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Administration of justice at the United Nations

Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations

Administration of justice at the United Nations

Report of the Secretary-General

Summary

By its resolutions [61/261](#), [62/228](#) and [63/253](#), the General Assembly decided to establish an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice for the United Nations. This system commenced operation on 1 July 2009.

The General Assembly has noted with appreciation the achievements of the system over the past four years; has acknowledged its evolving nature; and has continued to monitor it to ensure that it achieves its mandate.

In the present report, the Secretary-General provides information and statistics on the functioning of the system of administration of justice for calendar year 2012. The report also offers some observations on emerging trends and the jurisprudence.

During its sixty-seventh session, the General Assembly identified a number of areas in which the new system required strengthening, and in resolution [67/241](#) it requested the Secretary-General to report on a number of issues. The report includes the responses to those requests.

* Reissued for technical reasons on 16 October 2013.

** [A/68/150](#).



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Abbreviations

DESA	Department of Economic and Social Affairs
DFS	Department of Field Support
DGACM	Department for General Assembly and Conference Management
DM	Department of Management
DPA	Department of Political Affairs
DPI	Department of Public Information
DPKO	Department of Peacekeeping Operations
DSS	Department of Safety and Security
ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECLAC	Economic Commission for Latin America and the Caribbean
ESCAP	Economic and Social Commission for Asia and the Pacific
ESCWA	Economic and Social Commission for Western Asia
ICAO	International Civil Aviation Organization
ICSC	International Civil Service Commission
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Tribunal for the former Yugoslavia
ILO	International Labour Organization
ITSD	Information Technology Services Division
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSTAH	United Nations Stabilization Mission in Haiti
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
OICT	Office of Information and Communications Technology
OIOS	Office of Internal Oversight Services
OLA	Office of Legal Affairs
ONUB	United Nations Operation in Burundi
OPPBA	Office of Programme Planning, Budget and Accounts
UNAMI	United Nations Assistance Mission for Iraq

UNARKT	United Nations Assistance to the Khmer Rouge Trials
UNAT	United Nations Appeals Tribunal
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDCP	United Nations Drug Control Programme
UNDP	United Nations Development Programme
UNDT	United Nations Dispute Tribunal
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNFPA	United Nations Population Fund
UN-Habitat	United Nations Human Settlements Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNHQ	United Nations Headquarters
UNIC	United Nations information centre
UNICEF	United Nations Children's Fund
UNIFIL	United Nations Interim Force in Lebanon
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMIS	United Nations Mission in the Sudan
UNMISS	United Nations Mission in South Sudan
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNOG	United Nations Office at Geneva
UNON	United Nations Office at Nairobi
UNOPS	United Nations Office for Project Services
UNOV	United Nations Office at Vienna
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSCO	Office of the United Nations Special Coordinator for the Middle East Peace Process

UNSCOL	Office of the United Nations Special Coordinator for Lebanon
UNTSO	United Nations Truce Supervision Organization
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women
WFP	World Food Programme

I. Overview

1. By resolutions [61/261](#), [62/228](#) and [63/253](#), the General Assembly decided to establish an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of both managers and staff members. The system became operational on 1 July 2009.
2. The system has two tribunals, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, which are staffed by professional judges and supported by registries in Geneva, Nairobi and New York. The Office of Administration of Justice provides substantive, technical and administrative support to the Dispute Tribunal and the Appeals Tribunal through their Registries, provides legal assistance and representation to staff members through the Office of Staff Legal Assistance, and provides assistance, as appropriate, to the Internal Justice Council.
3. Before proceeding to the Tribunals, staff members wishing to contest non-disciplinary matters must request a management evaluation either from the Management Evaluation Unit in the Department of Management at United Nations Headquarters, or from the respective entity performing that function in the separately administered funds and programmes. The management evaluation function permits management to deal with requests if possible and avoid unnecessary litigation.
4. The Secretary-General is represented at the Dispute Tribunal by the Administrative Law Section of the Office of Human Resources Management for matters brought by staff serving in the Secretariat and certain other United Nations entities, as well as by legal and human resources staff in the United Nations Office at Nairobi, UNEP, UN-Habitat, the United Nations Office at Geneva and the United Nations Office at Vienna. The Secretary-General is represented at the Dispute Tribunal by similar units for matters brought by staff serving in the separately administered funds and programmes. The Secretary-General is represented at the Appeals Tribunal by the Office of Legal Affairs for staff serving in the Secretariat and the funds and programmes.
5. The present report provides statistics on the functioning of the system of administration of justice for 2012 and offers observations on the formal system. It also responds to the specific requests of the General Assembly contained in resolution [67/241](#) for consideration at its sixty-eighth session.
6. Annex I to the present report depicts the process by which a staff grievance is addressed in the system.

II. Review of the formal system of justice

A. Observations on the operation of the formal system of administration of justice

7. The following observations are offered with respect to the formal system of administration of justice, based on its operation in 2012 and since its inception on 1 July 2009.

1. Caseloads

8. There was a decrease in the number of new requests for management evaluation received by the Management Evaluation Unit of the Department of Management in 2012 compared with 2011. In 2011 the Unit received 952 requests, while in 2012 it received 837 requests. There was an increase in requests for management evaluation in the funds and programmes.

9. There was also a decrease in the number of new cases filed with the Dispute Tribunal in 2012 compared with 2011. In 2012 the Dispute Tribunal received 258 new cases, while in 2011 it received 281 new cases.¹

10. Some entities in the formal system experienced a caseload increase in 2012. This was the case with respect to the Appeals Tribunal, the Office of Staff Legal Assistance, the Administrative Law Section and the Office of Legal Affairs.

2. Nature of the cases

11. As in prior years, the bulk of cases continued to be appointment-related (primarily non-selection and non-promotion), followed by separation from service (including non-renewal of appointment and abolition of post), disciplinary matters, benefits and entitlements and classification.

3. Role of management evaluation

12. The management evaluation process plays a very important role in the formal system of administration of justice in resolving disputes by conducting an objective evaluation of contested administrative decisions to assess whether the decision was made in accordance with rules and regulations. A majority of administrative decisions which were upheld or deemed not receivable by the Under-Secretary-General of Management upon recommendation of the Management Evaluation Unit were not appealed to the Dispute Tribunal. With respect to the funds and programmes, most of the cases were resolved at the management evaluation stage.

4. Informal resolution within the formal system

13. Mindful of the General Assembly's emphasis on informal dispute resolution, actors in the formal system of administration of justice attempt to settle cases whenever appropriate, and a significant number of cases were settled in 2012.

14. As indicated in paragraph 12 above, many disputes were resolved at the management evaluation stage and did not proceed to the Dispute Tribunal.

15. With respect to cases appealed to the Dispute Tribunal, a number were resolved *inter partes*, with settlement discussions initiated by counsel on behalf of staff members, including the Office of Staff Legal Assistance, or by counsel for the Secretary-General as respondent, including following judicial intervention or case management by the Dispute Tribunal.

¹ It is recalled that more than 75,000 staff members have access to the formal system of administration of justice.

5. Jurisprudence

16. The jurisprudence is becoming more settled in certain areas. Where settled, such jurisprudence helps to shape administrative and management practices and should have a positive influence on the conduct of staff and managers.

17. It is settled, for example, that: (a) there is a duty on the part of management to provide reasons to a staff member whose fixed-term appointment is not renewed, if requested by the staff member or ordered by the Dispute Tribunal; (b) the Dispute Tribunal does not have jurisdiction to waive deadlines for management evaluation; (c) the Tribunals have the power to award interest in the normal course of ordering compensation so as to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations; (d) in a disciplinary case where termination might result, the administration is required to establish misconduct by clear and convincing evidence.

6. Self-represented staff members

18. A significant number of staff members are self-represented before the Tribunals. Of the 258 new cases received by the Dispute Tribunal in 2012, staff members were self-represented in 108 (42 per cent). With respect to the 142 new appeals the Appeals Tribunal received in 2012, staff members were self-represented in 60 (42 per cent).

19. Self-represented staff members impose significant latent costs on the internal justice system in terms of efficiencies, time and use of resources.

20. Self-represented staff members are more likely to file submissions by e-mail or hard copy rather than use the electronic court case management system, which adds to the workload of the registries. Self-represented staff members tend to be unfamiliar with filing requirements, procedures, rules of evidence, and the conduct of hearings, which places a burden on the registries, counsel representing the Secretary-General and the Dispute Tribunal. Three examples are illustrative: (a) self-represented staff members tend to file unnecessary and ill-timed motions, such as for discovery of documents; (b) self-represented staff members tend to file submissions that exceed the length specified in the Dispute Tribunal application form or in the rules of procedure of the Appeals Tribunal; and (c) compliance with Dispute Tribunal directions orders requesting a joint submission from the parties as to the agreed and disputed facts and legal issues (the purpose of which is to narrow what is at issue and focus proceedings) tends to be more complicated in cases where staff members are self-represented, as they may not understand the process or the issues and judicial case management may be required.

21. Self-represented staff members also reduce the likelihood of informal dispute resolution. Without professional and independent legal advice, they are less likely to appreciate and be able to weigh the benefits and risks of settlement versus litigation.

7. Summary legal advice by the Office of Staff Legal Assistance

22. There was an increase in the demand by staff members for summary or preventive legal advice from the Office of Staff Legal Assistance. This reflects the importance of the Office as a filter in the system, as staff members seek professional and independent legal advice from the Office with respect to the merits of their cases and the benefits and risks of settlement versus litigation.

B. Management Evaluation Unit

23. The Management Evaluation Unit is located in the Office of the Under-Secretary-General for Management and is the first step in the formal system of administration of justice. The core functions of the Unit are to: (a) carry out timely management evaluations of administrative decisions contested by staff members relating to their contracts of employment and/or terms and conditions of appointment; (b) assist the Under-Secretary-General for Management in providing timely and reasoned responses to management evaluation requests; and (c) assist the Under-Secretary-General in realizing managerial accountability.

24. In 2012, the Management Evaluation Unit received 837 requests for management evaluation. The management evaluation process provides the Administration with opportunities to: (a) identify poor decisions in a timely manner, thereby preventing unnecessary litigation before the Dispute Tribunal; and (b) provide lessons learned for decision makers, resulting in significant cost avoidance to the Organization. Of the requests received and closed by the Unit in 2012, 21 per cent were resolved through efforts by the Unit itself, including working with the Office of Staff Legal Assistance acting on behalf of staff members, or involving informal resolution through the Office of the United Nations Ombudsman and Mediation Services. In 79 per cent of requests, the challenged matter was not reversed or modified.

25. Activity related to evaluation requests filed in 2012 is summarized in table 1 below.

Table 1
Disposition of management evaluation requests filed in 2012

<i>Management evaluation requests</i>									
<i>Total requests filed^a</i>	<i>Decisions upheld^b</i>	<i>Decisions reversed</i>	<i>Moot requests</i>	<i>Requests settled^c</i>	<i>Non-receivable requests</i>	<i>Requests withdrawn</i>	<i>Requests misrouted</i>	<i>Requests carried forward^d</i>	<i>Decisions appealed and decided by the Dispute Tribunal^e</i>
837	241	10	106	9	327	49	11	84	32
<i>Outcome of cases in the Dispute Tribunal^f</i>									
<i>Upheld</i>	<i>Partially upheld</i>			<i>Overturned</i>		<i>Pending</i>			
21	7			4		Not available			

^a Including requests received by management evaluation in 2012.

^b Including requests upheld on the merits.

^c Including requests where the matter was settled as a result of management evaluation (4 requests were carried over from 2012 and settled in 2013).

^d Including open requests not resolved in 2012.

^e Including requests received by management evaluation in 2012, the outcomes of which were decided by the Dispute Tribunal as at 30 June 2013.

^f Including requests decided by the Dispute Tribunal by 30 June 2013.

26. In 2012, in 96 per cent of the requests submitted to the Management Evaluation Unit that were not resolved through settlement or by declaring them moot, the contested decision was deemed not receivable or was upheld by the Secretary-General following a recommendation by the Unit that the decision was not receivable or consistent with the rules and jurisprudence of the Organization.

27. In conformity with the decision of the General Assembly to establish a transparent system of administration of justice, where the Management Evaluation Unit has recommended that a contested administrative decision be upheld, a written reasoned response is sent to the staff member concerned setting out the basis for the management evaluation, including a summary of the relevant facts of the request and the comments on the request provided by the decision maker or makers, the relevant internal rules of the Organization, relevant jurisprudence of the Dispute Tribunal and Appeals Tribunal, an explanation of why the Unit considered that the contested decision comported with the rules and the final decision of the Secretary-General.

28. Unless they agree on a settlement with the Organization, and subsequent to the conclusion of the management evaluation process, staff members have the statutory right to take their complaint against the upheld administrative decision to the Dispute Tribunal (General Assembly resolution [62/228](#), para. 51). The Management Evaluation Unit has experienced that staff members who have sought recourse to the formal system because of a perceived lack of transparency or respect for them in the administrative decision-making process are more likely to decide not to pursue their statutory recourse to the Dispute Tribunal following management evaluation, as they perceive the process to be objective and fair. The written reasoned response provided to staff members at the conclusion of the management evaluation process is an important means of establishing the credibility of the process. Of the substantive management evaluations provided upon requests filed in 2012, 3.8 per cent of decisions were challenged by staff members before the Dispute Tribunal by 30 June 2013.

29. By 30 June 2013, 87 per cent of the cases considered by the Dispute Tribunal upon staff member applications following management evaluation confirmed, confirmed on different grounds, or partly confirmed the recommendation of the Management Evaluation Unit. This is for evaluations delivered with respect to requests filed approximately between February 2012 and February 2013. This percentage is likely to change as the Dispute Tribunal continues to adjudicate currently pending cases upon applications filed following management evaluations as above. While there are, in addition, issues of interpretation of internal laws that have yet to be determined by the Appeals Tribunal, this is believed to be indicative of the objectivity and accuracy of the Unit.

30. From its inception on 1 July 2009 to 31 December 2012, the Management Evaluation Unit received a total of 2,400 management evaluation requests, including 184 requests in 2009, 427 in 2010, 952 in 2011 and 837 in 2012. Of the 2,400 requests received, the Unit closed 2,301 requests by 31 December 2012. As at 31 December 2012, it had recommended compensation with regard to 49 management evaluation requests in total (2.1 per cent of closed requests).

1. Statutory time limits

31. Management evaluations are required to be completed within a limit of 30 calendar days for Headquarters staff and 45 calendar days for staff at offices

away from Headquarters after the submission of such a request (resolution 62/228, para. 54). Deadlines may only be extended by the Management Evaluation Unit in cases where the matter has been referred to the Office of the United Nations Ombudsman under conditions specified by the Secretary-General, or by the Dispute Tribunal for a period of up to 15 days in exceptional circumstances when both parties to a dispute agree (resolution 66/237, para. 32).

32. The Advisory Committee on Administrative and Budgetary Questions has stated that every effort should be made to resolve cases before staff members resort to litigation and that the management evaluation function is an important opportunity to do so (A/65/557, para. 16). In cases where the Management Evaluation Unit takes the view that the contested decision does not comport with the internal laws of the Organization, and the Under-Secretary-General for Management endorses consideration of a settlement, the Unit seeks to facilitate resolution of the request. The experience of the Unit is that such resolution involves extensive communication with the staff member and the decision maker and frequently exceeds the statutory time frame.

2. Caseload and resource needs of the Management Evaluation Unit

33. The caseload of the Management Evaluation Unit steadily increased from 1 July 2009 to 31 December 2011, reaching 952 management evaluation requests in 2011; however, this included approximately 310 similar requests. In 2012, the number of requests levelled off at 837, but intensified significantly in the first half of 2013.

34. The extremely short 30- and 45-day timelines for delivery of a recommendation and final decision are particular to the management evaluation process. These timelines support the swift resolution of disputes, but are extremely hard to meet for the Management Evaluation Unit, bearing in mind the high number of requests and resulting workload, which includes requests from staff members in peacekeeping, special political missions, offices away from Headquarters and regional commissions, and taking into account the resources at its disposal.

C. United Nations Dispute Tribunal

1. Composition of the United Nations Dispute Tribunal

35. The composition of the Dispute Tribunal remained the same as set out in the prior report of the Secretary-General on administration of justice (A/67/265 and Corr.1, para. 20).

36. In 2012, the judges of the Dispute Tribunal held two plenary meetings, from 23 to 27 April 2012 in New York and from 15 to 19 October 2012 in Nairobi.

2. Judicial statistics

(a) General activity of the Dispute Tribunal

37. As at 1 January 2012, the Dispute Tribunal had 268 pending cases. In 2012, the Dispute Tribunal received 258 new cases and disposed of 260 cases. As at 31 December 2012, there were 266 pending cases before the Dispute Tribunal.

38. Table 2.A below shows the number of cases received, disposed of and pending for the years 2009 to 2012. Table 2.B provides a breakdown of the cases received, disposed of and pending from 1 July 2009 to 31 December 2012 by location.

Table 2

United Nations Dispute Tribunal, status of cases**A. Totals, 2009-2012**

Entity	Cases received					Disposition of cases and requests					Cases pending (end of year)			
	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total	2009	2010	2011	2012
Dispute Tribunal	282 ^a	306 ^b	281	258	1 127	92	237	272	260	861	190	259	268	266

^a Including 169 cases transferred from the former Joint Appeals Boards and Joint Disciplinary Committees.

^b Including 143 cases transferred from the former United Nations Administrative Tribunal.

B. By location, 1 July 2009-31 December 2012

Entity	Cases received					Disposition of cases and requests					Cases pending (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	89	78	323	18	57	60	76	211	57	81	110	112
New York	99	107	97	86	389	22	76	93	78	269	78	108	112	120

39. Of the 258 cases received in 2012, 170 cases originated from the United Nations Secretariat (excluding peacekeeping and political missions) including the regional commissions, offices away from Headquarters, the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and various United Nations departments and offices; 42 cases originated from peacekeeping and political missions; and 46 cases originated from United Nations agencies, funds and programmes, including UNHCR, UNDP, UNICEF, UNFPA, UNOPS and WFP.

(b) Cases transferred to the Dispute Tribunal from the former system

40. As at 31 December 2012, nine cases transferred from the former system remained pending: three from the former Joint Appeals Boards and Joint Disciplinary Committees (two in Nairobi and one in New York) and six from the former United Nations Administrative Tribunal (five in Nairobi and one in New York).

(c) Number of judgements, orders and court sessions

41. During the reporting period, the Dispute Tribunal issued 208 judgements and 626 orders and held 187 court sessions.² Table 3.A below reflects the total number

² A “court session” is a statistical unit used to ensure consistency among the three Dispute Tribunal Registries in the reporting of the workload generated by hearings. A “hearing” may consist of several daily court sessions (morning, afternoon, evening) that can be held over several days.

of judgements, orders and court sessions for the years 2009 to 2012 and table 3.B provides the same information broken down by Registry.

Table 3

United Nations Dispute Tribunal, judgements, orders and court sessions

A. Totals, 2009-2012

Entity	Judgements					Orders					Court sessions				
	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total
Dispute Tribunal	97	217	219	208	741	255	679	672	626	2 232	172	261	249	187	869

B. By Registry, 2009-2012

Entity	Judgements					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
New York	33	82	81	64	260	190	338	304	271	1 103	118	91	78	75	362

(d) Cases referred for mediation

42. As at 1 January 2012, there were three ongoing mediation cases previously referred by the Dispute Tribunal to Mediation Services in the Office of the United Nations Ombudsman and Mediation Services. In 2012, 10 additional cases were identified and referred. Of these, five cases were successfully mediated and four were unsuccessful. At the end of 2012, four cases were still pending completion.

