



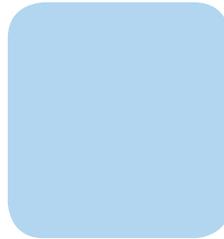
Empowered lives.
Resilient nations.



United Nations Entity for Gender Equality
and the Empowerment of Women

2019 Annual Report

of the Office of the Ombudsman for United Nations Funds and Programmes



Working together to find solutions

2019 Annual Report

of the Office of the Ombudsman for United Nations Funds and Programmes



Empowered lives.
Resilient nations.



United Nations Entity for Gender Equality
and the Empowerment of Women

Summary

In submitting his report on the work of the Office in 2019, the Ombudsman for United Nations Funds and Programmes takes stock of a very productive year while facing the daunting challenges ahead during the time of COVID-19. In immediate response to these challenges, the Office will further strengthen interventions that draw on the possibilities of virtual communication in the continuing expansion of informal conflict-resolution mechanisms and increase its distance-learning programme.

The greatest achievements of the past year lie in the field of mediation and in the introduction of the Respectful Workplace Facilitators (RWF) programme.

The potential of mediation as a speedy, cost-effective means of resolving workplace conflict was given a huge boost by the confidence placed in the Office by UNICEF, with the resources to match. With the establishment of the International Advisory Board and the Global Panel of On-call Mediators, the Office is now in a better position to deliver on the efficacy of mediation when expertly and professionally executed.

The RWF programme, currently supported by UNDP, UNFPA and UN-Women, also bolsters the impact of informal conflict resolution by engaging colleagues elected by their peers in the country offices as first-line resources. As with all other engagements of the Office, the Respectful Workplace Facilitators, who undergo rigorous training and are administered by the Office, offer the guarantee of confidentiality in dealing with issues brought to their attention.

The Ombudsman also addresses the issue of arbitration, which has not been an effective means of dispute resolution within the United Nations, mainly because of its restricted applicability to the kind of cases arising in the United Nations workplace. With this in mind, the Ombudsman proposes a workable solution.

The Office received cases from all categories during the reporting period. Leading issues continued to be evaluative relationships (33 per cent); job- and career-related issues (25 per cent); and organizational, leadership and management issues (11 per cent).

While commending the organizations for their sustained efforts to ensure a decent workplace, the Ombudsman has made a number of recommendations – some repeated from previous years – that can help at all levels to reach the goals of effective conflict prevention and management.

Made stronger by its recent reorganization, the Ombudsman team remains, as always, available to assist the five organizations in what will be very demanding times ahead.

Contents

Introduction	2
I. Overview of the work of the Office	4
A. Overview of cases	4
B. Outreach activities	6
II. Observations and recommendations concerning conflict in 2019	9
A. Recruitment for consultancies	9
B. Performance management	10
C. Organizational duty of care	12
1. Conflict management and mental health at work	13
2. Multilingualism in the workplace	13
D. Investigations	14
E. Respectful Workplace Facilitators	16
F. Mediation	17
G. Arbitration	19
III. The way forward	22

Introduction

The year 2019 was one of the most important on record for the Office of the Ombudsman for United Nations Funds and Programmes since its establishment almost 20 years ago. In response to requests from previous years, the five organizations served by the Office approved its restructuring, which is nearing completion as the present report is being prepared. Key features of the restructuring include the recruitment of a Deputy Ombudsman, the opening of two additional offices, one in Istanbul and one in Bangkok, and the doubling of the number of international professional and support staff. The restructuring will enable greater proximity of the Ombudsman team to personnel from the five organizations around the world and facilitate visits with them on a frequent and regular basis when traveling becomes possible again. Notably, the restructuring took place thanks to a more efficient utilization of existing resources, almost at zero cost.

The year in review will also be remembered as the time when the five organizations executed a new cost-sharing agreement for the Office, reflecting the significant changes that have occurred since its establishment. The absence of a revised agreement had been the major obstacle to the restructuring of the Office. The new cost-sharing mechanism includes a simple formula for adjusting the contribution of each organization based on the number of total personnel, making it very easy to reflect future changes in the respective workforces.

