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## Item 5 of the provisional agenda

### REPORT BY THE DIRECTOR-GENERAL ON THE JUDGMENTS CONCERNING UNESCO ISSUED BY THE INTERNATIONAL LABOUR ORGANIZATION ADMINISTRATIVE TRIBUNAL (ILOAT)

#### ADDENDUM

#### COMMENTS BY THE INTERNATIONAL STAFF ASSOCIATION OF UNESCO (ISAU)

##### SUMMARY

Pursuant to Item 9.2.7 of the UNESCO Human Resources Manual, the International Staff Association of UNESCO (ISAU) submits its comments on human resources issues (document 206 EX/5.III.INF).

1. This report demonstrates the existence of a major problem in the internal justice system within UNESCO and in the management of individual cases by the Administration.
2. The report shows in particular that the current system has become obsolete and no longer meets the standards of the procedures in force under international human rights instruments. It is extremely slow, cumbersome and inefficient. We believe that UNESCO deserves a more sophisticated system of internal justice, allowing it to deal with different types of appeals (Review Panel, Reports Board, Appeals Board, ILO Administrative Tribunal), in keeping with an Organization that promotes human rights. We therefore welcome HRM's decision to reform the justice system, which is currently very complex and clearly has gaps and shortcomings.
3. ISAU will continue to work closely with HRM in preparing the revision of the Statutes of the Appeals Board, which should lead to a fairer and more effective internal justice system, particularly in terms of time limits. In order to do so, **the necessary financial and human resources are essential**. Such a system of justice will be to the benefit of the Organization and its staff. The new system should be based on basic principles of law such as access to justice for all and equality of the parties. It would also be desirable for legal advice to be accessible to all.
4. ISAU further considers that internal justice reform is not an end in itself, but a means of improving the current system.



Job: 201905182

5. It is alarming to note that the incorrect application of rules and procedures, particularly those relating to the Medical Benefits Fund (MBF), accounts for 64% of cases lost by the Organization. This mismanagement was damaging, especially since it could have been avoided if HRM had taken into account the serious warning issued by the staff associations. We would also like to recall that lack of communication is a major cause of conflict, so it is important that managers are trained in conflict management and interrelational communication. The other cases lost (36%) are due to obvious failings in case management.

6. Therefore, for all the reasons mentioned above, we support the corrective measures announced by the Administration and its intention to focus on the development of conflict prevention mechanisms, in particular through mediation. ISAU intends, in this respect, to play its role in full in the settlement of disputes.

7. In conclusion, ISAU encourages the Administration to take swift action to set up the new system of internal justice, to apply rules and procedures strictly, and to invest in conflict prevention and manager training.



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## **REPORT BY THE DIRECTOR-GENERAL ON THE JUDGMENTS CONCERNING UNESCO ISSUED BY THE INTERNATIONAL LABOUR ORGANIZATION ADMINISTRATIVE TRIBUNAL (ILOAT)**

### **SUMMARY**

This document aims at providing to the Executive Board Members information on ILOAT judgments concerning UNESCO for the period from 1 January 2010 to 31 December 2018.



Job: 201901260

## Introduction

1. UNESCO recognizes the jurisdiction of the International Labour Organization Administrative Tribunal (ILOAT) to consider complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the provisions of the Staff Regulations.

2. This document presents the results, figures and grounds of the complaints lodged with the ILOAT for the period between 2010 and 2018. This information aims at providing the Executive Board with an overview of the recent judgments in line with requests made by Member States at the 205th session of the Executive Board.

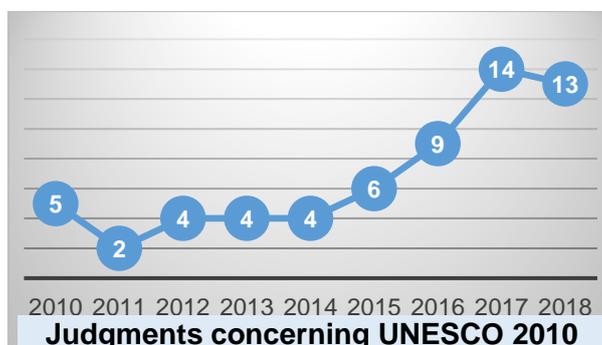
## Evolution between 2010 and 2018

3. Between 2010 and 2018, a total of 61 ILOAT judgments concerned UNESCO. It is worth noting that 59% of those complaints were dismissed by the ILOAT, a rate higher than some other specialized agencies over the same period.