(e) Cases referred for accountability

43. In 2012 four cases were referred for accountability under article 10.8 of the statute of the Dispute Tribunal.³

(f) Cases by subject matter

44. As in prior years, the nature of cases before the Dispute Tribunal received during the reporting period fell into six main categories: (a) appointment-related matters (non-selection, non-promotion and other appointment-related matters): 126 cases; (b) benefits and entitlements: 30 cases; (c) classification: 9 cases; (d) disciplinary matters: 16 cases; (e) separation from service (non-renewal and other separation matters): 50 cases; and (f) other: 27 cases.

(g) Legal representation of applicants before the Dispute Tribunal

45. The Office of Staff Legal Assistance provided legal assistance in 103 of the 258 new cases received in 2012; 35 staff members were represented by private counsel; 12 by volunteers (current or former staff members of the Organization); and 108 staff members were self-represented.

³ One of the four was not appealed, one was vacated on appeal and two are currently under appeal.

(h) Outcome of closed cases⁴

46. Of the 260 cases disposed of by the Dispute Tribunal 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; 38 were decided partially in favour of the applicant and partially in favour of the respondent; 49 were withdrawn; three cases were closed for want of prosecution; five involved applications for revision/interpretation/execution and three were closed by inter-registry transfer.

47. Of the 49 withdrawn cases, five were settled by the Office of the United Nations Ombudsman and Mediation Services following referral by the Dispute Tribunal, while many of the others were settled *inter partes*, including as a result of judicial intervention or case management.

(i) Issues relating to staffing of the Dispute Tribunal and its Registries

48. The number of cases filed with the Dispute Tribunal in 2012 was 258, less than in 2011, when 281 cases were filed.

49. With its current complement of judges, including the three ad litem judges, in 2012, the Dispute Tribunal disposed of approximately the same number of cases as new cases it received (see table 2.A above). The number of pending cases at the end of the year was 266, representing approximately one year of work. It is thus of critical importance that the ad litem judges and their supporting staff are extended until the end of 2014, in order to keep abreast of the caseload. Any reduction in the judicial capacity of the Dispute Tribunal would result in a significant increase in the length of time needed to dispose of cases.

(j) Courtrooms

50. In resolution 67/241, the General Assembly reaffirmed the need for fully equipped courtrooms and other administrative requirements for the Tribunals, and requested the Secretary-General to ensure the provision of functional courtrooms with adequate facilities as a matter of urgency.

51. On 11 June 2013, a permanent and professional courtroom in Nairobi was inaugurated. It contains all necessary video, sound and recording devices; it includes interpretation booths for three languages and can accommodate up to 50 persons. The courtroom is equipped to hold hearings with parties and witnesses both in Nairobi and away from the duty station in an effective and efficient manner. In Geneva, the new courtroom is scheduled to be operational in the fourth quarter of 2013 and in New York the new courtroom is scheduled to be operational by the end of 2013.

D. United Nations Appeals Tribunal

1. Composition of the Appeals Tribunal

52. The composition of the Appeals Tribunal remained the same as set out in the previous report of the Secretary-General (A/67/265 and Corr.1, para. 44).

⁴ The total number of 260 cases disposed of by the Dispute Tribunal includes 47 suspension of action cases, 5 requests for revision/interpretation/execution, 3 inter-registry transfers and 2 cases that have been remanded.

53. The Appeals Tribunal held three sessions in 2012: New York, 5-16 March, Geneva, 18-29 June, and New York, 22 October-2 November.

2. Judicial statistics

(a) General activity of the Appeals Tribunal

54. In 2012, the Appeals Tribunal received 142 new cases and disposed of 103 cases. As at 31 December 2012, the Appeals Tribunal had 108 cases pending. This represented approximately one year of work.

55. Table 4 below shows the number of cases received, disposed of and pending for 2011 and 2012. There was a 48 per cent increase in cases received in 2012 as compared with 2011.

Table 4
United Nations Appeals Tribunal, status of cases, 2011-2012

Entity	Cases received			Disposition of cases			Cases pending	
	2011	2012	Total	2011	2012	Total	2011	2012
Appeals Tribunal	96	142	424	102	103	316	93	108

56. The 142 new cases included 109 appeals against judgements of the Dispute Tribunal (69 brought by staff members and 40 brought on behalf of the Secretary-General); 20 appeals against judgements rendered by the UNRWA Dispute Tribunal (19 brought by staff members and one brought on behalf of the Commissioner-General); and two of decisions by the UNRWA Commissioner-General. They also included three appeals of decisions of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, six requests for revision of Appeals Tribunal judgements filed by staff members, one request for interpretation of an Appeals Tribunal judgement by the Secretary-General and one request for execution of an Appeals Tribunal judgement by a staff member.

57. Table 5 below reflects the total number of judgements, orders and hearings for the Appeals Tribunal for the period from 2009 to 2012.

Table 5
Judgements, orders and hearings, United Nations Appeals Tribunal, 2009-2012

Entity	Judgements					Orders					Hearings				
	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total
Appeals Tribunal	—	102	88	91	281	—	30	44	45	119	—	2	5	8	15

(b) Outcome of disposed cases

58. Of the 91 judgements rendered by UNAT in 2012, 82 related to Dispute Tribunal judgements, four to UNRWA Dispute Tribunal judgements, two to decisions of the UNRWA Commissioner-General, one to a decision of the Standing Committee acting on behalf of the Pension Board, one to a decision of the Secretary-General of ICAO and one to a decision of the Secretary-General of IMO.

59. Of the appeals related to Dispute Tribunal judgements, 58 were brought by staff members and 34 were brought on behalf of the Secretary-General.⁵ The ratio of appeals filed by staff members versus those filed on behalf of the Secretary-General remained relatively consistent from 2011 to 2012. Approximately two thirds of the appeals were filed by staff members and one third were filed on behalf of the Secretary-General.

60. 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, 8 were rejected, 26 were granted in full or in part and one case was remanded to the Dispute Tribunal.

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

62. The Appeals Tribunal joined three appeals of a decision taken by the Standing Committee acting on behalf of the Pension Board. The Appeals Tribunal rejected all three appeals and upheld the contested decision.

63. The Appeals Tribunal rendered one judgement granting an appeal filed by a former ICAO staff member.

64. The Appeals Tribunal rendered one judgement rejecting an appeal filed by an IMO staff member.

E. Office of Staff Legal Assistance

1. Mandate

65. The Office of Staff Legal Assistance was established to ensure that staff members receive professional and independent legal advice and representation as a fundamental requirement to fulfil the General Assembly's decision "to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process" (resolution 61/261, paras. 4 and 23).

66. The mandate of the Office of Staff Legal Assistance is to assist staff members and their volunteer representatives in processing claims through the formal system of administration of justice (see General Assembly resolution 63/253, para. 12). The Office serves staff members, former staff members and their legal beneficiaries serving in the United Nations Secretariat, offices away from Headquarters, peacekeeping and political missions, certain United Nations tribunals and 22 funds, programmes and other entities in every duty station of the Organization. The Office serves approximately 75,000 staff in total. It has represented all categories and levels of general service and professional staff in duty stations throughout the world, including in the Secretariat and in United Nations agencies, funds and programmes.

⁵ The total number of appeals filed by staff members and the Secretary-General does not correspond to the number of appellate judgements addressing Dispute Tribunal judgements because these numbers include both cross-appeals and consolidated appeals.

67. The Office of Staff Legal Assistance provides a range of legal assistance to staff at all stages of the formal dispute process, from assistance with the management evaluation process through representation before the Tribunals and other recourse bodies.⁶ In addition, the Office provides assistance during informal dispute resolution and mediation, and in disciplinary matters. Each of these activities represents a “case”.

68. The Office of the United Nations Ombudsman and Mediation Services frequently refers staff to the Office of Staff Legal Assistance for independent legal advice and representation during the informal resolution process. As a result, the Office increasingly represents staff during formal mediation and in informal negotiations aimed at resolving conflicts. This is a positive development in the system.⁷

2. Statistics

(a) Caseload and type of assistance rendered

69. The status of cases of the Office is illustrated in table 6 below.

Table 6
Office of Staff Legal Assistance, status of cases, 2012

<i>Cases carried over to 2012</i>	<i>New cases</i>	<i>Cases closed or resolved</i>	<i>Cases pending at end of 2012</i>
190	1 049	1 016	223

70. There has been considerable growth in the caseload of the Office of Staff Legal Assistance since 2009, which is largely attributable to assistance provided by the Office outside of representation before the Tribunals. There was a 12 per cent increase in the number of cases that the Office received from 2010 to 2011 and a 60 per cent increase from 2011 to 2012.

71. Table 7 below provides a breakdown of cases received in 2009 through 2012 by type of assistance rendered.

Table 7
Office of Staff Legal Assistance, cases received by type of assistance rendered, 2009-2012

<i>Type of assistance rendered</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Disciplinary matters	153	70	55	46
Management evaluation matters	62	90	116	195
Representation before the Dispute Tribunal	165	76	108	102
Representation before the Appeals Tribunal ^a	18	39	21	31

⁶ The Internal Justice Council has very firmly warned against removal of representation function of the Office, for a number of reasons, including the negative impact it would have on the ability of the Office to negotiate effective resolutions “at the court door” (A/67/98, para. 52).

⁷ The Internal Justice Council has opined that the Office of Staff Legal Assistance adds “great value” to the justice system and does not contribute to any increase in the volume of litigation in the system (A/67/98, paras. 48 and 54).

Type of assistance rendered	2009	2010	2011	2012
Other matters	26	12	10	27
Summary advice	167	299	345	648
Total	591	586	655	1 049

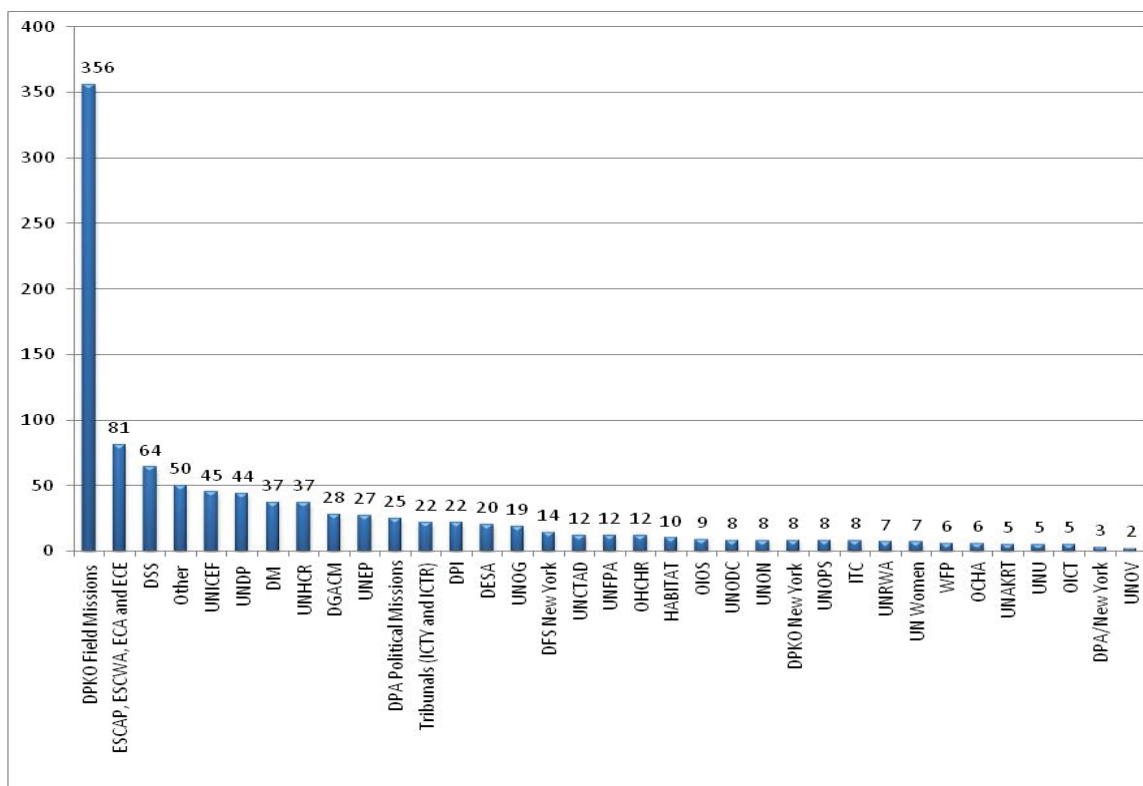
^a Including cases received from the United Nations Administrative Tribunal and transferred to the Appeals Tribunal.

72. The largest category of cases disposed of by the Office of Staff Legal Assistance in 2012 was non-disciplinary forms of separation from service (i.e., non-renewal, termination, and abolition of post) (31 per cent). Non-selection and promotion were the second highest category (24 per cent), while disciplinary cases and benefits and entitlements cases were each 11 per cent of the Office's caseload. Classification cases comprised 7 per cent, while harassment, discrimination, performance and miscellaneous matters comprised 16 per cent of the caseload.

(b) *Distribution of cases handled by department, agency, fund or programme*

73. The figure below breaks down the new cases received by the Office of Staff Legal Assistance by the entity of the staff member, including Secretariat departments, peacekeeping and political missions and United Nations agencies, funds and programmes. The figure reflects the large number of cases from Department of Peacekeeping Operations field missions handled by the Office.

New cases received, by entity of the staff member



(c) *Distribution of cases by gender*

74. The gender breakdown of staff members who sought legal assistance from the Office of Staff Legal Assistance in 2012 was 65 per cent male and 35 per cent female.

3. Informal dispute resolution

75. The legal officers of the Office of Staff Legal Assistance are uniquely placed in the United Nations system to engage in settlement discussions with counsel for the Administration. In 2012, the Office was involved in settling 99 cases at different stages of the formal or informal process. This figure comprised 9 disciplinary cases; 18 summary advice matters; 49 cases at the management evaluation stage; 16 cases before the Dispute Tribunal; 2 cases before the Advisory Board on Compensation Claims; and 5 cases involving the Office of the United Nations Ombudsman and Mediation Services. The ability of the Office of Staff Legal Assistance and the Administration to settle matters outside of judicial resolution has increased and is a positive trend in the system.

76. Where a negotiated settlement cannot be reached, the Office of Staff Legal Assistance assists staff to assess the risks and benefits of pursuing formal redress.

77. The provision of summary legal advice in particular serves several purposes including filtering out from the system claims without legal merit. Staff members will usually decide not to pursue litigation after being advised that their case lacks legal merit and that the Office of Staff Legal Assistance will not represent them. The summary advice process educates staff members with respect to their rights and obligations, and can help guide staff to other existing resources including informal recourse through the Office of the United Nations Ombudsman and Mediation Services to address workplace conflicts.

4. Resources

78. The staffing of the Office of Staff Legal Assistance has not changed since its inception.⁸ During 2012, three experienced legal officers from the Office left to take assignments elsewhere in the United Nations system at higher grades, reducing the experience and expertise in the Office.

79. To augment its resources, the Office of Staff Legal Assistance has continued to benefit from established contacts with a few volunteer lawyers working in other parts of the United Nations system, as well as informal arrangements with some private legal counsel. The Office also engages legal interns, both in New York and in its overseas offices.

80. The Secretary-General has previously identified the greatest challenge facing the Office of Staff Legal Assistance as having to respond to the high volume of

⁸ In New York, the Office consists of a Chief of Office at the P-5 level, one P-3 Legal Officer, one P-2 Associate Legal Officer and one G-6 and two G-5 Administrative Assistants. In Addis Ababa, Beirut and Geneva, the Offices each consist of one P-3 Legal Officer. During the reporting period, in Nairobi, the Office had one other P-3 Legal Officer funded by the support account for peacekeeping operations and in Geneva, the Office benefited from a P-3 Legal Officer on loan from UNHCR.

requests for assistance with a limited number of staff and limited non-post resources.⁹

81. In its resolution 67/241, the General Assembly decided that the overall level of resources for the Office of Staff Legal Assistance shall be maintained at its current level until the General Assembly takes a decision regarding a staff-funded scheme.

F. Office of the Executive Director

82. The Office of the Executive Director plays an important role in maintaining the independence of the formal system and is responsible for the coordination of the independent elements of the formal system, including oversight and coordination of the Tribunal Registries and the Office of Staff Legal Assistance. The Office of the Executive Director is responsible for the management and administration of the Office of Administration of Justice, which provides administrative, operational and technical support to the Tribunals through their Registries and to the Office of Staff Legal Assistance and also provides assistance, as appropriate, to the Internal Justice Council. The Office of the Executive Director also represents the formal system both within the United Nations and before external bodies and in all matters requiring interdepartmental coordination and consultation.

83. The Executive Director advises the Secretary-General on systemic issues relating to the administration of internal justice, represents the formal system both within the United Nations and before external bodies, liaises with the heads of other United Nations offices, including the Office of the United Nations Ombudsman and Mediation Services, and is responsible for disseminating information regarding the formal system of administration of justice. The Executive Director also prepares reports of the Secretary-General to the General Assembly on issues relating to the administration of justice and is responsible for ensuring administrative and technical support to the Internal Justice Council.

84. Under the authority of the Executive Director, the Principal Registrar is responsible for the coordination of the substantive, technical and administrative support to the judges of the Tribunals. The Principal Registrar advises on the optimal use of the human and financial resources allocated to the Tribunals, analyses the implications of emerging issues in the Tribunals, makes recommendations on possible strategies and measures and advises on all matters related to the operational activities of the Registries.

85. The Office launched a website on 28 June 2010 explaining all aspects of the formal system in all six official languages of the United Nations and providing a basic search tool for researching Dispute Tribunal and Appeals Tribunal jurisprudence. In 2012 there were 115,180 visits to the website, of which 28.7 per cent were new visitors. Overall, use of the website is increasing. In 2012, the average number of visits per month was 9,598, which constitutes an increase of 1,002 visits per month from 2011 levels. The most visited part of the website was the judgements and orders of the Tribunals. Extensive work was done in 2012 to improve access to Dispute

⁹ See A/66/275 and Corr.1, paras. 83-92 and A/65/373 and Corr.1, paras. 58-69. The Internal Justice Council has made similar recommendations: see A/65/304, paras. 70-73; A/66/158, paras. 41-42; and A/67/98, para. 46.

Tribunal and Appeals Tribunal judgements and orders and to provide linkages between the two Tribunals.

86. On 6 July 2011, a fully web-based court case management system was launched that permits staff members at any duty station to file their submissions electronically and allows parties to monitor their cases electronically from any geographic location. In 2012, eight new releases of the system containing critical upgrades to maintain and enhance access and functionality were rolled out. A major upgrade of the platform was also undertaken to ensure continued vendor support and to improve overall performance.

87. An electronic intake form in English and French was developed for the Office of Staff Legal Assistance to assist staff to request assistance and facilitate the capture of case-related data and statistics.

88. The Office liaised with management and staff for the purpose of facilitating the nomination of new members of the Internal Justice Council. The Council has been fully constituted with the following membership:

Ian Binnie: Chair

Carmen Artigas: Staff representative

Sinha Basnayake: External jurist nominated by management

Anthony Miller: Management representative

Victoria Phillips: External jurist nominated by staff

89. The Office provided administrative and technical support to the Internal Justice Council, including with respect to the preparation of its annual report to the General Assembly on the implementation of the system of administration of justice (A/68/306).