Lastly, with respect to the internal functioning of the Office, 2019 was also important since it marked the time when the five organizations, in accordance with the terms of reference of the Office, finally determined the length of the term of office of the Ombudsman for United Nations Funds and Programmes, which now is the same as that of the United Nations Ombudsman. The organizations further decided to renew the term of the current Ombudsman for a second five-year term.

The Office also had one of its busiest years on record in 2019, including a significant expansion of its mediation capacities to meet the growing demand for the rapid response and speedy action that this mechanism brings for the informal resolution of workplace-related conflict. Another major expansion is the deployment of

Respectful Workplace Facilitators (RWFs): selected through a competitive process from staff of the country offices and trained by members of the Ombudsman team, the RWFs provide an on-the-spot opportunity for staff to address their issues with trusted colleagues who give the guarantee of confidentiality. Early feedback on both these components of the Office is extremely positive.

Section I of the present report provides a breakdown of the numbers of cases received in 2019 (434 with almost 80 per cent from offices away from headquarters), noting that the three main issues brought to the attention of the Ombudsman have remained constant over the years: evaluative relationships (prime issue for five consecutive years); job- and career-related issues; and organizational leadership and management. As in previous

Key features of the restructuring include the recruitment of a Deputy Ombudsman, the opening of two additional offices, one in Istanbul and one in Bangkok, and the doubling of the number of international professional and support staff.

years, the Ombudsman has made a number of recommendations to address these issues, which continue to be major obstacles to establishing and maintaining a decent workplace. In doing so, the Ombudsman urges all decision-makers of the five organizations to implement these recommendations, which are based on first-hand experience and represent the cumulative experience of a wide range of actors. This section also provides an overview of outreach activities, including the numerous interactive meetings and training opportunities facilitated by Office team visits to a total of 23 countries in five regions.

Section II of the report provides observations and recommendations on major facets of the work of the Office in 2019, ranging from the perennial issues of hiring practices and performance management to the duty of care in the five organizations, particularly with regard to mental health issues, the question of multilingualism in the workplace and questions raised by staff regarding the investigation process. Also addressed in detail in this section are the ongoing developments and fine-tuning in mediation and the RWF mechanism, as noted, as well as a revised proposal dealing with arbitration.

Section III points to the way forward. The reorganization of the Office and its expansion in 2020 will be a powerful force in meeting the growing needs for alternative dispute-resolution mechanisms. Existing e-learning facilities and the experience of the Office team in dealing with cases via telephone and various voice-over-internet protocols will, to some extent, facilitate the current remote working arrangements resulting from the COVID-19 pandemic. With new geographical locations, especially in Western Africa, there will be closer contact with more staff and increased personal visits for training and conflict resolution to country and regional offices once travel restrictions are lifted. The Ombudsman is greatly encouraged by the importance that the Executive Heads of the five organizations attach to achieving and sustaining a decent workplace in their organizations. As ever, the Ombudsman will cooperate to the fullest, bearing in mind the operating principles of the Office: independence, neutrality, confidentiality and informality.

Writing in 2020, the Ombudsman cannot submit a report taking stock of the work done during the previous year, and addressing the present and future work planned, without reflecting upon the implications of living at the time of a global crisis. From the perspective of conflict prevention and resolution, the Ombudsman must thus emphasize how concepts such as respectful communication, cooperation, problem-solving and mediation are proving vital, now more than ever, in the global struggle to restore previous lifestyles. Once these trying times are over, especially the people who are honoured by the privilege of serving the United Nations should not forget the everyday importance of these concepts, which are key for a healthy and enriching work environment and thus at the very heart of any ombudsman work.

The Office also had one of its busiest years on record in 2019, including a significant expansion of its mediation capacities to meet the growing demand for the rapid response and speedy action that this mechanism brings for the informal resolution of workplace-related conflict.

