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1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of appeals against three Judgments rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi: Judgment Nos. UNDT/2020/122 (

UNDT/2020/132 (

; and UNDT/2020/150 (

These three Judgments upheld the Secretary-General'

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then transferred from the UNDT in Geneva to the UNDT in Nairobi on account of recusal by two Geneva-based Judges.<sup>5</sup>

4. Throughout the summer of 2020, the UNDT in Nairobi issued 19 Judgments on these applications. This Judgment addresses appeals by staff members of the United Nations Development Programme (UNDP) against three of those Judgments as noted above. The remaining UNDT Judgments, which have been appealed separately, are disposed of by way of this Tribunal in other Judgments.

5. On 16 July 2020, the UNDT issued Judgment No. UNDT/2020/122 ( ). On 29 July 2020, the UNDT issued Judgment No. UNDT/2020/132 ( ). On 19 August 2020, the UNDT issued Judgment No. UNDT/2020/150 ( ).

6. Before issuing its Judgments, the UNDT reviewed over 3,000 documents and heard oral evidence on 22 October 2018 from the Executive Head of the ICSC and from a representative of the United Nations Offi

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Judgment No. 2021-UNAT-1110

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the Secretary-General had little discretion to implement the PAM the Secretary-General's "mechanical power" was administrative in nature and therefore, reviewable on grounds of legality.

8. On the merits, the UNDT dismissed the applications finding that the Secretary-General had correctly implemented the PAM and that the ICSC had not acted its statutory authority, as it always had the authority under Article 11(c) of its Statute to decide on the PAM without the General Assembly's further approval or action.

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salaries and post adjustments" and decisory authority on classification of duty stations for the purpose of applying the post adjustment. Since the PAM decision did not involve the General Assembly, the ICSC acted

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meaning that staff have never encountered this issue before. A



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served beyond these. Further, the ICSC's agreed methodology had applied indices in a manner that did not correspond to their description. For instance, the ICSC hired a consultant following the report by the Geneva Statisticians but prevented the consultant from seeing the data regarding the PAM calculation so all he could review was methodology. Nonetheless, their own consultant agreed with the errors in methodology found by the Geneva Statisticians. The ICSC's numerous changes demonstrate they did not take a principled approach to ensure relative purchasing power. They first indicated a 7.7 per cent pay cut without transitional m

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Judgment No. 2021-UNAT-1110

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exercise of discretionary power. The Secretary-General has no discretion in implementing decisions of the ICSC and consequently there is no authority for the UNDT to review the implementation. The correct legal standard for this case is set out in . The Secretary-General, thus, requests the Appeals Tribunal to find that the Secretary-General's implementation decision was correct as the decision of the ICSC was binding upon him.

34. In the alternative, should the Appeals Tribunal consider the issues raised by the Appellants, the Secretary-General submits that the appeal should be dismissed as the UNDT correctly found that the ICSC decision was not its Statute. The Appellants request to be retroactively compensated at a higher PAM, which had been earlier decided by the ICSC before the 2016 survey, yet argue the ICSC acted . The ICSC has followed the same legal framework for thirty years and acted under the same statutory authority prior to 2016. This would be the same authority Appellants seek be used to retroactively compensathey

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Judgment No. 2021-UNAT-1110

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United Nations staff has a purchasing power equivalent to that at the base of the system, New York. The post adjustment allowance adds to the net base salary in order to form the net remuneration, or take-home pay. The main components of the PAI are: i) rental/housing; ii) medical insurance; iii) pension contribution; iv) out-of-area expenditures; v) and in-area costs (excluding housing/incurred at the duty station).<sup>33</sup> To obtain the inputs for these calculations, the Cost-of-Living Division of the ICSC Secretariat organizes the collection of data through cost-of-living surveys, while taking currency fluctuations into account.

41. The ICSC decision was based on new intercity cost-of-living differential coefficients among relevant reference headquarters locations which led to a revision in the post adjustment multiplier. A Gap Closure Measure was applicable to affected personnel based in Geneva in order to mitigate the impact of this revision and remedy the significant lower PAI

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specifically on the "implementation of decisions ... regarding the results of the cost-of-living surveys for 2016".<sup>42</sup>

50. As there is a direct order of the G

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that the Secretary-General acted in accordance with the ICSC decision, which, in turn, was subsequently endorsed

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56. Likewise, even though this has no bearing on the outcome, the UNDT on this matter seems to have made an error of law when it invoked the doctrine of estoppel resulting from the twenty-five years of acquiescence.<sup>51</sup> This is because it is not the absence of previous challenge to

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59. Having said the above, the question that arises in the present case is not exactly that deriving from any possible non-compliance with the terms of the ICSC decision o

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General Assembly resolution 74/255 A-B (27 December 2019):

Expressing its concern over the inconsistencies in the application of the 2016 post adjustment results at the Geneva duty station of the United Nations

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61. Therefore, by means of General Assembly resolution 74/255 issued a few months after a similar case had been dealt with by the ILOAT, the General Assembly, even though well aware of the arguments put forward against it, approved of the methodology for cal





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that staff members' terms and conditions may not be amended in a way that would deprive them of a benefit once the legal requirements for

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70. Having considered all elements , the Appeals Tribunal finds that there was no error in the UNDT's judgment, when it concluded that there was no unlawfulness of the Secretary-General's decision, the effects of which were only applied prospectively. The ICSC decisions under scrutiny are not reviewable and the Secretary-General's exercise of mechanical power is reviewable on narrow grounds but evinces no illegality in the present case. Moreover, even though the UNDT erred by reviewing the decision of the ICSC on grounds of reasonableness, the outcome of its judgment was correct. The appeal must therefore fail.

71. There is one last aspect of this litigation upon which

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