G. Legal offices representing the Secretary-General as respondent

1. Legal offices representing the Secretary-General before the United Nations Dispute Tribunal

(a) The Administrative Law Section, Office of Human Resources Management

90. The Administrative Law Section comprises the Appeals Unit and the Disciplinary Unit. The Section represents the Secretary-General in the majority of cases brought by staff members before the Dispute Tribunal. Organizationally, the Section is located in the Human Resources Policy Service of the Office of Human Resources Management. Its legal officers are posted in New York and Nairobi. The Section works closely with other offices within the Office of Human Resources Management, as legal challenges before the Dispute Tribunal often focus on the interpretation and application of the staff rules, Secretary-General's bulletins and administrative issuances.

91. The Administrative Law Section also advises managers in the Secretariat on the internal justice system, as well as about the investigative and disciplinary processes.

92. In 2012, the Section handled 333 applications and motions before the Dispute Tribunal brought by Secretariat staff members against the Secretary-General, through implementation of the final judgement.¹⁰ Primarily, these matters concerned challenges related to appointment, imposition of disciplinary measures, separation from service, benefits and entitlements or classification matters (see table 8 below). In the same year, the Dispute Tribunal disposed of 114 of the cases handled by the Section (see table 9 below). In 21 per cent of the disposed cases, the disposal was the result of a withdrawal or settlement, negotiated with or without the assistance of the Office of the Ombudsman. Of the remaining cases disposed of, the Dispute Tribunal upheld, in whole or in part, the challenged decision in 62 per cent of cases.

Table 8

United Nations Dispute Tribunal, breakdown of cases, 2010-2012

<i>Type of case^a</i>	<i>2010^b</i>	<i>2011^c</i>	<i>2012^d</i>
Appointment	82	123	138
Disciplinary	52	60	45
Separation from service	73	62	55
Benefits and entitlements	42	40	43
Classification	2	9	4
Other	30	43	48
Total	281	337	333

^a Including all cases where the Administrative Law Section represents the Secretary-General as respondent, regardless of whether a judgement was issued, including suspension of action applications, requests for revision and interpretation. The Section is also responsible for ensuring the implementation of the final judgement in a case. This means that the Section continues to handle a case after disposal of it by the Dispute Tribunal.

^b Including cases carried over from 2009 and earlier, and cases received in 2010.

^c Including cases carried over from 2010 and earlier, and cases received in 2011.

^d Including cases carried over from 2011 and earlier, and cases received in 2012.

Table 9

United Nations Dispute Tribunal, outcome of cases, 2012

<i>Total cases^a</i>	<i>Cases settled or withdrawn</i>	<i>Decision upheld</i>	<i>Decision partially upheld</i>	<i>Decision overturned</i>	<i>Judgement pending^b</i>
114	24	48	8	34	92

^a Including all cases for which the Administrative Law Section represented the Secretary-General as respondent (excluding suspension of action applications) that were disposed of by the Dispute Tribunal or were otherwise settled in 2012, regardless of when the application was received.

^b Including the total number of judgements pending before the Dispute Tribunal as at 31 December 2012, regardless of when the application was received, in cases where the Administrative Law Section represented the Secretary-General as respondent.

¹⁰ This number includes cases carried over from 2011 and earlier, as well as cases brought in 2012.

93. When the Dispute Tribunal issues a judgement, the Section liaises with the Office of Legal Affairs, which determines whether to appeal the judgement to the Appeals Tribunal. The Section implements the final judgements, obtaining the information necessary and conveying the judgements to the relevant officials, including the Controller, for execution.

94. In addition to handling cases involving disciplinary matters before the Dispute Tribunal, the Disciplinary Unit provides recommendations to senior management regarding the disposition of matters referred to the Office of Human Resources Management for possible disciplinary action. In 2012, the Disciplinary Unit handled 191 disciplinary matters. Additional information on disciplinary matters is published in an annual report of the Secretary-General entitled "Practice of the Secretary-General in disciplinary matters and possible criminal behaviour" (for information for the 12-month period ending 30 June 2013, see [A/68/130](#)).

(b) *United Nations Office at Geneva*

95. Statistics for 2012 are provided below.

Table 10

United Nations Office at Geneva outcome of cases before the United Nations Dispute Tribunal, 2012

<i>Total cases^a</i>	<i>Cases settled or withdrawn</i>	<i>Decision upheld</i>	<i>Decision partially upheld</i>	<i>Decision overturned</i>	<i>Final outcomes pending^b</i>
9	–	4	1	4	11

^a Including all cases in which the Legal Unit, Human Resources Management Service, United Nations Office at Geneva represented the Secretary-General as respondent (including suspension of action applications) that were disposed of by the Dispute Tribunal or were otherwise settled in 2012, regardless of when the application was received.

^b Including the total number of final outcomes pending before the Dispute Tribunal as at 31 December 2012, regardless of when the application was received, in cases where the Legal Unit, Human Resources Management Service, United Nations Office at Geneva represented the Secretary-General as respondent.

Table 11

United Nations Office at Geneva breakdown of cases before the United Nations Dispute Tribunal, 2010-2012

<i>Type of case handled^a</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Appointment	22	5	8
Disciplinary	2	1	0
Separation from service	6	2	3
Benefits and entitlements	9	2	2
Other	14	4	5
Total	53	14	18

^a Including all cases where the Legal Unit, Human Resources Management Service, United Nations Office at Geneva, represented the Secretary-General as respondent, regardless of whether a judgement was issued, including suspension of action applications.

(c) *United Nations Office at Vienna/United Nations Office on Drugs and Crime*

96. Statistics for 2012 are provided below.

Table 12

United Nations Office at Vienna outcome of cases before the United Nations Dispute Tribunal, 2012

<i>Total cases^a</i>	<i>Cases settled or withdrawn</i>	<i>Decision upheld</i>	<i>Decision partially upheld</i>	<i>Decision overturned</i>	<i>Final outcomes pending^b</i>
13	–	9	1	3	7

^a Including all cases in which the Human Resources Management Service, United Nations Office at Vienna represented the Secretary-General as respondent (including suspension of action applications) that were disposed of by the Dispute Tribunal or were otherwise settled in 2012, regardless of when the application was received.

^b Including the total number of final outcomes pending before the Dispute Tribunal as at 31 December 2012, regardless of when the application was received, in cases where the Human Resources Management Service, United Nations Office at Vienna, represented the Secretary-General as respondent.

Table 13

United Nations Office at Vienna breakdown of cases before the United Nations Dispute Tribunal, 2010-2012

<i>Type of case handled^a</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Appointment	9	12	8
Disciplinary	–	–	–
Separation from service	1	–	4
Benefits and entitlements	3	3	–
Classification	–	1	2
Other	7	12	6
Total	20	28	20

^a Including all cases where the Human Resources Management Service, United Nations Office at Vienna represented the Secretary-General as respondent, regardless of whether a judgement was issued, including suspension of action applications.

(d) *United Nations Office at Nairobi*

97. Statistics for 2012 are provided below.

Table 14
**United Nations Office at Nairobi, outcome of cases before the United Nations
 Dispute Tribunal, 2012**

<i>Total cases^a</i>	<i>Cases settled or withdrawn</i>	<i>Decision upheld</i>	<i>Decision partially upheld</i>	<i>Decision overturned</i>	<i>Final outcomes pending^b</i>
6	—	1	—	5	10

^a Including all cases in which the Human Resources Management Service, United Nations Office at Nairobi represented the Secretary-General as respondent (including suspension of action applications) that were disposed of by the Dispute Tribunal or were otherwise settled in 2012, regardless of when the application was received.

^b Including the total number of final outcomes pending before the Dispute Tribunal as at 31 December 2012, regardless of when the application was received, in cases where the Human Resources Management Service, United Nations Office at Nairobi represents the Secretary-General as respondent.

Table 15
**United Nations Office at Nairobi, breakdown of cases before the United Nations
 Dispute Tribunal, 2010-2012**

<i>Type of case handled^a</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Appointment	1	1	1
Disciplinary	—	—	—
Separation from service	4	3	4
Benefits and entitlements	—	3	4
Classification	1	1	4
Other	2	2	1
Total	8	10	14

^a Including all cases where the Human Resources Management Service, United Nations Office at Nairobi, represented the Secretary-General as respondent, regardless of whether a judgement was issued, including suspension of action applications.

(e) *United Nations Environment Programme*

98. Statistics for 2012 are provided below.

Table 16

United Nations Environment Programme, outcome of cases before the United Nations Dispute Tribunal, 2012

<i>Total cases^a</i>	<i>Cases settled or withdrawn</i>	<i>Decision upheld</i>	<i>Decision partially upheld</i>	<i>Decision overturned</i>	<i>Final outcomes pending^b</i>
1	—	—	—	1 ^c	6

^a Including all cases in which UNEP represented the Secretary-General as respondent (including suspension of action applications) that were disposed of by the Dispute Tribunal or were otherwise settled in 2012, regardless of when the application was received.

^b Including the total number of final outcomes pending before the Dispute Tribunal as at 31 December 2012, regardless of when the application was received, in cases where UNEP represented the Secretary-General as respondent.

^c Decision not technically overturned as staff member had separated.

Table 17

United Nations Environment Programme, breakdown of cases before the United Nations Dispute Tribunal, 2010-2012

<i>Type of case handled^a</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Appointment	—	—	—
Disciplinary	—	—	—
Separation from service	—	—	2
Benefits and entitlements	—	—	—
Classification	—	—	5
Other	—	1	—
Total	—	1	7

^a Including all cases where UNEP represented the Secretary-General as respondent, regardless of whether a judgement was issued, including suspension of action applications.

(f) United Nations Human Settlements Programme

99. Statistics for 2012 are provided below.

Table 18

United Nations Human Settlements Programme, outcome of cases at the United Nations Dispute Tribunal, 2012

<i>Total cases^a</i>	<i>Cases settled or withdrawn</i>	<i>Decision upheld</i>	<i>Decision partially upheld</i>	<i>Decision overturned</i>	<i>Final outcomes pending^b</i>
4	1	2	1	—	1

^a Including all cases in which UN-Habitat represented the Secretary-General as respondent (including suspension of action applications) that were disposed of by the Dispute Tribunal or were otherwise settled in 2012, regardless of when the application was received.

^b Including the total number of final outcomes pending before the Dispute Tribunal as at 31 December 2012, regardless of when the application was received, in cases where UN-Habitat represents the Secretary-General as respondent.

Table 19
United Nations Human Settlements Programme, breakdown of cases before the United Nations Dispute Tribunal, 2010-2012

<i>Type of case handled^a</i>	<i>2010^b</i>	<i>2011^c</i>	<i>2012^d</i>
Appointment	2	–	–
Disciplinary	–	1	–
Separation from service	–	1	1
Benefits and entitlements	1	1	–
Other	1	–	–
Total	4	3	1

^a Including all cases where UN-Habitat represented the Secretary-General as respondent, regardless of whether a judgement was issued, including suspension of action applications.

^b Including cases carried over from 2009 and earlier, and cases received in 2010.

^c Including cases carried over from 2010 and earlier, and cases received in 2011.

^d Including cases carried over from 2011 and earlier, and cases received in 2012.

(g) *United Nations Development Programme*

100. Statistics for 2012 are provided below.

Table 20
United Nations Development Programme, management evaluation cases^a as at 31 December 2012

<i>Total management evaluation cases filed</i>	<i>Cases upheld</i>	<i>Cases settled^b</i>	<i>Cases appealed to Dispute Tribunal^c</i>	<i>Cases carried forward^d</i>	<i>Outcome of cases before the Dispute Tribunal^e</i>			
					<i>Upheld</i>	<i>Partially upheld</i>	<i>Overtaken</i>	<i>Pending</i>
17	9	4	4	3	–	–	–	3

^a Including cases filed with the management evaluation entity within UNDP.

^b Including all cases where the matter was settled in whole or in part as a result of management evaluation.

^c Including all cases that were appealed to the Dispute Tribunal in 2012.

^d Including all open cases that were not resolved in 2012 and were carried over to 2013.

^e Including all cases that were disposed of by the Dispute Tribunal in 2012 or were pending before the Dispute Tribunal as at 31 December 2012.

Table 21
**United Nations Development Programme, breakdown of cases before the
 Dispute Tribunal, 2010-2012**

<i>Type of case handled^a</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Appointment	2	1	–
Disciplinary	11	8	7
Separation from service	21	11	7
Benefits and entitlements	–	–	–
Other	4	4	4
Total	38	24	18

^a Including all cases where UNDP represented the Secretary-General as respondent, regardless of whether a judgement was issued, including suspension of action applications.

Table 22
**United Nations Development Programme outcome of cases at the Dispute
 Tribunal, 1 January-31 December 2012**

<i>Total cases^a</i>	<i>Cases settled or withdrawn</i>	<i>Decision upheld</i>	<i>Decision partially upheld</i>	<i>Decision overturned</i>	<i>Judgement pending^b</i>
18	5	2	1	5	5

^a Including all cases for which UNDP represented the Secretary-General as respondent (including suspension of action applications) that were disposed of by the Dispute Tribunal or were otherwise settled in 2012, regardless of when the application was received.

^b Including the total number of judgements pending before the Dispute Tribunal as at 31 December 2012, regardless of when the application was received, in cases where UNDP represented the Secretary-General as respondent.

(h) *United Nations Children's Fund*

101. Statistics for 2012 are provided below.

Table 23
**United Nations Children's Fund, management evaluation cases^a as at
 31 December 2012**

<i>Total management evaluation cases filed</i>	<i>Cases upheld</i>	<i>Cases settled^b</i>	<i>Cases appealed to Dispute Tribunal^c</i>	<i>Cases carried forward^d</i>	<i>Outcome of cases at Dispute Tribunal^e</i>			
					<i>Upheld</i>	<i>Partially upheld</i>	<i>Overturned</i>	<i>Pending</i>
60	53	5	7	7	4	–	–	3

^a Including cases filed with the management evaluation entity within UNICEF.

^b Including all cases where the matter was settled in whole or in part as a result of management evaluation.

^c Including all cases that were appealed to the Dispute Tribunal in 2012.

^d Including all open cases that were not resolved in 2012 and were carried over to 2013.

^e Including all cases that were disposed of by the Dispute Tribunal in 2012 or were pending before the Dispute Tribunal as at 31 December 2012.

Table 24
United Nations Children's Fund, breakdown of cases before the Dispute Tribunal, 2010-2012

<i>Type of case handled^a</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Appointment	2	14	1
Disciplinary	1	4	1
Separation from service	—	—	—
Benefits and entitlements	—	—	1
Other	2	—	—
Total	5	18	3

^a Including all cases where UNICEF represented the Secretary-General as respondent, regardless of whether a judgement was issued, including suspension of action applications.

Table 25
United Nations Children's Fund, outcome of cases at the Dispute Tribunal, 2012

<i>Total cases^a</i>	<i>Cases settled or withdrawn</i>	<i>Decision upheld</i>	<i>Decision partially upheld</i>	<i>Decision overturned</i>	<i>Judgement pending^b</i>
6	1	3	—	2	6

^a Including all cases for which UNICEF represented the Secretary-General as respondent (including suspension of action applications) that were disposed of by the Dispute Tribunal or were otherwise settled in 2012, regardless of when the application was received.

^b Including the total number of judgements pending before the Dispute Tribunal as at 31 December 2012, regardless of when the application was received, in cases where UNICEF represented the Secretary-General as respondent.

(i) *Office of the United Nations High Commissioner for Refugees*

102. Statistics for 2012 are provided below.

Table 26
Office of the United Nations High Commissioner for Refugees, management evaluation cases^a as at 31 December 2012

<i>Total management evaluation cases filed</i>	<i>Cases upheld</i>	<i>Cases settled</i>	<i>Cases appealed to Dispute Tribunal</i>	<i>Cases carried forward</i>	<i>Outcome of cases at Dispute Tribunal</i>			
					<i>Upheld</i>	<i>Partially upheld</i>	<i>Overturned</i>	<i>Pending</i>
56	12	21	12	10	18	—	3	8

^a Including all cases filed with the management evaluation entity within UNHCR.

Table 27

Office of the United Nations High Commissioner for Refugees, breakdown of cases before the Dispute Tribunal, 2010-2012

<i>Type of case handled^a</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Appointment	29	11	13
Disciplinary	9	–	1
Separation from service	11	13	3
Benefits and entitlements	1	1	–
Other	14	2	6
Total	64	27	23

^a Including all cases where UNHCR represented the Secretary-General as respondent, regardless of whether a judgement was issued, including suspension of action applications.

Table 28

Office of the United Nations High Commissioner for Refugees, outcome of cases at the Dispute Tribunal, 2012

<i>Total cases^a</i>	<i>Cases settled or withdrawn</i>	<i>Decision upheld</i>	<i>Decision partially upheld</i>	<i>Decision overturned</i>	<i>Judgement Pending^b</i>
32	11	18	–	3	8

^a Including all cases for which UNHCR represented the Secretary-General as respondent (including suspension of action applications) that were disposed of by the Dispute Tribunal or were otherwise settled in 2012, regardless of when the application was received.

^b Including the total number of judgements pending before the Dispute Tribunal as at 31 December 2012, regardless of when the application was received, in cases where UNHCR represented the Secretary-General as respondent.

(j) United Nations Office for Project Services

103. Statistics for 2012 are provided below.

Table 29

United Nations Office for Project Services, management evaluation cases^a as at 31 December 2012

<i>Total management evaluation cases filed</i>	<i>Cases upheld</i>	<i>Cases settled^b</i>	<i>Cases appealed to Dispute Tribunal^c</i>	<i>Cases carried forward^d</i>	<i>Outcome of cases at Dispute Tribunal^e</i>			
					<i>Upheld</i>	<i>Partially upheld</i>	<i>Overturned</i>	<i>Pending^f</i>
4	3	–	3	1	1	–	–	5

^a Including cases filed with the management evaluation entity within UNOPS.

^b Including all cases where the matter was settled in whole or in part as a result of management evaluation.

^c Including all cases that were appealed to the Dispute Tribunal in 2012.

^d Including all open cases that were not resolved in 2012 and were carried over to 2013.

^e Including all cases that were disposed of by the Dispute Tribunal in 2012 or were pending before the Dispute Tribunal as at 31 December 2012.

^f Including 2 cases where the request for management evaluation was in 2012 and the Dispute Tribunal cases filed early 2013.

Table 30
**United Nations Office for Project Services, breakdown of cases before the
 Dispute Tribunal, 2010-2012**

<i>Type of case handled</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Appointment ^a	—	—	—
Disciplinary	2	1 ^d	4 ^h
Separation from service	4 ^b	3 ^e	2 ⁱ
Benefits and entitlements	3 ^c	2 ^f	2 ^j
Other		—	1
Total	9	6^g	9^k

^a Not including cases where the staff members post was abolished and the staff member was separated after non-selection for another post.

^b Including 2 cases that were subject of one judgement, and 1 suspension of action case where the staff member prevailed but did not pursue the case on the merits.

^c Including 1 case that was settled.

^d Carried over from 2010.

^e Including 2 cases carried over from 2010.

^f Including 1 case carried over from 2010 and then settled.

^g Including 3 cases carried over from 2010.

^h Including 1 case carried over from 2010-2011 and 2 cases filed in 2012 regarding disciplinary decisions made in 2011.