I. Overview of the work of the Office

A. Overview of cases

In the 2019 reporting period, the Office of the Ombudsman received 434 cases. Figure 1 shows that 189 were from UNDP, 25 from UNFPA, 134 from UNICEF, 37 from UNOPS, 43 from UN Women and 6 from other entities. Female staff reported 260 cases, male staff reported 153 cases and 21 were group cases.

In the period under review, three main categories accounted for a large part of the issues brought to the attention of the Ombudsman: evaluative relationships – 33 per cent; job- and career-related issues – 25 per cent; and organizational, leadership and management issues – 11 per cent (see figure 2). Figure 3 shows that evaluative relationships and job- and career-related issues are the two main issues across all regions. This is the fifth consecutive year that the category of evaluative relationships (supervisor/supervisee relationship) has been the main issue reported by staff to the Office.

Figure 1: Cases received from 1 January to 31 December 2019

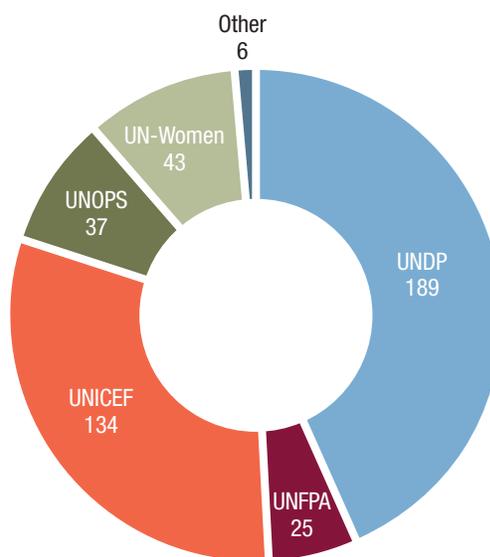


Figure 2: Issues addressed from 1 January to 31 December 2019

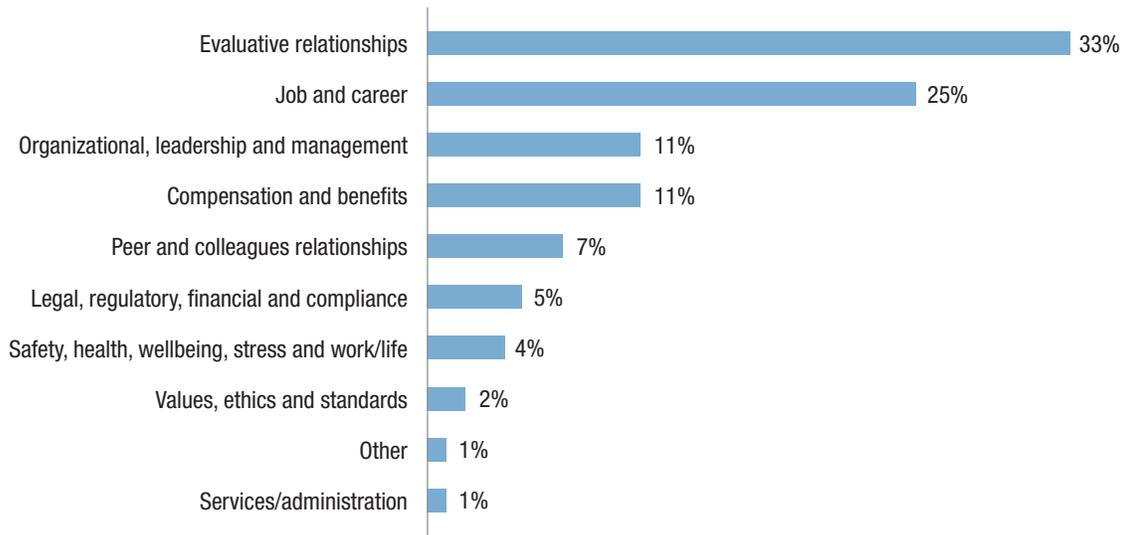
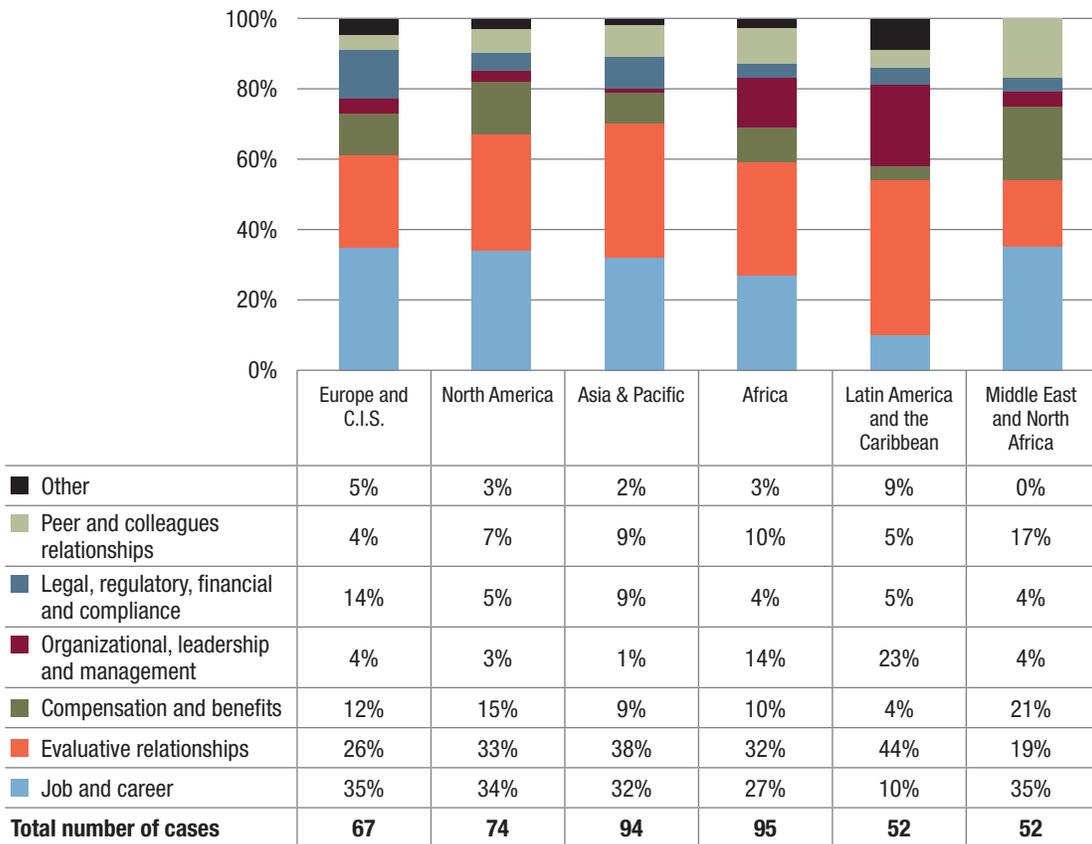


Figure 3: Issues received by region, 2019

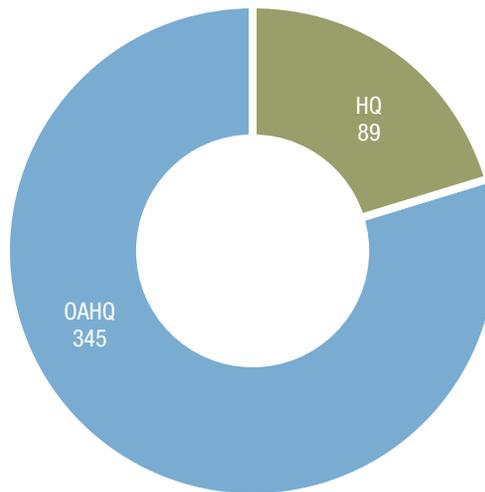


B. Outreach activities

Field visits give an opportunity to the Office of the Ombudsman to invite all contract holders to engage in interactive meetings, workshops, and trainings. At these events, the Ombudsman team invites staff to reflect on the root causes of conflict in the workplace and the options and tools available to them to help manage conflict more efficiently. In keeping with its neutral role, the team holds meetings with management and staff representatives. The Ombudsman is often asked on such visits why he chose to visit that particular region or country. It should be emphasized that a decision to visit a country or region rests solely with the Ombudsman.

