



## **The Office of the Ombudsman for United Nations Funds and Programmes**

### **A USER'S GUIDE TO MEDIATION AND RELATED SERVICES OFFERED BY THE OFFICE OF OMBUDSMAN**

The Office of the Ombudsman for United Nations Funds and Programmes (the “Office”) is an independent, confidential, neutral and informal resource for all members of the UNDP, UNFPA, UNICEF, UNOPS and UN-Women workforce.

The Office helps to prevent and resolve workplace disputes regardless of your type of contract or position (including managers, other staff members and consultants). If you are not sure whether the Office can help you, please do not hesitate to request a confidential consultation.

This User’s Guide describes the role of the Office in supporting effective conflict resolution and collaboration among the workforce members, with particular focus on the Office’s enhanced capacity for timely, effective provision of top-quality, confidential mediation services.

This enhanced mediation capacity means that the Office is positioned to be more responsive and supportive.

#### **MEDIATION CAN HELP**

Mediation operates at many levels and provides support in a wide range of difficult situations.

##### ***To Resolve Conflicts and Repair Relationships in the Workplace***

Any number of things could trigger a workplace conflict that may benefit from mediation. It is best not to wait until catastrophe is looming and you are therefore encouraged to contact the Office as soon as possible. Similarly, you are encouraged to use discretion and good judgment and follow the protocols set out by the executive heads of the five UN agencies, which call for seeking resolution at the most immediate and most appropriate level, including consulting the Office of the Ombudsman.

##### ***Prior to or During Formal Investigation***

If you are upset about a situation in your workplace and want to file a formal complaint with the investigation unit, in certain cases, the investigation unit may refer you to the Office to explore the possibility of mediation. You are also welcome to visit the Office in advance on your own initiative to discuss and explore whether mediation or another of the informal conflict-resolution services offered by the Office is suitable in your case.

##### ***At the Conclusion of an Investigation***

When a person is faced with a potential charge in an investigation, mediation between the parties can enable them to clarify options and to finalize the next steps.

##### ***During an Action before the Dispute Tribunal***

From time to time, the Dispute Tribunal may suggest mediation, or the parties may endeavor to seek mediation in tandem with the formal process.

#### **MEDIATION IS AVAILABLE TO YOU**



The members of the UNDP, UNFPA, UNICEF, UNOPS and UN-Women workforce who seek to resolve a workplace dispute are eligible to request mediation services from the Office regardless of their contractual modality. The Office ultimately retains the discretion to determine whether a case is appropriate for mediation. Any party that participates in mediation retains the right to pursue formal dispute-resolution processes.

## TYPICAL TYPES OF ISSUES SUITABLE FOR MEDIATION

Conflicts stemming from differences in values, culture, work environment or communication style can arise in the workplace. Such conflicts can escalate and may result in claims of discrimination, concerns about adverse actions such as retaliation and calls for appropriate consideration.

Some common issues that can give rise to a conflict are:

- Management of performance review;
- Interpersonal relations between supervisors and supervisees;
- Interpersonal relations among peers;
- Employment contracts;
- Terms of employment;
- Wages and benefits;
- Termination of employment;
- Workplace discrimination;
- Abuse of authority;
- Retirement;
- Relocation;
- Occupational safety and health;
- Workplace violations and misconduct;
- Misapplication of policies; and
- Incivility.

Most workplace disputes could benefit from a consultation with an ombudsman and/or a mediated discussion. Even in high-conflict cases where negotiation may seem difficult, a skilled mediator can position the issues and identify the best possible solution that meets the common interests and goals of the parties in conflict.

## MEDIATION OVERVIEW

Mediation is a confidential dispute-resolution process during which a neutral third-party professional—a mediator—helps the parties in dispute to engage in a constructive conversation, discuss issues, express interests, brainstorm options, find common ground and, where applicable, reach consensus with a view to resolving the dispute.

Owing to its flexibility and informal nature, mediation can accommodate a broad range of issues with varying degrees of complexity. All mediations conducted by the Office are based on four key principles: **confidentiality, impartiality and neutrality, independence** and **informality**. More information about these principles can be found on the Office website at <https://fpombudsman.org/what-are-our-principles>.



The Office also operates in accordance with the voluntary nature of mediation, self-determination in mediation and the principle of informed consent.