ⁱ Including 1 case carried over from 2011.

^j Including 2 cases carried over from 2011.

^k Including 4 cases carried over from 2011.

Table 31
**United Nations Office for Project Services, outcome of cases at the
 Dispute Tribunal, 2012**

<i>Total cases^a</i>	<i>Cases settled or withdrawn</i>	<i>Decision upheld</i>	<i>Decision partially upheld</i>	<i>Decision overturned</i>	<i>Judgement pending^b</i>
4	1 settled; 1 withdrawn	1	—	1	5

^a Including all cases for which UNOPS represented the Secretary-General as respondent (including suspension of action applications) that were disposed of by the Dispute Tribunal or were otherwise settled in 2012, regardless of when the application was received.

^b Including the total number of judgements pending before the Dispute Tribunal as at 31 December 2012, regardless of when the application was received, in cases where UNOPS represented the Secretary-General as respondent.

(k) *United Nations Population Fund*

104. Statistics for 2012 are provided below.

Table 32
United Nations Population Fund management evaluation cases as at 31 December 2012

<i>Total management evaluation cases filed</i>	<i>Cases upheld</i>	<i>Cases settled^a</i>	<i>Cases appealed to Dispute Tribunal^b</i>	<i>Cases carried forward^c</i>	<i>Outcome of cases at Dispute Tribunal^d</i>			
					<i>Upheld</i>	<i>Partially upheld</i>	<i>Overturned</i>	<i>Pending</i>
18	18	—	1	2	1	1	—	2

^a Including all cases where the matter was settled in whole or in part as a result of management evaluation.

^b Including all cases that were appealed to the Dispute Tribunal in 2012.

^c Including all open cases that were not resolved in 2012 and were carried over to 2013.

^d Including all cases that were disposed of by the Dispute Tribunal in 2012 or were pending before the Dispute Tribunal as at 31 December 2012; two additional cases were withdrawn in 2012.

Table 33
United Nations Population Fund breakdown of cases before the Dispute Tribunal, 2010-2012

<i>Type of case handled^a</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Appointment	2	0	3
Disciplinary	3	3	2
Separation from service	5	4	4
Benefits and entitlements	—	—	—
Other	—	—	—
Total	10	7	9

^a Including all cases where UNFPA represented the Secretary-General as respondent, regardless of whether a judgement was issued, including suspension of action applications.

Table 34
United Nations Population Fund outcome of cases at the Dispute Tribunal, 2012

<i>Total cases^a</i>	<i>Cases settled or withdrawn</i>	<i>Decision upheld</i>	<i>Decision partially upheld</i>	<i>Decision overturned</i>	<i>Judgement pending^b</i>
9	3	3	1	—	2

^a Including all cases for which UNFPA represented the Secretary-General as respondent (including suspension of action applications) that were disposed of by the Dispute Tribunal or were otherwise settled in 2012, regardless of when the application was received.

^b Including the total number of judgements pending before the Dispute Tribunal as at 31 December 2012, regardless of when the application was received, in cases where UNFPA represented the Secretary-General as respondent.

2. Representation of the Secretary-General before the Appeals Tribunal

Office of Legal Affairs

105. As the central legal service of the Organization, the Office of Legal Affairs of the Secretariat provides legal advice to the Secretary-General, Secretariat departments and offices, funds and programmes and other United Nations system organs in a

number of areas, including the administration of justice system. Within the Office, the organizational unit entrusted with the responsibility for providing legal advice regarding administration and management matters is the General Legal Division.

106. The functions of the Division include: reviewing each and every administrative issuance relating to human resources management policy for consistency and accuracy prior to its promulgation; providing legal advice, assistance and support concerning the interpretation of the Charter of the United Nations, the resolutions and decisions of the General Assembly, the Staff Regulations and Rules, the mandates of programmes and activities in which United Nations organs are engaged and other administrative issuances of the Organization; and providing legal advice on matters before an administrative decision is taken, including by legally clearing recommendations for the dismissal of staff members.

107. In addition, the Division reviews and analyses each and every judgement of the Dispute Tribunal and the Appeals Tribunal, thereby developing a comprehensive view of the jurisprudence in the administration of justice system. The Division draws on this analysis when it provides legal advice during the early stages of a claim advanced by a staff member, well before such a claim has progressed to litigation. The Division also uses this analysis to provide case-specific advice to the entities representing the Secretary-General at the first level of the judicial process, and to brief them generally on legal developments. Such advice and briefing ensure coordination and consistency in the legal strategies and arguments advanced by the Secretary-General on issues of policy and principle. The Division further uses this analysis when determining whether appealing a given judgement of the Dispute Tribunal is in the interest of the Organization. Thus, the Division reviewed all 299 judgements of the Dispute Tribunal and the Appeals Tribunal that were decided in 2012.

108. The Division is also responsible for the representation of the Secretary-General before the Appeals Tribunal. This responsibility encompasses both the filing of appeals against judgements of the Dispute Tribunal and responding to appeals filed by staff members. It also involves filing motions and responses to motions, as well as oral advocacy in support of the Secretary-General at hearings before the Appeals Tribunal. Once judgements are released, the Division further provides advice on their implementation and on responses to inquiries regarding their implications. In 2012, the Appeals Tribunal decided 82 judgements in cases in which the Secretary-General was a party. In more than 80 per cent of these judgements, there was a favourable outcome for the Secretary-General.

III. Responses to questions relating to the administration of justice

A. Overview

109. In paragraph 58 of resolution its [67/241](#), the General Assembly requested the Secretary-General to provide the reports requested in paragraphs 13, 18, 19, 44, 48, 49, 54 and 55 of the resolution in a single comprehensive report on administration of justice to be submitted to the General Assembly at the main part of its sixty-eighth session.

110. In paragraphs 2, 17, 18, 26, 27, 52 and 59 of resolution 67/241, and in resolution 66/237, the General Assembly made or endorsed other requests for reports from the Secretary-General to be submitted at the main part of its sixty-eighth session.

111. The present section responds to the various requests of the General Assembly.

B. Responses

1. Good management practices to address the underlying factors that give rise to workplace disputes

112. In paragraph 13 of resolution 67/241, the General Assembly requested the Secretary-General to report on the efforts made to institutionalize good management practices in order to address the underlying factors that give rise to disputes in the workplace at its sixty-eighth session.

113. In providing assistance to the Under-Secretary-General for Management, the Management Evaluation Unit reviews requests while identifying trends and systemic issues, which are subsequently set out in its reports. The Unit also provides support to the Under-Secretary-General in the compilation of the lessons-learned guide for managers and guidance notes that are circulated to all heads of offices and departments, and through them to their managers. The current three lessons-learned guides for managers (termination/non-renewal of contract, selection of staff, disciplinary measures; a guide on performance management is in the advanced preparation stage) include a review of the jurisprudence of the Dispute and Appeals Tribunals and examine how the judgements interpret and apply the internal laws of the Organization.

114. The Secretary-General consistently makes every effort to institutionalize good management practices in order to address the underlying factors that give rise to disputes in the workplace, in particular a lack of timely and open dialogue in performance evaluation issues between managers and staff members, a lack of full understanding by managers of the internal laws and procedures of the Organization, a lack of clarity of some elements of the laws and the general managerial challenges of making and communicating administrative decisions.

115. Good management practices are being identified from the work of the Management Evaluation Unit. The judgements of the Tribunals further provide important guidance as to the interpretation and application of the internal laws. Management evaluation letters serve as a very important instrument of good management practices as they contain a detailed and reasoned explanation setting out the basis for the evaluation. The outcome and lessons learned from the management evaluation process are also included in biannual reports of the Unit, which highlight, inter alia, systemic and problematic issues for managers.

2. Interim independent assessment of the formal system of administration of justice

116. In paragraphs 19 and 20 of resolution 67/241, the General Assembly requested the Secretary-General to present for consideration by the Assembly at its sixty-eighth session a proposal for conducting an interim independent assessment of the formal system of the administration of justice, to be done in a cost-efficient manner and within existing resources.

117. The Secretary-General's proposal is set out in annex II to the present report.

3. Code of conduct for external legal representatives

118. In paragraph 44 of resolution [67/241](#), the General Assembly stressed the need to ensure that all individuals acting as legal representatives, whether staff members or external counsel, are subject to the same standards of professional conduct applicable in the United Nations system, and requested the Secretary-General, in consultation with the Internal Justice Council and other relevant bodies, to prepare a code of conduct for legal representatives who are external individuals and not staff members, and to report thereon to the General Assembly at the main part of its sixty-eighth session.

119. Preparation of the code of conduct for external legal representatives is under way and it is expected that it will be ready for presentation at the sixty-ninth session of the General Assembly.

4. Financing of the Office of Staff Legal Assistance

120. In paragraph 48 of resolution [67/241](#), the General Assembly requested the Secretary-General to submit a single preferred proposal for joint financing for the Office of Staff Legal Assistance for consideration and approval by the General Assembly, at the main part of its sixty-eighth session, and to do so in consultation with all relevant stakeholders, including the Internal Justice Council and staff representatives.

121. For the reasons set out below, the Secretary-General is of the view that it would be in the best interests of the Organization for the Organization to continue to fund the entire cost of the Office of Staff Legal Assistance, including the additional resources that it requires.

122. The Secretary-General has previously noted the question whether the options would be consistent with the Charter of the United Nations and, in particular, with Article 17, paragraph 2 (see [A/66/275](#) and Corr.1 and [A/67/265](#) and Corr.1, para. 199 (f) and annex II).

123. It has been and remains the position of the Secretary-General that the Office of Legal Assistance provides benefits to both staff members and the Organization (see [A/62/294](#), paras. 23-26; [A/62/748](#); and [A/67/265](#) and Corr.1, paras. 67 and 68 and annex II). The General Assembly has also recognized that professional legal assistance is critical to the effective and appropriate utilization of the available mechanisms within the system of administration of justice (see resolution [62/228](#), para. 12; and resolution [65/251](#), para. 35).

124. The Office of Staff Legal Assistance acts as a filter in the system of administration of justice by encouraging staff members to seek recourse to the informal system of justice, by declining representation in cases it considers unmeritorious and by encouraging settlement, where appropriate, of cases that are in the formal system of administration of justice. All of the Management Evaluation Unit, the Office of the United Nations Ombudsman and Mediation Services, the Internal Justice Council and the Dispute Tribunal have acknowledged the important role that the Office of Staff Legal Assistance plays within the system of internal justice (see para. 24 above; see also [A/68/158](#), para. 55; and [A/68/306](#), para. 104 (a) and annex II, paras. 30 and 31).

125. The Office of Staff Legal Assistance is an integral part of the accountability architecture of the United Nations. It helps to ensure that improper administrative decisions are corrected and contributes to better decision-making in the Organization. This is often accomplished early on in the process so that matters are settled informally.

126. The costs of self-represented staff members to the system of administration of justice and the negative impact on informal dispute resolution have been noted in paragraphs 20 and 21 above. The Dispute Tribunal is also concerned about self-represented litigants (see [A/68/306](#), annex II, para. 29). The Office of Staff Legal Assistance provides an effective alternative to self-representation.

127. Challenges posed by external lawyers acting on behalf of staff members have been previously noted (see [A/67/265](#) and Corr.1, annex II, para. 21).

128. Subsequent to the sixty-seventh session, the three options identified in the previous report on administration of justice were further analysed in order to assess their feasibility.¹¹ As a result of such analysis, it has been concluded that all three options have significant drawbacks.

129. While a mandatory payroll deduction option could be structured so as to generate the revenue required to provide for additional resources for the Office of Staff Legal Assistance,¹² the Secretary-General has identified the risk of legal challenges by staff members.

130. While a user-pay option would place the burden of financing the additional resources on those staff members that rely on the Office of Staff Legal Assistance for legal assistance, the amount that could be generated is uncertain and the amounts that staff members would have to pay for legal services in order to fund the additional resources would be beyond the financial ability of many staff members and would give rise to serious concerns about access to justice.

131. The option of mandatory payments from staff associations and unions was not considered to be a feasible option for the reasons set out in annex II of the previous report on administration of justice.

132. However, in the event that the General Assembly wishes to proceed with a scheme for a staff contribution to the additional resources of the Office of Staff Legal Assistance, and it is necessary to choose one option, the Secretary-General considers that a fourth option would be the preferable option, namely an automatic monthly payroll deduction from net base salary unless a staff member expressly opted out of such deduction. Under such option, only those staff members who did not opt out would be permitted to use the services of the Office.

133. Since this model would be optional, it would reduce the risk of legal challenges. It would also alleviate concerns about access to justice. However, it would be difficult to predict what the opt-out rate would be and therefore how much revenue it would generate to finance additional resources for the Office of Staff

¹¹ The options assumed that the Organization would continue to fund the Office of Staff Legal Assistance at current levels and that a contribution from staff would be used to fund the additional resources that the Office requires.

¹² The additional resources that the Office seeks consist of two P-4 Legal Officers, four General Service Administrative Assistants and \$52,000 for non-post resources, at a cost of approximately \$895,000 per year at 2012 pay levels.

Legal Assistance. The opt-out rate and percentage automatic payroll deduction would have to be monitored and be subject to periodic review by the General Assembly.

134. The option is set out in further detail in annex III to the present report.

135. Consultations among staff representatives and management were to take place at the Staff-Management Committee meeting in June 2013, but did not occur. The Office of Administration of Justice invited staff representatives and management to participate in a videoconference discussion on 6 August 2013. One staff association participated.¹³ At the videoconference, staff maintained the view that the Office of Staff Legal Assistance is an expense that should be borne by the Organization. In the alternative, staff suggested that a portion of the staff assessment could be used to fund additional resources for the Office or in the further alternative that staff be given a step increment which could then be used for such purpose.

136. There has not yet been an opportunity for the Internal Justice Council to consider the matter.

5. Practice of tribunals in other international organizations and in Member States regarding awards for moral damage, emotional distress, procedural irregularities and violations of due process

137. In paragraph 49 of resolution [67/241](#), the General Assembly requested the Secretary-General to continue to solicit information on the practice of tribunals in other international organizations and in Member States regarding awards for moral damage, emotional distress, procedural irregularities and violations of due process. This request was further to the General Assembly's request for information in paragraph 34 of resolution [66/237](#) and the reporting on the issue in the previous report of the Secretary-General on the administration of justice at the United Nations.¹⁴

138. Pursuant to the General Assembly's request, the Secretariat continued in 2013 to seek information regarding this issue. The Secretariat received responses from seven additional Member States. These responses are summarized in annex IV to the present report. The full responses are on file with the Secretariat and may be made available upon request. Thus, including the responses received and reported on in 2012, the Secretariat has received responses from 14 Member States and seven international administrative tribunals.

Summary of the practice of tribunals in other international organizations and in Member States

139. There are limitations with respect to the observations that can be made regarding awards for moral damage, emotional distress, procedural irregularities and violations of due process based on the information received by the Secretariat. The

¹³ By an e-mail dated 5 August 2013 from the Vice-President of the Staff-Management Committee to the Special Assistant of the Executive Director, Office of Administration of Justice, it was indicated that consultations with respect to this matter should take place under the framework of Secretary-General's bulletin ST/SGB/2011/6. It is noted that ST/SGB/2011/6 has been superseded by ST/SGB/2011/6/Rev.1.

¹⁴ In paragraph 34 of resolution 66/237, the General Assembly additionally requested information on the awarding of punitive or exemplary damages. The Assembly did not include this component of its request in paragraph 49 of resolution 67/241.

scope and depth of the information received does not allow for firm conclusions to be drawn. Nevertheless, the information does permit some tentative observations.

140. Regarding compensation for non-pecuniary injury, the practice reported by a number of international organizations and Member States appears to permit compensation for such injury in cases brought by employees of public entities. Generally, applicants must allege moral damage or emotional distress in order to be compensated for them, and such damage must be established through evidence. In some instances, however, a procedural irregularity or violation of due process can result in a finding of non-pecuniary harm to the employee, and an ensuing award of compensation.

141. Once moral damage is established, the decision-making authority, whether a court or another type of body, determines the appropriate amount of compensation. According to the majority of the Member States that provided information, the amount of compensation depends on the extent or seriousness of the damage suffered and should be commensurate with the nature of the wrongful act or omission. The practice of 6 of the 14 Member States that provided information is either not to award compensation for moral damage in the normal course of such cases or to exercise restraint with regard to such awards. The information from one of these six Member States indicated that the overwhelming majority (i.e. more than 95 per cent) of such awards did not reach the amount of \$ 12,000. The information from another of these six Member States indicated that only in extreme cases could an award of compensation for moral damage exceed \$16,500. The other eight Member States did not include information on the actual amounts of such awards in their responses.

142. Seven responses were also received from comparable administrative tribunals of international organizations,¹⁵ addressing practice in their respective jurisdictions. Those responses were summarized in the previous report (A/67/265 and Corr.1, annex III, paras. 32-68).

143. From the information received, the practice of most of the comparable administrative tribunals that responded is to permit an award for moral damage or non-pecuniary harm; the party alleging harm has the evidentiary burden of proving such harm; and the amount awarded is based on the evidence in support of the claim. The information provided does not provide a basis for further conclusions about the calculation of compensation for non-pecuniary loss. For those of the comparable administrative tribunals of international organisations that provided examples of awards of compensation, they ranged from \$ 1,000 to \$10,000 (ILO Administrative Tribunal), to \$100,000 (European Union Civil Service Tribunal, ILO Administrative Tribunal, IMF Administrative Tribunal), and four months' net base salary to two years' net base salary (World Bank Administrative Tribunal).

Summary of the practice of the Dispute Tribunal and Appeals Tribunal

144. Regarding awards of compensation generally, article 10.5 of the statute of the Dispute Tribunal and article 9.1 of the statute of the Appeals Tribunal establish that

¹⁵ The Administrative Tribunals of: ILO, the World Bank, the International Monetary Fund, the Asian Development Bank, the Organization of American States, the European Bank for Reconstruction and Development and the European Union Civil Service Tribunal.

the Tribunals have the authority to order compensation. The statutes of the Tribunals are silent with respect to the specific issue of compensation for moral damage.

145. The Appeals Tribunal has developed several principles in its jurisprudence to guide awards of compensation for moral damage. The Appeals Tribunal has ruled that the authority of the Tribunals to award compensation includes the authority to award compensation for moral damage. Pursuant to the jurisprudence of the Appeals Tribunal, the Tribunals may award compensation for moral damage in two instances. First, compensation for moral damage may be awarded for a breach of the applicant's substantive entitlements arising from his or her contract of employment and/or from a breach of the procedural due process entitlements therein guaranteed (be they specifically designated in the Staff Regulations and Rules or arising from the principles of natural justice). Where the breach is of a fundamental nature, the breach may of itself give rise to an award of compensation. Breaches of fundamental rights have included: (a) the failure to respond to or address a complaint of discrimination, harassment and abuse of authority; (b) the failure to properly address a complaint of harassment and discrimination by not expeditiously finishing an investigation and its report; and (c) the failure to forward an application for sabbatical leave to the committee that was authorized to decide on such applications. Secondly, an award of compensation may be based on evidence of moral damage directly linked or reasonably attributed to a breach of a substantive or procedural right. In such instance, evidence of moral damage may consist of a medical or psychological report or other evidence of stress, anxiety or other harm sustained by the applicant. The applicant bears the burden of proof regarding such evidence, and the Tribunals must be satisfied that the stress, harm or anxiety is such as to merit a compensatory award.