The Ombudsman team visited a total of 23 countries in five regions. Figure 4 shows a breakdown of cases that the Office received at headquarters and those received from country offices. Cases from headquarters represent 21 per cent and offices away from the headquarters represent 79 per cent. This is consistent with previous years.

Figure 4: All cases, country offices vs. headquarters, 2019



In 2019, the Office facilitated 36 townhall presentations that reached almost 1,700 colleagues of the five organizations. The Office also facilitated 27 training courses, lasting from half a day to two days, that reached over 900 colleagues. This represents a significant increase in requests for training from previous years. While most presentations were facilitated in person, several were virtual presentations. An important aspect of the townhall presentations and training courses is that they raise awareness of the range of informal conflict-resolution services that the Office offers. They also provide the opportunity for extended, in-person interactions with the Ombudsman team, making it easier for staff to make the call to the Office when they are facing a workplace issue or concern.

Townhall meetings

The Office townhall presentation is entitled “De-Mystifying the Ombudsman” and covers the operating principles of the Office, how the work is accomplished and how it complements the integrated conflict-management resources of the organizations. As the title

suggests, the Office uses these presentations to continue combating misunderstanding and misperceptions about the role of the Ombudsman. One of the biggest hurdles is dispelling the myth that accessing the services of the Office is an act of escalation – it is not. In the question period after the presentation, participants typically inquire about confidentiality, the timeliness of conflict resolution, and most recently, the mediation function.

In-person training

As an internal mechanism for informal conflict resolution, the Ombudsman team is in a unique position to develop its courses based on the needs it observes and to tailor them into the context of a United Nations workplace, to make them as relevant for staff as possible. The current roster of courses offered by the Office, available at www.fpombudsman.org/training/, includes Negotiation, Mediation, Intercultural Interaction, Civility and Respect, and Challenging Conversations at Work (and Beyond). Negotiation examines basic principles of integrative bargaining, which is an ideal model for humanitarian aid organizations because it emphasizes a collaborative process when trying to reach agreement. Mediation was the course that human resource units most often requested in 2019. It was extremely well-received by participants, who commented that they needed more practice in productively managing dialogue with staff. The Office also presented a new workshop, Intercultural Interaction, which focuses on looking at quantifiable dimensions of national cultures to help people to become more effective in day-to-day exchanges at work. The enthusiastic initial feedback confirms that working in a multicultural, multinational, multilingual environment poses unique challenges. Several participants reported that Intercultural Interaction should become a mandatory course, at least for managers. The Civility and Respect course explores topics such as psychological safety and trust in the workplace. The Office notes that this course is often requested from units experiencing a breakdown in team communication and working dynamics. As in past years, the most frequently requested course overall was Challenging Conversations at Work (and Beyond), presented 17 times in 2019. Feedback included the need for a longer course to allow extra time for practice in multiple scenarios.

In fact, the consistent feedback that the Office receives is for longer and more frequent courses. This suggests that staff are starting to recognize the challenges of developing what are commonly referred to (and in the Ombudsman's view, mistakenly) as “soft skills”. In fact, in addition to the sheer amount of time it takes to learn and master such skills, their absence has a direct, heavy impact on any organization's work climate and even bottom line, among other things. As a result, the skills taught in these courses should more correctly be referred to as “hard skills”. Owing to the high demand for the Ombudsman courses, and scarcity of spaces to facilitate them, there is often a waiting list. The expansion of the Office staff mentioned in the introduction, however, has also increased its training capacity. Finally, the Office is also in a unique position to convene colleagues across the five organizations for training courses. For example, Challenging Conversations at Work (and Beyond) was presented in Bangkok as an inter-agency course for senior managers. Participants commented that learning with colleagues from other organizations was refreshing, enriching and dynamic.