***Voluntary participation:*** participation of disputing parties in mediation is voluntary, which means that the parties engage in the process voluntarily and, similarly, that they exit from the process voluntarily. The voluntary nature of the process enables the parties to be honest and candid in communicating their own perspective, to control the process, and to achieve mutual understanding.

***Self-determination:*** the mediator will not impose any solutions on the parties. The disputing parties will have the right and power to explore and find a solution acceptable to them while in an adjudicative process, a judge or an arbitrator will impose an outcome on the disputing parties.

***Informed consent:*** during the process, the mediator will ensure that the parties understand the risks and benefits of a settlement so that they can make an informed decision.

Mediated conflicts are typically resolved more quickly and at lower costs (and with less stress) to all involved. Participants in mediation continue to have access to all other formal and informal dispute-resolution mechanisms available to them although mediation does not automatically suspend any formal deadlines.

## HOW MEDIATION WORKS

Typically, mediation commences with a party initiating the process with the Office. Once a need for mediation is expressed and the Office determines that mediation is appropriate and obtains the consent of the person who has approached the Office, the Ombudsman will enquire whether the other party wishes to participate in mediation.

If both parties wish to proceed, a mediator selected by the Office will then schedule a time to meet the parties, whether in a joint meeting or individually, as the case may be. The enhanced mediation capacity of the Office means that it is much more likely that you will be able to find a professional mediator for your issue or one that is otherwise better aware of your needs.

The timing and duration of mediation are flexible: there may be multiple sessions, but the first session generally takes 1-2 hours. The session may be in-person or through other means (e.g., telephone, voice over Internet protocol). Although the parties may fail to agree, they will likely learn something new about the dispute, about themselves and about each other. The process works best when everyone tries working together to find common ground and a path forward.

Sometimes the parties are not ready to work towards a settlement or the issue itself is insurmountable and the mediation may need to end owing to an impasse or stalemate. Nevertheless, there is always a possibility that the impasse can be overcome at a later time, as is often the case. The mediator may follow up with the parties to assess the momentum that they have achieved.

To recap, the flow of the mediation process is:

- Initiate a mediation;
- Select a mediator;
- Hold mediation session(s);
- Prepare settlement agreement (or) acknowledge impasse; and
- Follow up.



## STAGES OF A MEDIATION

Although mediation does not follow a specific formula, certain stages should be expected. Mediation generally includes the following stages:

### **1. Planning**

The pre-mediation planning process can contribute greatly to a productive outcome. Before parties come to mediation, they should reflect on what they hope to accomplish, identify their own interests and think about the other party's interests.

The natural next step is to consider how parties can help each other to meet their own interests and those of the opposing party. Once you can envision options that meet multiple interests, you are prepared to engage in mediation.

Indeed, there are many useful resources other to help you. For example, *Getting to Yes: Negotiating Agreement Without Giving In* (Roger Fisher and William Ury, first published in 1981) is considered to be the foundational book on negotiation. It discusses ways to separate people from the problem, focus on interests instead of positions, to enlarge the “pie” for mutual gain, and to try requesting an objective criterion. There are many resources online that draw on this “integrative bargaining” approach to finding agreement, and this kind of thinking can be very productive in most kinds of mediation.

### **2. Mediator's Introduction and Opening Remarks**

You will most likely meet with the mediator in advance of the mediation to explore your needs and to share your side of the narrative, which can help you to become clearer about your goals and the possible options available to you. The mediator will keep the content of this conversation confidential unless you give permission to share something with the other party that you have shared with the mediator.

The mediator will typically open a mediation session by explaining the mediation process and terms of participation (including confidentiality), clarify expectations (ground rules) and then invite the parties to explain what has brought them to mediation. This is your opportunity to share what is on your mind, and what you hope to gain from the mediation and beyond.

### **3. Joint Discussion**

Mediations through the Office will typically be conducted using a joint discussion even if all the parties are not in the same location. This can be accomplished either in person or via videoconferencing or voice over Internet protocol.

### **4. Caucuses (optional)**

Sometimes, the mediator or a party may request a one-on-one meeting, called a “caucus”. In this case, the mediator will meet one-on-one with each party separately and will keep everything said during the caucus confidential unless given permission to share such information with the other party. A caucus provides an opportunity for the parties to discuss the issues that they want to address in private.

### **5. Negotiation and Settlement Agreement**

Once the parties have shared interests and brainstorm options, they proceed to discuss potential solutions that meet as many common interests as possible. The mediator may use a number of techniques to assist the parties to reach an agreement.