146. The Appeals Tribunal has also ruled that compensation must be set following a principled approach on a case-by-case basis. In this regard, the Appeals Tribunal has ruled that the amount of compensation for moral damage is to be assessed based upon the magnitude of the breach of a substantive or procedural right and the contents of any medical or psychological report or other evidence of harm sustained by the applicant. Furthermore, it must be proportionate to the harm suffered.

147. From 1 July 2009 to the end of 2012, compensation was awarded in approximately 125 of 675 final judgements.¹⁶ Roughly 85 of these 125 judgements included an award of compensation for moral damage, emotional distress, procedural irregularities and/or violations of due process. In the period from 1 July 2009 to 31 December 2012, such awards have ranged from \$1 to approximately \$100,000, with a median amount of awards for non-pecuniary loss of approximately \$17,000.

148. Additional responses received by Member States are set out in annex IV to the present report.

6. Agreements on cost-sharing arrangements

149. In paragraph 54 of resolution [67/241](#), the General Assembly requested the Secretary-General to make every effort to expedite the finalization of agreements on cost-sharing arrangements for the totality of the internal justice system, including on the expected reimbursement of approximately \$4.5 million from the participating

¹⁶ Final judgements are the judgements of the Dispute Tribunal that were not appealed and the judgments of the Dispute Tribunal as affirmed, reversed or modified by the Appeals Tribunal.

United Nations entities, and to report thereon to the General Assembly at the main part of its sixty-eighth session.

150. The parties have concluded recently the last details of the memorandum of understanding and the document was circulated for formal signature.

151. All the remaining balances for the biennium 2010-2011 in the amount of \$4,499,233.25 were fully recovered. Taking into account the previous payment in the amount of \$2,358,348.07, the overall reimbursement for the biennium 2010-2011 is in the amount of \$6,857,581.32 as shown in the breakdown below

Table 35

Reimbursement received from United Nations entities

<i>Organization</i>	<i>Amount due (United States dollars)</i>	<i>Amount received (United States dollars)</i>
UNHCR	1 578 888.93	1 578 888.93
UNICEF	2 335 600.37	2 335 600.37
UNDP	1 964 348.97	1 964 348.97
UNFPA	584 743.95	584 743.95
UNOPS	243 404.01	243 404.01
UNFCCC	105 515.57	105 515.57
UN-Women	45 079.52	45 079.52
Total	6 857 581.32	6 857 581.32

152. An amendment to the memorandum of understanding with respect to the cost sharing of the expenditures incurred in the biennium 2012-2013 will be issued upon receipt of the signed memorandum of understanding.

153. The funds received for the biennium 2010-2011 were classified as miscellaneous and credited as savings under the United Nations general fund.

7. Accountability of managers

154. In paragraph 55 of resolution 67/241, the General Assembly requested the Secretary-General to submit to the General Assembly at the main part of its sixty-eighth session proposals with reference to accountability of individuals where violations of the rules and procedures of the Organization have led to financial loss.

155. In paragraph 41 of resolution 66/237, the General Assembly requested the Secretary-General to submit information on concrete measures taken to enforce accountability in cases where contested decisions have resulted in awards of compensation to staff.

156. The Secretary-General may take concrete measures to realize accountability as a result of management evaluation requests and judgements of the Dispute and Appeals Tribunals, including:

(a) To modify or change the impugned decision where it has been determined that the manager has improperly exercised his or her delegated authority

when making that decision, thereby withdrawing the decision-making authority of the manager for that particular decision;

(b) To speak to the manager concerning the contested decision, explaining why the decision was improper and discussing lessons learned;

(c) To refer a case for investigation, where it has been determined that the improper exercise of delegated authority by the manager might rise to the level of possible misconduct;

(d) To place a note on the official status file of the manager at issue taking note of the improper decision, subject to the provisions of administrative instruction ST/AI/292 on the filing of adverse material in personnel records;

(e) To introduce specific performance evaluation objectives for the manager, where it has been determined that the contested decision was taken as a result of poor management;

(f) To require a manager to attend training in the light of the taking of an improper decision;

(g) To decide that the performance of a manager specifically be assessed in view of the poor administrative decision that was reversed.

157. The Management Evaluation Unit makes accountability recommendations in cases which are settled; however, every case has to be analysed individually in order to establish whether there is a managerial failure and if so how serious it is, whether there is evidence of “intent” or “bad faith”, and what the appropriate accountability measures would be. Having a single approach with automatic “sanctioning” of decision makers in the event of a mistake would be neither appropriate nor can it be expected to reduce the number of mistakes more effectively than through the use of learning and development measures.

158. Out of 837 requests filed in 2012, the Unit recommended nine settlements with compensation between \$500 and \$77,000, avoiding further litigation and eliminating any further exposure to potential awards for damage. In all cases, the settlements were brought to the attention of the decision makers. In terms of accountability, the Management Evaluation Unit took the view that in all cases the mistakes were either of a technical nature, involved nominal amounts or amounts the staff members were entitled to, that is, not damages per se, and thus did not merit a punitive approach.

159. Pursuant to article 10 (8) of its statute, the Dispute Tribunal may refer appropriate cases to the Secretary-General or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability. In 2012, the Dispute Tribunal referred four such cases.

8. Performance appraisal system

160. In paragraph 17 of resolution 67/241, the General Assembly requested the Secretary-General to redouble his efforts to continue to develop and implement a credible, fair and fully functioning performance appraisal system.

161. This matter is addressed in the biennial reports to the General Assembly on the overview of human resources management and in the annual reports on accountability.

9. Issues relevant to review of the statutes of the Tribunals

162. In paragraph 18 of resolution 67/241, the General Assembly requested the Secretary-General to submit to it for consideration at the main part of its sixty-eighth session, an updated report on issues relevant to its review of the statutes of the Tribunals.

163. The Secretary-General reports that at this time there are no additional issues relevant to a review of the statutes of the Tribunals to bring to the attention of the General Assembly.

10. Measures to encourage informal dispute resolution and avoid litigation

164. In paragraphs 22 and 24 of resolution 67/241, the General Assembly requested the Secretary-General to recommend to the General Assembly at its sixty-eighth session additional measures to encourage recourse to informal resolution of disputes and to avoid unnecessary litigation.

165. If the Management Evaluation Unit identifies a management evaluation request, which in its view has a potential for settlement that both the staff member and the administration may not have identified, it reaches out to the staff member and/or the administration to propose consideration of informal settlement or suggests seeking the services of the United Nations Ombudsman as a neutral third party.

166. Wherever appropriate, the Management Evaluation Unit recommends settling or rendering moot requests which in its assessment have a likelihood of resulting in awards of compensation before the Dispute Tribunal. The Unit further averts litigation through issuing its recommendations that explain the background and legal basis of decisions in clear and simple terms and in a respectful language. At 30 June 2013, 3.8 per cent of all administrative decisions that had been the subject of a management evaluation request filed in 2012 were challenged before the Dispute Tribunal and already disposed of by the Tribunal. This number will increase as the Dispute Tribunal progresses in issuing decisions on applications filed within the above time frame. Of all management evaluation requests submitted in 2011, staff members filed applications to the Dispute Tribunal in 38 per cent of requests (this included one group case with 270 applicants; if the group case was counted as one case, the figure would be 15 per cent); in 2010, only 19 per cent of all evaluations were the subject of applications filed to the Dispute Tribunal; and in 2009, the number was 28 per cent.

167. The Secretary-General has been informed that the Management Performance Board is considering reaching out to all senior managers to remind them of the availability and potential of informal dispute resolution through the Office of the United Nations Ombudsman and Mediation Services.

11. Responsibility for the resolution of conflicts

168. In paragraph 25 of resolution 67/241, the General Assembly requested the Secretary-General to take concrete measures to address the current organizational culture wherein there is a tendency to shift responsibility for the resolution of conflict upwards in the organizational hierarchy.

169. In paragraph 153 of the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/67/172), it is stated that: the organizational culture is one in which there is a tendency to shift responsibility for the resolution of conflict upwards in the organizational hierarchy. The Secretary-General understands this observation of the Ombudsman to refer to the importance the organization already places on the resolution of conflicts first by the individuals directly involved, and at the lowest possible level.

170. It is crucial that the responsibility for resolving conflicts is not shifted and that in case the parties are not able to resolve an issue directly, managers take the responsibility to assist in resolving the conflicts within their respective area of responsibility.

171. Towards that end, the Office of the Ombudsman and the Learning, Development and Human Resources Services Division of the Office of Human Resources Management have been collaborating to enhance the training offered to staff to promote “conflict competence”, whereby staff and managers are assisted in developing the skills to manage conflict effectively. This collaboration has recently included contracting an outside party with the expertise to review and revise existing programmes and to continue delivery of the training.

12. Implementation of the recommendations contained in the report on the activities of the Office of the United Nations Ombudsman and Mediation Services

172. In paragraph 26 of resolution 67/241, the General Assembly requested the Secretary-General to report to the Assembly at the main part of its sixty-eighth session on progress made on the implementation of the recommendations to address systemic and cross-cutting issues contained in the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services. That report is set out in annex V to the present report.

13. Revised terms of reference for the Office of the United Nations Ombudsman and Mediation Services

173. In paragraph 27 of resolution 67/241, the General Assembly reiterated its request to the Secretary-General to report to it on the revised terms of reference for the Office of the United Nations Ombudsman and Mediation Services, and requested the Secretary-General to ensure that the terms of reference and guidelines for the Office are promulgated as soon as possible.

174. Consultations are being completed and it is expected that the revised terms of reference will be promulgated in the latter part of 2013.

14. Non-staff personnel

175. In paragraph 52 of resolution 67/241, the General Assembly requested the Secretary-General to continue to include information on disputes involving non-staff personnel in the context of both management evaluation and informal mediation in his respective reports and to provide information also on existing measures to institutionalize good management practice that aim to avoid or mitigate disputes involving the different categories of non-staff personnel.

176. From 1 July 2009 to 31 December 2012, the Management Evaluation Unit received 16 management evaluation requests from non-staff members. This group

included one judge of the United Nations system, eight United Nations volunteers, one contractor, one military observer, one attorney, one consultant and three interns.

177. Information on disputes involving non-staff personnel in the context of informal mediation is contained in the separate report of the Secretary-General on the Office of the United Nations Ombudsman and Mediation Services (A/68/158).

15. Observation of the Convention on the Rights of Persons with Disabilities

178. In paragraph 59 of its report (A/67/547), the Advisory Committee on Administrative and Budgetary Questions requested the Secretary-General to take all necessary corrective action to ensure that the relevant provisions of the Convention on the Rights of Persons with Disabilities are observed in the workplace. Information in that regard is set out in annex VI to the present report.

16. Pilot project on the feasibility of decentralizing elements of disciplinary matters relating to the field

179. In its resolution 66/237, implementing A/66/7/Add.6, the General Assembly endorsed the consideration of the Advisory Committee on Administrative and Budgetary Question that the results of the implementation of the pilot project to test the feasibility of decentralizing elements of the system of administration of justice and the other short-term measures proposed by the Secretary-General should be submitted for consideration to the General Assembly at its sixty-eighth session. The response is set out in annex VII to the present report.

180. For the reasons set out in annex VII, the Secretary-General recommends that the implementation of the Nairobi pilot project should be postponed by two years in order to reassess it in the light of the degree to which other complimentary efforts may have contributed to the underlying objective of strengthening the quality and timeliness of response to allegations of misconduct.

17. Monetary compensation awarded by the Management Evaluation Unit and the Tribunals

181. In the seventh report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium 2012-2013 of 25 October 2011 (A/66/7/Add.6), the Advisory Committee requested that information on the level of compensation awarded by the Tribunals and paid out to staff members and former staff members continue to be included in future reports of the Secretary-General on the administration of justice.

182. The information on the level of compensation awarded and paid out to staff members and former staff members by the Management Evaluation Unit and the Tribunals is set out in annex VIII to the present report. The annex also includes a breakdown of the Tribunals' awards among the following categories: funds and programmes, peacekeeping missions, special political missions, offices away from Headquarters and United Nations Headquarters.

IV. Other matters

Salary level of the judges of the Dispute Tribunal

183. The General Assembly, in section III of its resolution 63/253, approved the proposed conditions of service of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as set out in the report of the Secretary-General on Administration of justice at the United Nations (A/63/314). In paragraph 83 of that report, the Assembly was advised of “the intention of the Secretary-General to compensate the judges to be appointed by the Assembly to serve on the Dispute Tribunal with salaries and allowances equivalent to the D-2 level”. In the annex to the report, it was specified that the compensation would include “salary and allowances equivalent to those payable to United Nations staff members at the D-2 level, step IV”.

184. The conditions of service for the judges of the United Nations Dispute Tribunal set out in the annex to A/63/314, as approved by the General Assembly in resolution 63/253, make reference to certain benefits and allowances that are the same as those of staff members, such as annual leave, sick leave and home leave. In the case of the salary level, however, the conditions of service for judges of the Dispute Tribunal specifically provide for salary and allowances “equivalent to those payable to United Nations staff members at the D-2 level, step IV”. Establishing a fixed level of salary, as well as pensionable remuneration, corresponds to the conditions of service of other non-staff officials with similar status such as the Inspectors of the Joint Inspection Unit. The conditions of service do not provide for salary increments under annex I to the Staff Regulations, as such increments are subject to satisfactory service which the Secretary-General would not be in a position to evaluate.

185. Owing to an administrative error, four judges of the Dispute Tribunal were granted salary increments to the D-2 level, step V, effective 1 July 2011. While regretting the administrative error, the four judges concerned were informed in March 2013 that the overpayment owing to the error would be recovered. The Secretariat considered it necessary and appropriate to recover the overpayment in view of the fact that the General Assembly, by resolution 63/253, had approved the salaries of the members of the United Nations Dispute Tribunal at the D-2 level, step IV and in the interest of equity, as other judges of the Dispute Tribunal continue to be paid a salary equivalent to the D-2 level, step IV. In the light of the views expressed by the judges concerned, recovery action has been deferred to allow the General Assembly an opportunity to clarify whether, when approving the proposal of the Secretary-General to provide salary and allowances to the judges of the Dispute Tribunal equivalent to those payable to United Nations staff members at the D-2 level, step IV, the Assembly intended for salary increments to be granted upon completing the required period of service and subject to satisfactory service.

186. To assist the General Assembly in its consideration, the position of the judges concerned is provided in annex IX to the present report.

187. The General Assembly may wish to clarify whether the salary level of the judges of the Dispute Tribunal remains at a fixed level equivalent to those paid to United Nations staff members at the D-2 level, step IV.

V. Resource requirements

188. Resources for the system of administration of justice, including for continuation of the three ad litem judges and the staff that support them through 2014, referred to in paragraph 49 above, are reflected in the proposed programme budget for the biennium 2014-2015. No additional resources are being requested in the context of the present report.

VI. Conclusions and actions to be taken by the General Assembly

189. The Secretary-General requests the General Assembly to give due consideration to the recommendations and proposals contained in the present report.

190. Accordingly, the Secretary-General requests the General Assembly to:

(a) Take note of the information provided on the efforts made to institutionalize good management practices in order to address the underlying factors that give rise to disputes in the workplace;

(b) Approve the proposal for an interim independent assessment of the formal system of administration of justice;

(c) Consider whether the Organization should fund the cost of additional resources for the Office of Staff Legal Assistance or, in the alternative, approve the proposal for an automatic payroll deduction with an opt-out provision for the funding of additional resources;

(d) Take note of the further information provided with respect to the practice of tribunals in other international organizations and in Member States regarding awards for moral damage, emotional distress, procedural irregularities and violations of due process;

(e) Take note of the information provided with respect to efforts to expedite the finalization of agreements on cost-sharing arrangements for the totality of the internal justice system;

(f) Take note of the concrete measures taken to enforce accountability in cases where contested decisions have resulted in awards of compensation to staff;

(g) Take note of the measures to encourage informal dispute resolution;

(h) Take note of the measures to address the current organizational culture wherein there is a tendency to shift responsibility for the resolution of conflict upwards in the organizational hierarchy;

(i) Take note of the progress made on the implementation of the recommendations to address systemic and cross-cutting issues contained in the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services;

(j) Take note of the report of the Secretary-General with respect to revised terms of reference for the Office of the United Nations Ombudsman and Mediation Services;

(k) Take note of the information provided with respect to disputes involving non-staff personnel;

(l) Take note of the information provided concerning observation of the Convention on the Rights of Persons with Disabilities;

(m) Consider whether it would be appropriate to postpone the implementation of the Nairobi pilot project by two years;

(n) Clarify whether the salary level of the judges of the Dispute Tribunal remains at a fixed level equivalent to those paid to United Nations staff members at the D-2 level, step IV.

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graph TD
    SSG[Staff member grievance] --> ME[Management evaluation]
    ME -- "Informal resolution may be recommended" --> OMS[Ombudsman and Mediation Services]
    ME --> UNDT[United Nations Dispute Tribunal]
    UNDT -- "Informal resolution may be recommended" --> OMS
    UNDT -- "Solution found" --> SF1((Solution found))
    UNDT -- "UNDT judgement implemented" --> UJ1((UNDT judgement implemented))
    UNDT -- "UNDT judgement appealed" --> UNAT[United Nations Appeals Tribunal]
    UNAT --> UJ2((UNAT judgement implemented))
    OLA[Office of Staff Legal Assistance] --> UNDT
    OMS -- "Informal resolution available throughout" --> SF2((Solution found))
  
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Annex II

Proposal for conducting an interim independent assessment of the formal system of administration of justice

A. Introduction

1. The present paper is in response to the request of the General Assembly in its resolution 67/241 that the Secretary-General submit for consideration by the General Assembly at its sixty-eighth session a proposal for conducting an interim independent assessment of the formal system of administration of justice, to be done in a cost-efficient manner and within existing resources.

2. It is recalled that in its report (A/67/547), the Advisory Committee on Administrative and Budgetary Questions proposed that an interim independent assessment of the formal system of administration of justice at the United Nations be conducted:

“9. ... The Committee notes ... that no independent assessment of the system of administration of justice in all its aspects has yet been undertaken, including an examination of caseload and jurisprudence trends, incentives for the early and informal resolution of disputes, opportunities for efficiencies, including better use of technology and staff resources, and whether the aims and objectives of the system, set out in resolution 61/261, are in fact being achieved.

“11. The Advisory Committee notes that, after three full years of operation, the system of administration of justice is no longer in the start-up phase. While acknowledging that the system is continuing to evolve, the Committee notes with concern the implications of a growing number of cases proceeding to formal adjudication. The system, in the Committee’s view, requires stronger measures to encourage informal dispute resolution. Furthermore, the Committee stresses that reducing litigation also requires that the causes underlying the high level of recourse to the internal justice system be identified and addressed. Considering that a number of cases filed with the Tribunals relate to fundamental weaknesses in the handling and management of human resources-related matters, it is essential that good management practices be implemented throughout the Organization.

“12. The Advisory Committee therefore recalls its prior recommendation that a comprehensive assessment be conducted on the evolution and functioning of the system of administration of justice (see A/66/7/Add.6, para. 6). While acknowledging that certain aspects of the system have yet to settle into place, the Committee is convinced that an interim independent assessment of all functioning aspects of the system is now required in order to take stock of the general direction of the system and to ensure that it is meeting the governing principles set out in paragraph 4 of its resolution 61/261. The outcome of this interim assessment could also inform future decisions regarding the alignment of resources among relevant offices or entities handling different aspects of the system of administration of justice.”