4. In the remaining 41%, in half of the cases, the appellants succeeded only partially. In some cases, the Tribunal confirmed the lawfulness of the challenged decision, but found against the Organization for having exceeded statutory time limits.

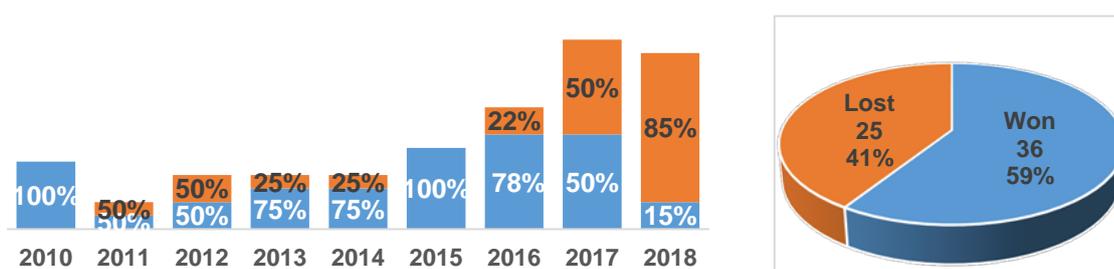
5. The figures below summarize the evolution of judgments issued and the main grounds on which the ILOAT found against the Organization. [Table 1](#) shows the number of judgments per year since 2010; an average of four to five judgments was issued per year until 2015. Their number increased significantly in 2017-2018.

**Table 1: Evolution of the number of judgments issued (2010-2018)**



6. [Table 2](#) shows the evolution of the number of judgments where UNESCO was ordered to pay compensation over the period concerned.

**Table 2: Evolution of the number of judgments dismissed (2010-2018)**



7. Figures show that between 2010 and 2016, UNESCO won a majority of cases. In 2017, however, this trend reversed with 50% cases won in 2017 and only 15% won in 2018.

8. The cases in 2017 concerned mainly the governance of the Medical Benefits Fund (MBF) filed in 2014 and 2015, representing a total of four judgments, and those in 2018 included two cases of moral harassment (filed in 2011 and 2013), two cases of abolition of post/separation (2015), two cases of non-renewal of temporary appointments (filed in 2010 and 2014).

### Overview of grounds and costs of ILOAT decisions

9. The tables below present the main grounds for compensation in the period considered, as well as the level (quantum) of compensation and costs. They show that the highest quantum concerned the decisions related to the MBF, followed by harassments cases (2) and non-renewal of temporary appointments (2).

**Table 3: Amount of compensation and costs – ILOAT judgments (in US Dollars) since 2010**

	Compensation and costs in US\$ Dollars									
	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
MBF								215 327	87 037	<b>302 364</b>
Classification			6 703					97 643		<b>104 345</b>
Moral Harassment							26 756		75 122	<b>101 878</b>
Non-renewal of temporary appointment								12 000	128 519	<b>140 519</b>
Abolition of post/separation									162 354	<b>162 354</b>
Others :	\$0	8 242	3 064	7 762	2 484	0	0	1 601	58 859	<b>82 012</b>
<i>Recruitment</i>				7 762						7 762
<i>Transfert</i>									13 665	13 665
<i>Lack of functional protection</i>		8 242								8 242
<i>Application for execution</i>			3 064					1 601		4 665
<i>No functions/Deprivation of work</i>									13 665	13 665
<i>Extension beyond mandatory age of retirement</i>									31 530	31 530
<i>Tax Refund</i>					2 484					2 484
<b>Total</b>	<b>\$0</b>	<b>8 242</b>	<b>9 766</b>	<b>7 762</b>	<b>2 484</b>	<b>0</b>	<b>26 756</b>	<b>326 571</b>	<b>511 891</b>	<b>893 472</b>

10. Table 4 shows that the most frequent grounds were a flaw in applying UNESCO rules and procedures, including in the MBF cases.