When the parties are able to reach consensus, the mediator will assist the parties to record the terms in writing. The mediator may prepare a draft memorandum of understanding or term sheet summarizing the parties' agreement that is then signed by both parties. The mediator may then follow up with a more formal document for the parties to review and agree on. The settlement agreement will be binding on the parties and will be enforceable. The mediator may assist the parties to understand their obligations and responsibilities under the agreement for the purpose of implementation. In the event that there is a pending investigation or tribunal hearing, the Office may seek consent from the parties to submit the settlement agreement to the appropriate body.

## **6. Follow-up**

It will be vital during the mediation to establish the foundation for the follow-up to the mediation. Often, mediation may set the stage for further work by the parties to include formal and informal accountability.

## **STARTING THE MEDIATION PROCESS**

Any member of the UNDP, UNFPA, UNICEF, UNOPS and UN-Women workforce seeking to schedule a mediation session can contact the Office directly at:

Office of the Ombudsman for United Nations Funds and Programmes  
Tel: 1 646 781 4083 (New York)  
Email: [ombudsmediation@fpombudsman.org](mailto:ombudsmediation@fpombudsman.org)  
304 East 45th Street, 6th Floor  
New York, NY 10017  
USA

### ***Intake Information***

Where relevant, an enquiring individual may be asked to provide a number of documents and information, including: (a) a copy of the employment contract; (b) the names and contact information of all parties to the dispute; and (c) a summary of any specific qualifications that the mediator should possess, including but not limited to languages spoken. All communications shall be strictly confidential.

### ***Contacting the Other Party***

Typically, an individual initiating the mediation will ask the Office to contact the other party to initiate the process. In that case, someone from the Office will contact the other party within a matter of days and endeavour to schedule the mediation within 14 days. These periods may vary depending on the realities of the situation and the nature of the request.

### ***Confidentiality***

An agreement to mediate is generally signed by both parties before mediation. This, among other things, ensures that the parties and the process benefit from the principle of confidentiality, one of the key operating principles respected throughout the United Nations system.

### ***Engaging an Advocate or Supporter***

Parties generally represent themselves in mediation. Some parties, however, may prefer to be accompanied by an outside counsel, advocate or supporter, which is permissible as long as the mediator and the other party have been informed about it in advance. Any such person must understand and abide by the standards of practice of the Office, including those of informality and confidentiality. You may also qualify for help



from the UN Office of Staff Legal Assistance (OSLA). Please check to determine whether you meet the requirements.

## **FEES AND GOOD FAITH**

Both parties to the dispute shall participate in mediation in good faith.

The leadership of the five UN agencies are investing in mediation services for the employees of their organizations. It is hoped that all parties in a dispute will use them and use them judiciously. When mediation is not performed by a staff member of the Office, but by an external mediator affiliated with the Office, the costs associated with the services will be borne by country offices.

## **THE MEDIATORS SELECTED**

All the mediators selected for this program, both internal and external are highly qualified, experienced, and talented practitioners. They are also required to follow the Code of Conduct for Mediators, which is a set of global norms and standards that demand a high bar for ethical behavior.

## **OTHER SERVICES OFFERED BY THE OFFICE OF THE OMBUDSMAN**

The Office offers a wide range of services in addition to mediation. First, the Office is a resource for anyone who needs guidance to identify a proper point of contact (or resource) for receiving help in a difficult situation. This also means that individuals who visit the Office (“visitors”) can explore questions and receive information anonymously through the facilitation of the Office.

Second, the Office can provide one-on-one coaching services for any leadership or development challenges, such as conflict of all kinds and their root causes. Sometimes people come to the Office for advice as to how to better address conflict without necessarily requesting mediation. The Office also facilitates conflict resolution involving large groups, provides conflict-competency training and reports on systemic trends in conflict particularly through its annual report.,

You can visit the Office [website](#) to access videos and annual reports, which provide additional information on what we do and how we do it.

If you are unsure whether the Office can help you, please just ask! You will find a team ready to help you.

## **CONTACT US WITH QUESTIONS OR FOR A CONSULTATION**

For any questions or to schedule a consultation, please contact the Office at [ombudsmediation@fpombudsman.org](mailto:ombudsmediation@fpombudsman.org) or by telephone at +1646-781-4083.

## **APPENDIX: FORMS**

1. Agreement to Mediate
2. Code of Conduct for Mediators