3. It is further recalled that in response to a request by the Fifth Committee for clarification, the Chair of the Advisory Committee indicated that the proposal was

for an “interim” assessment because certain aspects of the system of administration of justice were not yet fully finalized and therefore the assessment could cover the currently functioning aspects of the system. He further indicated that the assessment should be “independent” in that the entity selected to conduct the assessment should not be an entity or office that has a role or function in the system of administration of justice.

4. As set out above, the General Assembly, in its resolution 67/241, endorsed the proposal of the Advisory Committee.

B. Proposed terms of reference

5. It is proposed that the scope of the interim independent assessment be as follows:

(a) The assessment shall examine all operational aspects of the formal system of administration of justice in the light of the principles established in paragraph 4 of General Assembly resolution 61/261, by which the Assembly decided to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike and evaluate whether the aims and objectives of the system are in fact being achieved;

(b) The entity conducting the assessment should:

(i) Consider the relevant resolutions of the General Assembly;

(ii) Consider the reports of the Secretary-General and the Internal Justice Council on the current system of administration of justice;

(iii) Receive and review information from relevant stakeholders regarding the general direction and functioning of the formal system of administration of justice;

(iv) Consult with, inter alia, United Nations staff, staff unions and associations, managers, management in the Secretariat and funds and programmes including management evaluation units, legal representatives of staff and management including the Office of Staff Legal Assistance, the Administrative Law Section in the Office of Human Resources Management, counterparts in the funds and programmes and the Office of Legal Affairs, the Office of Internal Oversight Services and other investigative authorities in the funds and programmes, offices away from Headquarters, funds and programmes, judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, the Registries of the Tribunals, the Office of Administration of Justice, the Internal Justice Council, Office of the United Nations Ombudsman and Mediation Services and, to the extent possible, members of the former Redesign Panel;

(c) The assessment should include consideration of, inter alia, the following:

(i) Caseloads of entities that comprise the formal system of administration of justice and any trends with respect thereto;

- (ii) Lessons from the jurisprudence for the implementation of good management practices throughout the Organization;
 - (iii) Identification of the causes of recourse to the formal system of administration of justice and possible means of addressing such causes;
 - (iv) Proactive measures for the early and informal resolution of disputes;
 - (v) Opportunities for efficiencies, including better use of technology and of staff and non-staff resources;
 - (vi) Effective access to the formal system of administration of justice for staff members at all duty stations;
 - (vii) Resource requirements and cost effectiveness of the formal system of administration of justice.
6. A draft report on the findings and recommendations is to be circulated to relevant stakeholders for comments and their comments are to be appended to the final report.
7. A report on the findings and recommendations is to be prepared for consideration by the General Assembly at its sixty-ninth session.

C. Entity to conduct the assessment

8. It is submitted that at least two considerations inform which entity might be appropriate to conduct an interim independent assessment:
- (a) The entity must be independent; that is, be an entity or office that does not have a role or function in the system of administration of justice;
 - (b) The assessment must be conducted within existing resources.
9. The second of these considerations constrains the ability to engage an entity external to the United Nations to conduct the assessment.
10. One external option that was identified was to ask members of the former Redesign Panel to conduct the assessment. The appeal of such an option was their familiarity with the former system of administration of justice in the United Nations, the problems that the new system of administration of justice was intended to remedy and the principles and objectives of the new system. However, it was not possible to identify a source of potential funding for such an option and therefore it was not considered further.
11. Another external option that was identified was to locate an entity or group of entities that would be willing to conduct the assessment on a pro bono basis. It was determined, however, that such an option was unrealistic and in any event would give rise to a number of concerns such as quality control, adherence to deadlines and the enforceability of the terms and conditions of the agreement.
12. With respect to internal entities, there are two that are independent — the Joint Inspection Unit and the United Nations Board of Auditors. However, the mandate of the Board is to audit the financial statements of the Organization. In all of the circumstances, it was concluded that the most appropriate entity to conduct the assessment would be the Joint Inspection Unit.

13. The Joint Inspection Unit is an independent external oversight body of the United Nations system, established pursuant to General Assembly resolutions 2150 (XXI), 2735 A (XXV) and 2924 B (XXVII), and is mandated to conduct evaluations, inspections and investigations system-wide.

14. Certain of the Inspectors have legal backgrounds and all of them have management experience. The Joint Inspection Unit has access to additional legal assistance and consultation and the budgetary resources necessary to support obtaining such additional legal assistance and consultation and to undertake the work required for conducting an interim independent assessment.

15. The Joint Inspection Unit has previous experience with respect to administration of justice matters, having prepared a number of reports in connection with the former system of administration of justice in the United Nations.

Annex III

Proposal for joint financing of the Office of Staff Legal Assistance

1. An automatic payroll deduction with an opt-out provision would be characterized by the following:

(a) A percentage payroll deduction would automatically be levied against the net base salary of all staff members who have access to the formal system of administration of justice, unless a staff member expressly opted out of such deduction;

(b) Staff members who chose to opt out would not be able to use the services of the Office Staff Legal Assistance, except as set out below;

(c) If staff members who expressly opted out of the automatic payroll deduction wished to use the services of the Office, they would be required to opt back in to the automatic payroll deduction and would be subject to a waiting period (e.g., 12 months) before being able to use the services of the Office. The purpose of the waiting period would be to encourage staff members not to opt out of the automatic payroll deduction;

(d) The opt-out rate and percentage payroll deduction would be monitored and be subject to periodic review by the General Assembly.

2. If it is assumed that no staff members would opt out, the percentage payroll deduction that would have to be levied against net base salary in order to generate \$895,000 per year would be 0.029 per cent. Using this figure, examples of the approximate impact of the deduction on the salaries of staff members at different levels and serving at different duty stations are as follows:

<i>Duty station of staff member</i>	<i>Level of staff member</i>	<i>Net base salary (United States dollars, per month)</i>	<i>Payroll deduction (United States dollars, per month)</i>
Vienna	D-1, step 5	14 895.55	4.32
Geneva	P-5, step 5	15 300.64	4.44
Addis Ababa	P-4, step 5	8 859.02	2.57
New York	P-3, step 3	8 263.07	2.40
Santiago	P-2, step 2	5 781.74	1.68
South Sudan	G-5, step 7	1 168.11	0.34
Nairobi	G-4, step 4	1 425.05	0.41
Somalia	G-2, step 4	449.30	0.13
Nairobi	National Professional Officer B	4 040.50	1.17
Bangkok	Local, step 6	1 652.63	0.48
Dili	Local 3, step 3	537.84	0.16

3. If it is assumed that there would be a 20 or 40 or 60 per cent opt-out rate, the percentage automatic payroll deduction that would have to be levied against net base salary in order to generate \$895,000 per year would be 0.036 per cent, 0.048 per cent

and 0.073 per cent, respectively. Using these figures, examples of the approximate impact of the deduction on the salaries of staff members at different levels and serving at different duty stations are as follows:

<i>Duty station of staff member</i>	<i>Level of staff member</i>	<i>Net base salary (United States dollars, per month)</i>	<i>Payroll deduction</i>		
			<i>0.036 per cent</i>	<i>0.048 per cent</i>	<i>0.073 per cent</i>
			<i>(United States dollars)</i>		
Vienna	D-1, step 5	14,895.55	5.40	7.20	10.80
Geneva	P-5, step 5	15,300.64	5.55	7.40	11.09
Addis Ababa	P-4, step 5	8,859.02	3.21	4.28	6.42
New York	P-3, step 3	8,263.07	3.00	3.99	5.99
Santiago	P-2, step 2	5,781.74	2.10	2.79	4.19
South Sudan	G-5, step 7	1,168.11	0.42	0.56	0.85
Nairobi	G-4, step 4	1,425.05	0.52	0.69	1.03
Somalia	G-2, step 4	449.30	0.16	0.22	0.33
Nairobi	National Professional Officer B, step 1	4,040.50	1.46	1.95	2.93
Bangkok	Local, step 6	1,652.63	0.60	0.80	1.20
Dili	Local 3, step 3	537.84	0.19	0.26	0.39

4. It is difficult to predict what the opt-out rate would be and therefore how much revenue would be generated to fund additional resources for the Office, as the United Nations system of administration of justice is unique and there are no close comparators. It might be prudent to assume an opt-out rate of 40 per cent, which would mean that the percentage payroll deduction against net base salary would be 0.048 per cent. As stated above, the opt-out rate and percentage payroll deduction would have to be monitored and be subject to periodic review by the General Assembly.

Annex IV

Practice of tribunals in other international organizations and in Member States regarding awards for moral damage, emotional distress, procedural irregularities and violations of due process

1. Responses were received from seven additional Member States addressing practice in their respective jurisdictions. These responses are set out in summary form below.

Argentina

2. The Permanent Mission of Argentina provided the summaries of two cases from the Supreme Court and 10 cases from the Appellate Claims Court, in which the award of moral damages was considered. These cases concerned serious delays in the judicial process, complaints made against the penitentiary authorities and other criminal and civil matters. The cases generally involved the breach of responsibility of a governmental authority.

3. With regard to the two cases involving serious delays in concluding a criminal prosecution, the Supreme Court found that moral damages were warranted on the basis that one of the claimants had been subjected to an unduly prolonged prosecution and the other claimant had also been deprived of his liberty for a lengthy period of time.

4. In the other summaries of cases provided by the Permanent Mission, the Appellate Claims Court discussed the basis upon which moral damages can be awarded. This jurisprudence included a case in which the Appellate Claims Court found that moral damages were justified where the penitentiary authorities failed in their responsibility to protect an inmate who died during a fire. The Court awarded moral damages to the family of the inmate for their suffering as a result of the circumstances and consequences of the fire. In this case, the Court discussed the evidence required for award of moral damages, and found that it did not require any specific proof beyond the evidence already submitted. The emotional impact on the prisoner's family and permanent loss of a family relationship was sufficient evidence.

5. In addition, in another case concerning penitentiary authorities, the Appellate Claims Court observed that emotional distress could cause physical pain or illness, and constitutes any suffering which cannot be evaluated from a monetary perspective. The award of financial compensation should be designed to make satisfaction equivalent to the moral suffering experienced, in order to make reparation and sanction the responsible person or institution for the damage caused. The Court further found that determination of the value of moral damages should involve consideration of the complainant's social, economic and family circumstances, and that the amount of moral damages should be commensurate to the nature of the act and the suffering experienced.

6. In a case concerning a civil action, the Appellate Claims Court found that, in order to award compensation for moral harm, certain criteria are necessary. Such criteria included the verified and personal nature of the damage and the fact that the

damage had resulted from the violation of a subjective right or legitimate interest that could not be evaluated in monetary terms.

Burkina Faso

7. The Permanent Mission of Burkina Faso advised that the courts in Burkina Faso divide matters into “social” and “administrative.” In respect of social matters, an employer can be ordered to pay an employee up to three months’ salary where the employer has committed a due process violation. In awarding damages, the courts can take into account factors such as the time it took the employee to find new employment, the employee’s family responsibilities, the amount of salary earned at the new employment and other relevant factors. When a claim is brought before the courts, the courts require that the allegations in the claim are substantiated.

Burundi

8. The Permanent Mission of Burundi advised that article 23 of the Constitution provides generally that no one shall be treated in an arbitrary manner by the State or its organs, and that the State has the obligation to compensate any victim of arbitrary treatment for which the State or any of its organs is responsible. Articles 258 and 259 of Book 3 of the Civil Code also provide generally that every individual is liable to make reparation for damage caused not only by his or her own actions but also through his or her negligence or imprudence.

9. Under labour law, any person having an employment contract with the State, a local authority or a semi-autonomous public body may seek legal redress for material, moral or other damages suffered. In labour disputes, cases of procedural irregularities and violations of due process consist primarily of summary dismissal and/or unfair dismissal giving rise to the payment of compensation.

10. Material compensation is calculated pursuant to the Labour Code. In a case of termination of contract, article 52 of the Labour Code provides that compensation in lieu of notice may not be less than: (a) one month, if the employee has less than 3 years of service; (b) one and a half months, if the employee has between 3 and 5 years of service; (c) two months, if the employee has between 5 and 10 years of service; or (d) three months, if the employee has more than 10 years of service. In the event of dismissal in the absence of gross negligence, article 60 of the Labour Code provides further that employees other than daily paid workers receive compensation that is no less than: (a) the average monthly cash remuneration plus, where applicable, the average monthly legal exchange value of in-kind benefits, including any housing allowances to which the employee was entitled at the time of dismissal, for employees with 3 to 5 years of service; (b) twice the amount stipulated in (a) for employees with 5 to 10 years of service; or (c) three times the amount stipulated in (a) for employees with more than 10 years of service. In addition, judges award damages and interest for wrongful termination of a permanent contract or early termination of a fixed-term contract. Case law establishes that this amount is determined pursuant to the following formula: one month’s salary x 6 x years of service. The judge may also award compensation for other material damages at his or her discretion.

11. In labour disputes, material damages do not always entail moral damages. The judge hearing the claim for damages determines at his or her discretion the extent of damage suffered and the amount to be awarded in compensation. The burden of proof that moral damages were incurred rests with the employee.

Cuba

12. The Permanent Mission of Cuba observed that article 26 of the Constitution provides generally that any person who suffers damage or injury unjustly caused by a State official or employee in the exercise of his or her public functions has the right to claim and obtain appropriate reparation and compensation as prescribed by law. Article 82 of the Civil Code also provides generally that anyone who unlawfully causes damage or injury to another party shall be obliged to provide redress. In this context, there are various forms of redress, including restitution of property, reparation for material damage, reparation for moral damage and compensation for lost earnings and expenses incurred by the victim as a result of the wrongful act in question.

13. Article 18 of Decree Law No. 168 specifically provides for the right of workers to receive from their employer compensation for injury and reparation for damage arising from a wrongful act. This provision applies in cases where disciplinary measures have been imposed when the dispute resolution body or the competent authority (a) provides for an exemption; (b) applies a more lenient disciplinary measure; or (c) declares that the contested measure is invalid because it was applied in an untimely manner, imposed by an authority that was not competent, or did not comply with the procedure established by law. In determining the amount to be paid in compensation for injury or reparation for damage, article 20 of Decree Law No. 168 provides that the dispute resolution body or the competent authority shall take into account the period during which the employee ceased to receive a salary or the extent of the salary reduction. Article 20 also provides that the amount of the compensation shall never exceed the salary that the affected worker would have received if he or she had been working, less the remuneration received for work undertaken during the disciplinary process or during the period in which his or her rights were violated.

14. Furthermore, the decisions of dispute resolution bodies with regard to compensation for injury or reparation for damage must be based on proof of a causal nexus between the wrongful act of the administrative authorities and the alleged injury or damage.

Honduras

15. The Permanent Mission of Honduras advised that all matters pertaining to claims contesting the dismissal, or separation from service, of public servants are governed by chapter IV of the Administrative Jurisdiction Act. Under this Act, public servants affected by dismissal, may petition for the decisions by which they had been dismissed to be declared invalid and may request reinstatement in their former positions. In addition, public servants may claim payment for loss of salary or payment of compensation, namely, employment benefits and salary from the effective date of their dismissal. Instead of awarding compensation for moral damages or emotional distress, the Administrative Court frequently awards compensation to complainants through the payment of acquired rights, payment in lieu of notice, and unemployment relief.

16. Generally, claims for moral damages or emotional distress are not filed in labour or employment suits. The procedure for payment of compensation is set out in the Administrative Jurisdiction Act. Pursuant to article 82 (c) of this Act, payment of compensation is deferred until execution of the judgement in accordance with article 884 of the Code of Civil Procedure. In its jurisprudence, the Administrative

Court has granted awards for moral damages in claims or actions related to establishing the State's pecuniary responsibility in relation to wrongful acts or negligence committed by contract or tort. However, claims and awards for moral damages in tort proceedings are very rare. In order for moral damages to be awarded, relevant specialist evidence, such as an actuarial report, must be presented before the Administrative Court.

Mexico

17. The Permanent Mission of Mexico advised that there is no provision under its national labour law for awards for moral damages, emotional distress, procedural irregularities and violations of due process. Article 48 of the Federal Labour Act defines the benefits that workers may claim as: (a) reinstatement to the previously occupied position, or compensation in the amount of three months' salary; and (b) payment of lost salary from the alleged date of dismissal until the date of the final judgement. Furthermore, constitutional compensation in the amount of three months' salary is provided for in accordance with article 123 (a), subsection XXII, of the Constitution.

Uruguay

18. The Permanent Mission of Uruguay advised that the Supreme Court of Justice has allowed claims for compensation for moral damages in only a few labour cases. Moral damages are defined by the Supreme Court of Justice as an injury, which, in addition to resulting in material harm, inflicts discomfort, indignity, emotional distress or other suffering. With regard to compensation for moral damages, the Supreme Court of Justice ruled that it was proper in one case to award \$3,000 for the anguish experienced by a public employee who was unjustifiably held back in his advancement. In other cases, the Supreme Court of Justice ruled that, in order for there to be an award of compensation for moral damages, such injury must be proven by evidence. The Supreme Court of Justice also ruled that the significance or gravity of the emotional humiliation suffered constitutes a prima facie ground for the award of compensation for moral damages. In addition, the Supreme Court of Justice reported that the violation of due process rights, when duly proven, gives rise to compensation.

Annex V

Implementation of the recommendations contained in the report on the activities of the Office of the United Nations Ombudsman and Mediation Services

1. The report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/67/172) identified, in paragraph 120, that “difficulties in the interactions between supervisors and supervisees have led to complaints of harassment and abuse of authority by some staff who saw no other way for their concerns to be addressed than to bring a complaint”. Supervisors have consulted the Office as a result of fears that complaints would be made against them if they provide honest feedback, and some consulted the Office after such complaints had been made.
2. The report suggested that the Organization analyse all complaints of harassment and abuse of authority filed within a certain period of time, with a view to identifying whether the cases reveal underlying issues of performance management.
3. The Office of Human Resources Management welcomes the analysis done by the Office of the Ombudsman regarding this issue. The Office of Human Resources Management examined the cases that it has on record for 2012 pertaining to complaints under Secretary-General’s bulletin ST/SGB/2008/5, on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority. The overall number of cases on record for 2012 (35)^a is proportionately small, compared with the total number of staff members in the Secretariat (approximately 44,000 staff members). However, it is noted that the Office of Human Resources Management only has a record of cases referred for disciplinary action to the Office following a fact-finding investigation under ST/SGB/2008/5, complaints sent to the Office for consideration under section 5.11 of the bulletin^b and cases copied to the Office. The Office of Human Resources Management is therefore mindful that this does not capture all of the informal and formal complaints of harassment, abuse of authority and discrimination across the Organization.
4. Based on its records, the Office of Human Resources Management identified that nearly half of the complaints under the Secretary-General’s bulletin for 2012 related to a relationship between supervisor and supervisee (17 complaints), and almost two thirds of those complaints included some aspect of performance management issues (11 complaints).
5. The Office of Human Resources Management is of the view that attempts at early and informal resolution of certain issues may have prevented at least some of the formal complaints in the area of supervisory relations and that not all office conduct that may generate conflict amounts to possible misconduct or is cause for formal investigation. The Office of Human Resources Management welcomes the initiatives of the Office of the Ombudsman to promote early conflict resolution

^a The number of cases per year in 2012 accords roughly with the numbers of cases of which the Office of Human Resources Management is aware for both 2011 (38) and 2010 (24).