**Table 4: Breakdown of decisions by grounds**

Grounds for compensation awarded by the ILOAT	Number of occurrences	Percentage in the total requests
Flaw in applying UNESCO rules and procedures, including MBF (4)	16	64%
Insufficient grounds provided in separation process	3	12%
Managerial issue	2	8%
Procedural time limit exceeded	2	8%
Others	2	8%

## Quantum of awards

11. In 2017-2018, the overall compensation due by UNESCO amounted to US \$838,462. This represents 94% of the total cost of the period 2010-2018. This exceptional cost can be partially explained by the increase in the cases won by the staff members, and by the increase in the number of judgments issued in 2017-2018 (27). However, the increase is due mainly to three cases, which contributed to 61% of the total losses:

- MBF: 53 complainants challenged the decision to amend the Rules of the MBF, without the approval of the General Assembly of Participants. This decision was taken by the General Conference ([37 C/Resolution 85](#)) on submission of a report by the Director-General. The complainants challenged the lawfulness of the Administrative and Information Circulars issued to apply the General Conference Resolution. The Tribunal decided that both Circulars were unlawful. Due to the high number of complainants, this case generated a total cost of \$302,364, i.e. 36% of the total costs in 2017-2018.
- The second highest cost relates to a case of non-reinstatement of a staff member by UNESCO whose contract was not renewed (in 2013, in the UNESCO Institute for Statistics), in which the ILOAT awarded compensation in the sum of \$110,000. To note that the non-renewal of the contract of the staff in question was considered retaliation following a harassment complaint.
- The third highest cost (\$99,000) concerned the redeployment of a staff whose post was abolished in 2014, in the context of the restructuring exercise following the financial crisis. The ILOAT found against UNESCO on grounds of insufficient consideration, for posts, of the application of a staff member whose post had been abolished. It is worth noting that there were only two cases before the ILOAT on the restructuring/redeployment exercises. In similar cases, the ILOAT also found against other United Nations agencies.
- Finally, there seems to be an overall tendency of the ILOAT to grant increasingly higher amounts of compensation to complainants, not only in the case of UNESCO, but also of other international organizations.

## Remedial actions from the Secretariat

12. The Secretariat has built upon past judgments in order to identify the gaps and failures in the implementation of its procedures.

13. Regarding the specific case of the MBF, based on [39 C/Resolution 74](#) deciding “to reconsider paragraph 1 of [37 C/Resolution 85](#) whereby it “decided to amend the Rules of the Medical Benefits Fund as set out in Part 3 of document [37 C/38 Add.](#)” and also deciding “that the applicable Medical Benefits Fund (MBF) Rules should be those in force before the issuance of Administrative Circular AC/HR/43 of 21 October 2014, including the governance structure laid out therein”, HRM published in December 2017 a new circular repealing the General Conferences resolutions and reverting to the MBF rules in force on 20/10/2014.

14. The Board of Management of the Medical Benefits Fund, chaired by the ADG/ADM, and composed of three representatives of the Director-General (DIR/HRM, DIR/BFM, DIR/FSC or their representatives) and three representatives elected by the participants (or alternates), has already met on four occasions since October 2018 and the General Assembly of Participants is being convened in March 2019.

15. Furthermore, a systematic review and simplification of processes and procedures has been undertaken, targeting the high-risk areas. This effort will be complemented by training, including reinforced briefings/communication, of managers, Administrative Officers and of key HR personnel. Managers will also need to put in sufficient time to manage their staff. They need to communicate

with them, having performance and career conversations. Frequent communication between managers and staff will contribute to reducing conflicts. Managers will also need to take accountability for actions of the team.

16. Greater emphasis will also be put on prevention, to avoid cases in litigation; by identifying early solutions, through early advice by HR, mediation involving Mediators, the Ethics Office, and Staff Associations. Ethics training will continue to be systematically rolled out. Raising awareness about ethical behaviour and Standards of Conduct is a key element of prevention.

17. Finally, one of the main initiatives is to review the current grievance-handling mechanisms, including the internal appeals system (which has been in place in UNESCO for several decades), the disciplinary procedure, the anti-harassment policy, and the performance evaluation rebuttal mechanism. This review, to be completed by 2019, aims at modernizing and streamlining these mechanisms, while aligning UNESCO with best United Nations practice, and ensuring due process.

18. It should be added that the effective management of the internal system of justice at UNESCO requires a sufficient number and grade-level of resources, as well as specialized expertise in the subject matter, to ensure that cases are handled effectively and within the statutory timeframes. This is not the case of the resources currently allocated, which raises significant risks for the Organization, particularly in view of the increased workload both at the Appeals Board and ILOAT stages. In addition, the revised Appeal's Board procedure will also require adequate resourcing to ensure that the new provisions can be implemented effectively, in particular to ensure that the revised statutory timeframes are met. The Secretariat is carefully assessing the need for additional resources, and will ensure that corrective actions are taken.