^b Section 5.11 provides that cases are appropriately referred to the Assistant Secretary-General for Human Resources Management where the official who would normally receive the complaint is the alleged offender.

interventions to avoid recourse to formal mechanisms and it will continue to work with the Office of the Ombudsman in this regard.

6. With regard to initiatives to ensure performance management is handled appropriately by supervisors, and therefore does not lead to formal complaints under the Secretary-General's bulletin, the Department of Management is preparing a lessons-learned guide for managers that addresses performance management (which is in the advanced preparation stage). The guide draws to the attention of staff and managers, once again, the roles and responsibilities for proper performance management and the resources available to assist them in conducting this process.

7. In 2011, the mandatory performance management learning programme was introduced for all managers and supervisors, regardless of level. This programme has been rolled out globally. The Office of Human Resources Management is currently working on the development of an online e-learning programme that would be easily accessible to all staff globally. The programme will address the distinct roles of the staff member, first reporting officer and second reporting officer.

8. The role of the second reporting officer is incorporated in all performance management training programmes. The extent of its inclusion depends on the audience (e.g., mandatory performance management training for managers and supervisors and induction programme for senior leaders). The Office of Human Resources Management acknowledges that more targeted materials could help to raise awareness of the critical role of the second reporting officers and the Office will be looking at this further.

9. Performance management issues are also discussed in a number of other for a (e.g., meeting with chief administrative officers, chief human resources officers) and in briefings to heads of offices and senior management teams, including the new induction programme for senior managers. Among the issues discussed in these forums is the importance of good "people management".

10. The interventions and initiatives set out above should help to ensure that staff and managers are given the required assistance to deal with conflict in the workplace, and that recourse to formal mechanisms is made only in those cases where other solutions have not succeeded or are otherwise not appropriate.

11. Downsizing and retrenchment exercises, in addition to the issuance of the continuing appointments policy, have made it increasingly necessary to emphasise the critical importance of timely performance appraisals and credible ratings. The Office of Human Resources Management continues to strengthen this message to all managers at every available opportunity (trainings, briefings, meetings, communications, etc.). Most recently, on 6 March, the Assistant Secretary-General for Human Resources Management wrote to all heads of departments/offices to remind them of their obligations in this regard. In addition, the terms of reference of the Management Performance Board (see ST/SGB/2013/2) includes the responsibility to "conduct yearly reviews of the performance management and development system within the United Nations Secretariat to ensure Secretariat-wide consistency in its application, in order to identify and address possible deviations therefrom".

12. The Field Personnel Division agrees that constant communication and expectation management are vital in any downsizing process. The Division has recently issued best practices on downsizing to all missions dealing, inter alia, with the need to communicate from an early stage of the downsizing process, to

communicate at times when no new information is available and to manage expectations of all staff during all stages of the process. The Division will continue to work with the missions to provide necessary guidance on these issues.

13. The Office of Human Resources Management has observed, in some situations, that the number of direct and indirect reports is unmanageable for both first and second reporting officers. To this end, a staff-management working group on performance management and development is focusing on the role of the senior management team and second reporting officers to devise ways of rendering these roles more meaningful and manageable. To this end, the group is convening focus groups with senior management teams and second reporting officers.

14. Regarding the investigations and disciplinary process, the report of the Secretary-General (A/67/172) stated, in paragraph 146: "The departments functionally concerned with investigations and the disciplinary process, from recruiting for investigatory functions and designing and delivering training for serving staff to carrying out the investigation and ensuring quality control, are already coordinating their efforts at the working level. These separate efforts could be strengthened by increased synergies, perhaps supported by a high-level focal point to coordinate efforts and to give the issue the organizational priority necessary to manage the risks."

15. During late 2012 and early 2013, at the request of the Management Committee, the Office of Legal Affairs chaired a working group bringing together the departments and offices functionally concerned with the investigations and the disciplinary process (the Office of Internal Oversight Services, the Department of Field Support, the Department of Peacekeeping Operations, the Department of Management, the Office of Human Resources Management, the Department of Safety and Security and the Ethics Office). The purpose of the working group was to identify areas of concern in relation to investigations and to develop proposals to strengthen investigations in the Secretariat.

16. The recommendations of the working group were submitted to the Management Committee in March 2013. The Management Committee approved all of the recommendations, which included: (a) the long-term transfer of all investigations to the Office of Internal Oversight Services, as a means of professionalizing and strengthening the investigations function, subject to the completion of a feasibility study and various related assessments, including consideration of the full implications of the potential structural and resources implications and respecting the request of the General Assembly in resolution 62/247; (b) the short-term implementation of a pilot project to test the feasibility of establishing a standing, trained pool of non-OIOS investigators that could be used by the Office to conduct investigations; (c) the revision of administrative instruction ST/AI/371, entitled "Revised disciplinary measures and procedures", as amended, and of the Secretary-General's bulletin ST/SGB/2008/5; (d) pursuant to the revision of ST/SGB/2008/5, the transfer of all investigations under ST/SGB/2008/5 to the Office of Internal Oversight Services; (e) an increase in training sessions for investigators and a needs assessment regarding training programmes and their impact on existing resources; (f) the establishment of a working group to consider possible approaches to a central intake mechanism for investigations; (g) the refinement of job descriptions for investigators and the creation of a job family for investigators; and (h) improved feedback and outreach following the completion of an investigation. The Management Committee requested the Office

of Legal Affairs to continue assisting the Chair of the Management Committee in developing a set of next steps for successful implementation of the foregoing decisions.

17. Regarding the proposal to have position occupancy limits to avoid prolonged assignments in extreme working environments (see A/67/172, paras. 147 and 148), this is being considered in the context of the comprehensive managed mobility proposal under consideration by the General Assembly. The Assembly has asked the Office of Human Resources Management to revert with a number of clarifications and refinements at the sixty-eighth session. Under the proposed framework, there would be position occupancy limits depending on duty station classification (e.g., three years for staff serving in D/E duty stations).

Annex VI

Observation of the Convention on the Rights of Persons with Disabilities

1. The Secretariat has prepared a draft Secretary-General's bulletin on accessibility for persons with disabilities at the United Nations, which is currently the subject of consultation. The bulletin will establish an overarching framework for the creation of an inclusive and accessible working environment for persons with disabilities at the United Nations Secretariat. The bulletin builds on the work of the Interdepartmental Task Force on Accessibility, and takes into account the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto as well as General Assembly resolutions that call for the full and equal enjoyment of all human rights and freedoms for all persons with disabilities in the United Nations Secretariat. The bulletin will ensure reasonable accommodation for staff members with disabilities, provided that such accommodation does not cause disproportionate or undue burden on the Organization. "Reasonable accommodation" will be defined as the adjustment of a rule, practice, condition or requirement to take into account the specific needs of an individual with disabilities, with the aim of enabling the person to participate fully and equally. It includes, but is not limited to, the adjustment and modification of machinery and equipment, the modification of job content, working time and work organization, and the adaptation of the work environment to provide access to the workplace.

2. In addition, the administrative instruction on medical clearances (ST/AI/2011/3) addresses accommodation for disabilities during the medical clearance process, the extracts of which are provided below:

Section 8 Medical clearance

8.1 Based on the results of medical evaluation, the United Nations Medical Director or medical officer duly authorized by the Medical Director shall provide the recruiting office with the candidate's or staff member's medical clearance and/or any observations which may be appropriate, including specified restrictions or disabilities which need to be reasonably accommodated.

8.2 To ensure maximum medical confidentiality, the medical clearance shall be communicated to the requesting office as follows:

(a) *Fit*: individuals who are fit to perform the functions for which they have been selected;

(b) *Not fit*: individuals who are not fit to perform the functions for which they have been selected.

8.3 Where a candidate or staff member is considered medically fit to perform the functions for which they have been selected, the final employment/deployment decisions will be made by the employing office. Where the Medical Director has observed specified restrictions or disabilities which need to be reasonably accommodated, the final employment/deployment decisions

will be made by the Office for Human Resources Management. In the event that a candidate or staff member is considered not medically fit as per paragraph 8.2 (b) above, such individuals shall be considered as not having fulfilled the medical clearance requirements set out in section 1 and shall not be recruited.

Section 9

Medical evaluations (including examinations)

9.1 All staff members may be required at any time to undergo medical evaluation (which may include examination), when requested by the United Nations Medical Director or a medical officer duly authorized by the Medical Director, to protect the health and safety of staff members, to follow up chronic medical conditions, or to assess how new circumstances since a prior clearance might be affecting a staff member's capability to fulfil job functions.

Annex VII

Pilot project on the feasibility of decentralizing elements of disciplinary matters relating to the field

Background

1. At the sixty-second session of the General Assembly, the Secretary-General introduced the possibility of delegating, to heads of offices away from Headquarters and heads of missions, the authority to impose disciplinary measures.^a The Assembly endorsed, in principle, the delegation of authority for imposing disciplinary measures, and requested the Secretary-General to present a detailed proposal regarding possible options for the delegation of authority for disciplinary measures see resolution 62/228, para. 49.

2. In his subsequent report on the subject (A/63/314), the Secretary-General reviewed the possible impact of delegation of authority on the organizational structures and proposed a limited delegation of authority for disciplinary measures. In particular, the Secretary-General proposed that heads of missions and offices away from Headquarters be given the authority to impose minor sanctions, in the form of censures and fines, once the necessary capacity to do so was in place.^b However, the Secretary-General identified a number of specific prerequisites and safeguards that were necessary prior to the implementation of the limited delegation of authority.^c

3. At its sixty-third session, the General Assembly, having considered the Secretary-General's report, as well as the report of the Advisory Committee on Administrative and Budgetary questions (A/63/545), requested the Secretary-General to submit, at its sixty-fifth session, a new detailed proposal regarding the delegation of authority for disciplinary measures (see resolution 63/253, para. 33).

4. The Secretary-General responded to that request in his report on administration of justice at the United Nations (A/65/373). In his report, among other things, the Secretary-General concluded that a number of prerequisites to the delegation of authority for disciplinary matters had yet to be fulfilled to a significant degree.

^a See document A/62/294, paras. 98-120. The Secretary-General's proposal was based on the recommendations contained in the report of the Redesign Panel on the United Nations system of administration of justice, which recommended the delegation of authority for the full range of disciplinary measures, as well as on the results of the twenty-eighth session of the Staff-Management Coordination Committee, where it was agreed that the disciplinary process and the imposition of certain disciplinary measures could only be delegated when the necessary capacity was in place to ensure that the due process rights of staff members would be protected, and that decisions made away from Headquarters would continue to conform with the relevant rules and regulations (see A/61/205; A/62/294, para. 114).

^b This proposal reflected the recommendations made by the Staff-Management Coordination Committee at its twenty-eighth session and initially proposed by the Secretary-General in his report (A/62/294, para. 116).

^c Including, for example, "the completion of a comprehensive review of the recommendations for disciplinary action made by heads of mission to Headquarters under the current system" and the development of guidelines for the imposition of censure or fines. The latter guidelines would be "essential to ensure a consistent application throughout the system of censures and fines of an appropriate level" (see A/63/314, para. 24).

Consequently, the Secretary-General proposed to put the previous recommendation for a limited delegation of authority on hold, pending further analysis.

5. At its sixty-fifth session, the General Assembly reiterated its request to the Secretary-General to submit, at its sixty-sixth session, a report containing a detailed proposal setting out possible options for delegation of authority for disciplinary measures (see resolution 65/251, para. 51).

6. At the sixty-sixth session, the Secretary-General responded to the General Assembly's request (see A/66/275 and Corr.1). Among other things, the Secretary-General noted that three critical bottlenecks had developed in the handling of disciplinary cases: (a) the length of the investigation process, the number of entities involved in investigations and the quality of fact-finding and other inquiries conducted by non-professional investigators; (b) the time required to obtain comments from staff members alleged to have engaged in misconduct; and (c) the time taken to obtain additional information from the investigating entity. The Secretary-General reviewed the feasibility of a partial delegation of authority, a full delegation of authority and no delegation of authority, and concluded that, while neither partial nor full delegation of authority would be optimal at that time, it was clear that action was required to address the delays in the system. Accordingly, the Secretary-General proposed four short-term measures to address these concerns: (a) the implementation of a pilot project to test the feasibility of decentralizing critical elements of the administration of justice, through the establishment of a service base that would cover a cluster of missions; (b) the handling of high-priority cases through a "fast-track" approach that would involve prioritization by all offices concerned; (c) the delegation, from the Assistant Secretary-General for Human Resources Management to the Under-Secretary-General for Field Support, of the authority to place field mission staff on administrative leave with pay; and (d) the establishment of an interdepartmental working group on the delegation of authority with regard to disciplinary matters. The Secretary-General indicated that he would submit a comprehensive report in this regard to the General Assembly at its sixty-eighth session (*ibid.*, paras. 191-209).

7. The General Assembly endorsed the consideration by the Advisory Committee on Administrative and Budgetary Questions that the results of the implementation of the pilot project to test the feasibility of decentralizing elements of the system of administration of justice and the other short-term measures proposed by the Secretary-General should be submitted for consideration to the General Assembly at its sixty-eighth session (see resolution 66/237, implementing A/66/7/Add.6).

Current status of implementation of the short-term measures

8. The Department of Field Support, the Office of Internal Oversight Services and the Office of Human Resources Management have collaborated to address the issues to improve the handling of cases, from the time of the report of misconduct through investigation to the conclusion of a case. Case management and reporting in the field and at Headquarters have been strengthened, investigations are being handled increasingly expeditiously and effectively, having regard to the nature and complexity of a case, and the backlog of disciplinary matters formerly pending with the Office of Human Resources Management has been cleared.

9. Of the short-term measures proposed by the Secretary-General, some of these have been implemented, but in the case of others, events have demonstrated that the

strategic objectives which drove the measures are being met through different approaches, and therefore it is prudent to reassess which action is still needed to best meet the goals. Each is discussed below.

(a) *Pilot project to test feasibility of decentralizing critical elements of the administration of justice process*

10. A pilot project was proposed, which would test the feasibility of decentralizing key elements of the investigation and disciplinary processes by establishing a service base in Nairobi to cover certain field missions in Africa (“the Nairobi pilot project”). The goal of the project was to gather, in the service base, various functions critical to the entire process, including legal officers and conduct and discipline officers, and permit access to other functions such as investigators, the Ombudsman and the Office of Staff Legal Assistance. The expectation was that the structure of the project would bring critical aspects of the investigation and disciplinary process closer to the locations in which the cases occurred, and would shorten the time needed for handling those cases.

11. As the process of consultation and planning for the Nairobi pilot project was under way, a number of other initiatives were simultaneously taking place, which also had both the goal and effect of strengthening the Organization’s performance and efficiency in handling certain aspects of the pre-disciplinary process. Details of these initiatives are set out below:

(a) The Department of Field Support has strengthened its quality assurance mechanisms for case management, at both the mission and Headquarters levels. This has been done, inter alia, through the establishment of an annual quality assurance exercise conducted by each field mission, and overseen at Headquarters by the Conduct and Discipline Unit within the Department of Field Support. The annual exercise is allowing for cases that remain pending for any number of reasons to be carefully re-examined, and a course of action determined, thus identifying any cases that may require action and reducing delays in the system overall by taking a regular inventory of the status of open cases;

(b) The Department of Field Support has strengthened reporting requirements by conduct and discipline teams in field missions, having introduced monthly performance accountability reports. These include enhanced indicators of performance in case management, as set out in the proceeding subparagraph, and also serve as a practical tool that allows for close follow up and regular quality assurance reviews of pending and open cases;

(c) The Department of Field Support has also developed key performance indicators for field missions. These set out clear timelines for managing certain aspects of the pre-disciplinary process, which takes place at the mission level. Field missions were advised in February 2013 that key performance indicators were to be applied to serious allegations of misconduct: (i) in the absence of exceptional circumstances, within seven days of any information or complaint of possible misconduct being received by any United Nations personnel in a field mission, the complaint is to be assessed to determine if it represents one or more allegations of misconduct and to be properly recorded; (ii) serious allegations of misconduct are to be referred for investigation to the Office of Internal Oversight Services within three days; (iii) follow-up status requests are to be sent regarding investigations into serious allegations of misconduct that are not completed six months following

referral for investigation (three months in cases of alleged sexual exploitation and abuse), with further follow-up status requests to be sent to the investigating body every month thereafter; (iv) investigation reports into serious allegations of misconduct should normally be reviewed by field missions and referred to Headquarters for follow-up within one month (15 days in cases of alleged sexual exploitation and abuse);

(d) The Department of Field Support has strengthened the regional and/or intermediate support provide to a number of field missions. This has been done through regional arrangements, such as those seen in UNIFIL, which supports smaller regional missions (UNDOF, UNFICYP, UNIFIL, the Global Service Centre, UNSCO, UNSCOL, UNTSO and UNSMIL) and UNAMA, which supports UNMOGIP. Similar support has been established on an intermediate basis whereby larger missions with conduct and discipline teams (UNMIL, UNMISS, MONUSCO and UNAMID) are supporting smaller, regionally connected missions which do not have a dedicated capacity. These initiatives allow for smaller missions to benefit from expertise on complex conduct and discipline matters, on an as-needed basis, by using existing resources within a geographical region;

(e) The quality of non-OIOS investigations is increasingly improving. This has been achieved through, among other things, dedicated trainings for Special Investigations Unit investigators, arranged by the Department of Field Support and conducted by the Office of Internal Oversight Services with the participation of the Office of Human Resources Management, as well as through continued feedback from the Office of Human Resources Management on investigation reports referred for possible disciplinary action, in the form of requests for clarification or for further investigation;

(f) In December 2011, the Department of Management issued the third instalment of the guide entitled, "Lessons learned from the jurisprudence of the system of administration of justice: a guide for managers", setting out developments in the jurisprudence of the Appeals Tribunal and the Dispute Tribunal as it relates to investigations and disciplinary matters. Among other things, the lessons learned guide is designed to enhance managers' understanding of the system of administration of justice in the Organization, in order to improve awareness of the duties and responsibilities that apply when making decisions that affect staff members' terms and conditions of appointment.

12. Indications to date suggest that the combined effects of the initiatives described herein are having a positive effect on how cases are being handled, and how efficiently they are moving through the predisciplinary and disciplinary phases. Given the wide range of activity that is taking place, the Secretary-General considers that it is prudent to allow for a period of time to consider whether the cumulative effect of the ongoing initiatives may, in fact, be achieving the overarching strategic goals conceived within the Nairobi pilot project. The Secretary-General believes that taking a sober second reflection at this stage would avoid duplication and ensure the most targeted use of existing resources. Following an assessment, the Nairobi pilot project could be restructured, if appropriate, in the light of any gaps that may be found to remain.

13. It is therefore recommend that the implementation of the Nairobi pilot project should be postponed by two years in order to reassess it in the light of the degree to which other complimentary efforts may have contributed to the underlying objective

of strengthening the quality and timeliness of response to allegations of misconduct, allowing in turn for greater authority and flexibility within field missions

(b) *“Fast-track” approach to high-priority cases*

14. The implementation of a “fast-track” approach to high-priority cases was discussed in the context of process of consultation and planning for the Nairobi pilot project. Criteria for identifying high-priority cases were discussed, and agreement was reached on the timelines that would apply to such cases. In light of the developments described above, the Secretary-General does not propose to implement a separate, formalized system for the handling of such cases. Nevertheless, despite the absence of a formalized “fast-track” system, both the Department of Field Support and the Office of Human Resources Management continue to handle serious cases on a priority basis.

(c) *Delegation of authority to place staff members on administrative leave with pay*

15. It was also proposed that the authority to place staff members on administrative leave with pay pending investigation and the disciplinary process be delegated, on a pilot basis, from the Assistant Secretary-General for Human Resources Management to the Under-Secretary-General for Field Support. The goal in transferring this authority was to cut down on the time taken to have a staff member placed on administrative leave with pay in these circumstances. On 19 December 2012, this delegation of authority went into effect. In that regard, the Under-Secretary-General for Field Support committed to field missions to process formal requests to place staff members on administrative leave with pay pending investigation and the disciplinary process within five days of receipt. The Office of Human Resources Management is monitoring the effectiveness of the implementation of this delegation of authority.

Annex VIII

Compensation recommended by the Management Evaluation Unit and awarded by the Tribunals in 2012

A. Compensation recommended by the Management Evaluation Unit

<i>Department of decision maker</i>	<i>Amount of compensation</i>	<i>Level of staff member</i>	<i>Amount (US dollars)</i>	<i>Reason for compensation</i>
UNODC	15 months net base salary	P-2/5	76 827.50	For procedural irregularities resulting in non-selection
UNCCD	\$45,000.00	D-1	45 000.00	Withdrawal of accepted offer of appointment
DM-OHRM-MSD	\$500.00	G-3/2	500.00	Non-provision of reason for non-renewal of FTA
DFS-UNSOA	2 months net base salary	P-4/12	13 301.33	Flaws in administering a written assessment concerning staff member's application
ECA	Sum equal to special post allowance at the P-2 level for 7 months	G-7/8	36 622.95	For assignment of higher-level functions without compensation
ECA	Sum equal to special post allowance at the P-4 level for about 5 months	P-4/3	4 141.73	For assignment of higher-level functions without compensation
ECA	Sum equal to special post allowance to GS-5 level for 15 months	G-5/3	1 377.65	For assignment of higher-level functions without compensation
OHCHR	Sum equal to special post allowance to P-5 for about 10 months	P-4	6 578.51	For assignment of higher-level functions without compensation
DFS-UNMIK	Sum equal to special post allowance to P-2 for 12 months	FS-4/13	2 186.80	For assignment of higher-level functions without compensation
Total			186 536.47	

B. Monetary compensation awarded by the Tribunals

<i>United Nations Dispute Tribunal judgement No.</i>	<i>Registry</i>	<i>Entity</i>	<i>Compensation awarded by United Nations Dispute Tribunal</i>	<i>United Nations Appeals Tribunal judgement</i>	<i>Compensation awarded by United Nations Appeals Tribunal</i>	<i>Net amount paid (local currency)</i>	<i>Net amount paid (United States dollars)</i>	<i>Date</i>
UNDT/2012/006	New York	UNEP	(i) \$50,000 for breach of right to be properly considered for an appointment; (ii) \$20,000 for emotional distress	No appeal	No appeal		70 000	11 Apr 2013
UNDT/2012/043	New York	UNFPA	\$25,000 for breach of rights	2013-UNAT-298	UNDT judgement is affirmed and the appeal is dismissed.		25 000	7 May 2012
UNDT/2012/062	New York	UNDP	(i) 75 per cent of full-time net base salary had the applicant's contract been extended for an additional 18 months' period (pecuniary damages); (ii) \$50,000 (non-pecuniary damages); (iii) total compensation is limited to two years' net base salary	2013-UNAT-307	The appeal is allowed and the judgements of UNDT on liability and relief are set aside.		–	
UNDT/2012/067	New York	Secretariat (MINUSTAH)	\$10,000 (emotional harm)	No appeal	No appeal		10 000	30 Jun 2012
UNDT/2012/121	New York	Secretariat (MINUSTAH)	(i) 7.5 days of salary at the GS-7 level, step X; (ii) 4.5 days of salary at the FS-6 level, step X; (iii) 9 days of mission subsistence allowance; (iv) \$1,200 for delayed home leave entitlements	No appeal	No appeal		6 532.94	7 Dec 2012
UNDT/2012/125	New York	Secretariat (OIOS)	\$30,000 for stress and anxiety	Under appeal	Under appeal	–	–	–
UNDT/2012/126	New York	Secretariat (DPKO)	\$30,000 for harm to reputation and undue delay	Under appeal	Under appeal	–	–	–
UNDT/2012/163	New York	Secretariat (DM)	\$10,000 for anxiety and stress	No appeal	No appeal		10 015.14	24 Jan 2013
UNDT/2012/178	New York	Secretariat (DM)	\$8,496.75 for pecuniary loss	No appeal	No appeal		9 308.91	6 Feb 2013

<i>United Nations Dispute Tribunal judgement No.</i>	<i>Registry</i>	<i>Entity</i>	<i>Compensation awarded by United Nations Dispute Tribunal</i>	<i>United Nations Appeals Tribunal judgement</i>	<i>Compensation awarded by United Nations Appeals Tribunal</i>	<i>Net amount paid (local currency)</i>	<i>Net amount paid (United States dollars)</i>	<i>Date</i>
UNDT/2012/186	New York	Secretariat (UNIC)	(i) Payment of retroactive interest on compensation for unused annual leave days; (ii) 3 months' net base salary in lieu of notice, with retroactive interest	Under appeal	Under appeal	-	-	-
UNDT/2012/197	New York	UNICEF	Compound interest at applicable rates on the sum of \$259,90 from March 2011 to the date of payment	No appeal	No appeal		259.90	12 Oct 2012
UNDT/2012/205	New York	Secretariat (UNAMA)	(i) Rescission of the decision to calculate the applicant's absence from work against her annual leave and to place her on special leave without pay; (ii) appropriate adjustments to reflect the placement of the applicant on sick leave on half pay	No appeal	No appeal		33.80	14 Dec 2012
							13 203.09	10 Jun 2013
UNDT/2012/208	New York	Secretariat (DM)	Reinstatement, with proper adjustments to entitlements and benefits	Under appeal	Under appeal	-	-	-
UNDT/2012/004	Geneva	United Nations Headquarters	3 months' net base salary at P-3 level for moral damage	2012-UNAT-276	The appeal is dismissed and the UNDT judgement is affirmed.		14 405.79	5 Mar 2013
UNDT/2012/010	Geneva	UNCTAD	\$10,000 for moral damage	2012-UNAT-277	The appeal is allowed and the compensation awarded by the UNDT is vacated.	-	-	-
UNDT/2012/030	Geneva	ICTY	€2,000 for moral damage	2013-UNAT-290	The appeal is allowed and the judgement of the UNDT is set aside.	-	-	-
UNDT/2012/066	Geneva	Employment: UNCTAD/ Decision: DM	SwF 10,000 for loss of chance for promotion; SwF 15,000 for moral damage	2013-UNAT-309	The appeal is allowed and the awards of SwF 10,000 and 15,000 are set aside.	-	-	-
UNDT/2012/088	Geneva	UNDP	\$8,000 for moral damage	No appeal	No appeal		8 000	23 Jul 2012

<i>United Nations Dispute Tribunal judgement No.</i>	<i>Registry</i>	<i>Entity</i>	<i>Compensation awarded by United Nations Dispute Tribunal</i>	<i>United Nations Appeals Tribunal judgement</i>	<i>Compensation awarded by United Nations Appeals Tribunal</i>	<i>Net amount paid (local currency)</i>	<i>Net amount paid (United States dollars)</i>	<i>Date</i>
UNDT/2012/095	Geneva	UNOV/ UNODC	\$3,000 for moral damage	No appeal	No appeal	—	3 002.71	29 Aug 2012
UNDT/2012/110	Geneva	OAJ	SwF 10,000 for moral damage	Under appeal	Under appeal	—	—	—
UNDT/2012/111	Geneva	OAJ	SwF 9,000 moral damage	No appeal	No appeal	\$9 000	9 404.39	24 Sept 2012
UNDT/2012/112	Geneva	UNHCR	SwF 2,000 moral damage	Under appeal	Under appeal	—	—	—
UNDT/2012/123	Geneva	ICTY	€2,000 for moral damage	Under appeal	Under appeal	—	—	—
UNDT/2012/129	Geneva	ICTY	Rescission or €2,000 as alternative compensation	Under appeal	Under appeal	—	—	—
UNDT/2012/130	Geneva	ICTY	Rescission or €2,000 as alternative compensation	Under appeal	Under appeal	—	—	—
UNDT/2012/131	Geneva	ICTY	Rescission or €2,000 as alternative compensation	Under appeal	Under appeal	—	—	—
UNDT/2012/141	Geneva	UNHCR	€1,000 for moral damage	Under appeal	Under appeal	—	—	—
UNDT/2012/162	Geneva	ICTY	Rescission or €2,000 as alternative compensation	Under appeal	Under appeal	—	—	—
UNDT/2012/164	Geneva	UNHCR	(i) Rescission or SwF 10,000 as alternative compensation; (ii) SwF 4,000 for moral damage	Under appeal	Under appeal	—	—	—
UNDT/2012/019	Nairobi	ECA	4 months' net base salary at the L-1 level for distress	2013-UNAT-299	The appeal is allowed and the UNDT judgement is vacated to the extent that it awards compensation for moral damages.	—	—	—
UNDT/2012/037 ^a	Nairobi	ONUB	(i) 8 months' net base salary for unlawful and improper non-renewal of contract; (ii) 2 months' net base salary in compensation for violation of due process rights	No appeal	No appeal	—	—	—

<i>United Nations Dispute Tribunal judgement No.</i>	<i>Registry</i>	<i>Entity</i>	<i>Compensation awarded by United Nations Dispute Tribunal</i>	<i>United Nations Appeals Tribunal judgement</i>	<i>Compensation awarded by United Nations Appeals Tribunal</i>	<i>Net amount paid (local currency)</i>	<i>Net amount paid (United States dollars)</i>	<i>Date</i>
UNDT/2012/039	Nairobi	MONUSCO	(i) One year's net base salary at the FS-5 level; (ii) \$15,000 in compensation for moral injury; (iii) restore Applicant to FS-5 level or pay difference between salary and entitlement of FS-4 and FS-5	2013-UNAT-295	The appeal is allowed. The award of compensation of one year's net base salary at the FS-5 level is set aside.		46 855.94	10 Sept 2012
UNDT/2012/046 ^b	Nairobi	ICTR The staff member was an international staff member payrolled in New York.	(i) Compensation of 6 months' net base salary (awarded by former JAB); (ii) payment of lump pension grant to legal heir of the Applicant's estate	No appeal	No appeal			
UNDT/2012/049	Nairobi	UNON	(i) 9 months' net base salary; (ii) payment of \$15,000 for mistreatment; (iii) payment of \$5,000 for loss of reputation	2013-UNAT-305	Compensation awarded by UNDT is set aside. Compensation awarded in the amount of \$10,000, subject to interest.	KES 882,244.91	10 373.25	20 Jun 2013
UNDT/2012/054	Nairobi	UNICEF	(i) Compensation in lieu of reinstatement set at 2 years' net base salary; (ii) compensation for the moral damage set at 6 months' net base salary; (iii) 6 months' net base salary for the violation of due process rights	2013-UNAT-302	The appeal is affirmed and the UNDT judgement is vacated.	-	-	-
UNDT/2012/068	Nairobi	UNDP	(i) Compensation at 2 years' net base salary for the non-renewal of contract; (ii) DSA entitlement for the period of posting in Nairobi, Kenya.	2013-UNAT-311	The appeal is affirmed and the UNDT judgement is vacated.	0	0	

<i>United Nations Dispute Tribunal judgement No.</i>	<i>Registry</i>	<i>Entity</i>	<i>Compensation awarded by United Nations Dispute Tribunal</i>	<i>United Nations Appeals Tribunal judgement</i>	<i>Compensation awarded by United Nations Appeals Tribunal</i>	<i>Net amount paid (local currency)</i>	<i>Net amount paid (United States dollars)</i>	<i>Date</i>
UNDT/2012/072	Nairobi	UNIFIL	(i) Payment of lost earnings from date of separation; (ii) compensation in lieu of reinstatement set at 2 years' net base salary	2013-UNAT-310	The UNDT judgement is vacated in its entirety.	LL 14,414,000.00 for termination indemnity, time in lieu of notice and accrued annual leave. No other payment was made.	9 602.93	19 May 2011
UNDT/2012/076	Nairobi	ONUCI	(i) Compensation of 3 months' net base salary for moral damages, stress and humiliation; (ii) 2 months' full salary for pay denied while on certified sick leave; (iii) 3 months' half salary for pay denied while on sick leave for a period of 12 consecutive months after the certified sick leave	No appeal	No appeal		34 501.00	21 Sept 2012
UNDT/2012/124	Nairobi	UNDP	Rescission of summary dismissal and reinstatement or 2 years' net base salary	Under appeal	Under appeal	—	—	—
UNDT/2012/135	Nairobi	UNON	3 months' net base salary of the applicant for moral damage	Under appeal	Under appeal	—	—	—
UNDT/2012/139	Nairobi	MONUC	Rescission of summary dismissal and reinstatement or 2 years' net base salary	Under appeal	Under appeal	—	—	—
UNDT/2012/150	Nairobi	UNHCR	(i) SwF 5,000 for expenses in filing case; (ii) interest awarded on the sum of US\$ 23,118 from 30 June 2004 until 29 December 2008 and US\$ 11,559 from 13 May until 29 December 2008	Under appeal	Under appeal	—	—	—
UNDT/2012/154	Nairobi	UNICEF	(i) 2 years' net base salary at the P-4 level in lieu of rescission of summary dismissal and reinstatement; (ii) 6 months' net base salary for due process violations; (iii) 6 months' net base salary for the breach of rights	Under appeal	Under appeal	—	—	—

<i>United Nations Dispute Tribunal judgement No.</i>	<i>Registry</i>	<i>Entity</i>	<i>Compensation awarded by United Nations Dispute Tribunal</i>	<i>United Nations Appeals Tribunal judgement</i>	<i>Compensation awarded by United Nations Appeals Tribunal</i>	<i>Net amount paid (local currency)</i>	<i>Net amount paid (United States dollars)</i>	<i>Date</i>
UNDT/2012/158	Nairobi	UNDP	One year's net base salary at the NO-A level at rate applicable at the time of separation	Under appeal	Under appeal	—	—	—
UNDT/2012/161	Nairobi	ONUCI	\$6,000 for distress	Under appeal	Under appeal	—	—	—
UNDT/2012/191	Nairobi	UNAMID	(i) 2 years' net base salary in lieu of reinstatement; (ii) one year's net base salary for due process violations	Under appeal	Under appeal	—	—	—
UNDT/2012/192	Nairobi	UNDP	2 years' net base salary in lieu of reinstatement	Under appeal	Under appeal	—	—	—
UNDT/2012/200	Nairobi	UNON	(i) \$50,000 in moral damages; (ii) difference in salary between P-4 and P-5 from 21 October 2008 until January 2012	Under appeal	Under appeal	—	—	—
UNDT/2012/201	Nairobi	UNAMID	3 months' net base salary for failure to address complaints of harassment and discrimination	No appeal	No appeal	—	17 401.76	7 Mar 2013
UNDT/2012/202	Nairobi	UNMIS	(i) One year's net base salary for substantive irregularity; (ii) 4 months' net base salary for procedural irregularity	No appeal	No appeal	No response was provided	—	—

^a UNDT/2012/037: Based on correspondence with the Controller's Office in November 2012, it is understood that the payment would be processed in the field by the United Nations Office in Burundi.

^b UNDT/2012/046: In April 2012 ICTR asked for details of a previous compensation payment to the staff member and indicated that they were working towards implementation of the decision.

N/A signifies "not applicable".

C. Breakdown of compensation paid

(United States dollars)

Funds and programmes

UNEP	70 000.00	UNDT/2012/006
UNFPA	25 000.00	UNDT/2012/043
UNICEF	259.90	UNDT/2012/197
UNICEF	33.80	UNDT/2012/197
UNDP	8 000.00	UNDT/2012/088

Subtotal	103 293.70
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Peacekeeping missions

MINUSTAH	6 532.94	UNDT/2012/121
MINUSTAH	10 000.00	UNDT/2012/067
MONUSCO	46 855.94	UNDT/2012/039
UNIFIL	9 602.93	UNDT/2012/072
UNOCI	34 501.00	UNDT/2012/161
UNAMID	17 401.76	UNDT/2012/201

Subtotal	124 894.57
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Special political missions

UNAMA	13 203.09	UNDT/2012/076
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Subtotal	13 203.09
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Offices away from Headquarters

UNON	10 373.25	UNDT/2012/049
UNOV	3 002.71	UNDT/2012/095

Subtotal	13 375.96
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United Nations Headquarters

United Nations Headquarters	14 405.79	UNDT/2012/004
DM	9 308.91	UNDT/2012/178
DM	10 015.14	UNDT/2012/163
OAJ	9 404.39	UNDT/2012/111

Subtotal	43 134.23
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Total	297 901.55
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Annex IX

Position of the judges of the United Nations Dispute Tribunal on the application of “within-grade step increments” to their salaries and on recovery of so-called overpayment

1. The application of the within-grade step increments on the judges’ salary is substantially justified and necessary. Their conditions of service clearly demonstrate in each and every detail that the judges are treated like D-2 staff members. Taking into account that the judges are appointed for a non-renewable seven-year term, the application of within-grade step increments is appropriate. Also, it is a well-known practice in many Member States (e.g., France and Germany) and an established element of the respective salary systems that judges receive within-grade salary increments.

2. Neither the resolutions of the General Assembly nor the offer of appointment explicitly or implicitly exclude the application of the within-grade step increments to the salary of the Dispute Tribunal judges. The wording of the basic report of the Secretary-General refers to “salaries and allowances equivalent to the D-2 level” (A/63/314, para. 83) in a general way. The annex to the report also reiterates in its introductory lines the proposal of the Secretary-General that the Dispute Tribunal judges “be compensated equivalent to staff members at the D-2 level”.

3. Insofar as the annex reads “... at the D-2 level, step IV”, this reference cannot be considered as an exclusion of the within-grade step increments. On the contrary, it should be interpreted as the appropriate entry level for the judges, thus reflecting the fact that a Dispute Tribunal judge to be eligible for appointment must possess at least 10 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions (see art. 4.3 (b) of the statute of the Dispute Tribunal).

4. A comparison with the level of salary of the Inspectors of the Joint Inspection Unit is misleading. Indeed, these Inspectors, pursuant to article 14.1 of the statute of the Joint Inspection Unit, “shall receive the salary and allowances payable to United Nations staff members at the Director (D-2) level, step IV”. However, a reasonable understanding of this provision should take into account that at the time of its enactment, to the best of our knowledge, the salary scale of the D-2 level ended at step IV. It follows that the Inspectors were put at the highest possible end of the Director level from the beginning of their appointment. For the Inspectors, therefore, the application of a within-grade step increment could not be an issue. The only conclusion to be drawn from the Inspectors’ example, if ever, is that the Dispute Tribunal judges might also have been awarded the highest possible applicable D-2 level, i.e. step VI, right from the beginning of their appointment.

5. In any case, it is not correct to recover parts of the judges’ salary as so-called overpayment. Payments at the D-2, step V level have been intentionally made by the United Nations Office at Nairobi and the United Nations Offices at Geneva — in the latter case, even after careful reconsideration — for nearly two years, thus creating good faith expectations and acquired rights. No legal basis for a recovery is available, since — according to the Administration’s own view — staff related rules may not be applied to judges.