As an internal mechanism for informal conflict resolution, the Ombudsman team is in a unique position to develop its courses based on the needs it observes and to tailor them into the context of a United Nations workplace, to make them as relevant for staff as possible.

On-line training

In 2019, the Ombudsman team completed most of the work to develop a multi-module, online conflict-management course, now available on the Office website and to the five organizations for incorporation into their existing learning platforms. This practical, interactive course consists of five core modules and several supplementary modules. All the modules were created with the United Nations workplace in mind and using the principles of the United Nations Charter as the foundation for informal conflict-resolution methods. It was designed to be useful for all levels of personnel at all locations. Through scenarios based on actual cases addressed by the Office, the modules examine best practices in conflict management, as well as available resources to everyone facing workplace issues or concerns. The core modules of the course provide personnel with a fundamental understanding of conflict management in the five organizations. In addition, these modules explain the notion of shared responsibility to manage conflicts and the consequences of failing to do so. The supplementary modules cover a range of topics, including group conflict and the role of managers in dealing with workplace conflict. The final module consists solely of practice questions that will further hone skills. The Ombudsman is pleased to note that various ombudsman colleagues, both inside and outside the United Nations system, have expressed interest in the course and have requested that the Ombudsman share its content and methodology

RECOMMENDATION

- **The Ombudsman recommends that as a means of strengthening conflict-management skills in their organizations at all levels, the Executive Heads designate as a mandatory course for all staff the five core modules of *Managing Conflict Effectively in the United Nations Workplace*. In addition, the Ombudsman strongly recommends that the supplementary module on the role of managers be mandatory for all managers.**

II. Observations and recommendations concerning conflict in 2019

A. Recruitment for consultancies

The Office of the Ombudsman has received complaints from consultants who have been awarded a contract after a rigorous selection process and have then discovered that the advertised contractual terms have been changed. There are cases where consultants have been working for some time and are then informed that there is insufficient funding for them to continue and they are given notice that the contract will be foreshortened. In other cases, consultants accept a 12-month contract but are informed upon arrival in the region that the contract will be for a much shorter period because of a lack of funding. Some units announce a unilateral change in the expected deliverables and indicate that they will, therefore, foreshorten the contract and re-advertise the consultancy. The Ombudsman has spoken to procurement units and has ascertained that before a consultancy is advertised, the hiring unit must provide a guarantee that funds are available for the advertised duration of the contract. The Ombudsman believes that to safeguard the good reputation of the organizations, hiring units should, without exception, honour the terms of a contract as advertised.

When an organization fails to honour the terms of a contract claiming that lack of funding is a force majeure requiring rescission or unexpected modification, the consultant suffers both professional and financial loss for which no recompense is envisaged. International consultants may very well not be interested in moving to a duty station at their own cost for, say, a three-month period. The Ombudsman further believes that it is not reasonable for a consultant engaged by an organization of the United Nations system to be expected to absorb the financial costs caused by a unilaterally, radically changed contract; he further believes that such practice is extremely damaging to the reputation of the organization.

It has also come to the attention of the Ombudsman that some units advertise a consultancy for a duration of, say, three-to-six months but then renew the contract repeatedly for periods of up to several years. Among other negative effects, this practice reduces the pool of potential, competent consultants who may be interested in a contract of more than six months but would not apply for shorter periods of time.

The consultants involved informed the Ombudsman that they regard the practices described above as a form of bait and switch. The Ombudsman fully understands their point of view and has tried, unsuccessfully so far, to redress the situation and has accordingly made a recommendation in this regard. Unfortunately, this lack of adherence to United Nations standards is not new. In the annual report for 2007, for example, the Ombudsperson noted:

“As the Office of the Joint Ombudsperson reported last year, the ombudspersons continued to see that many staff members are being subjected to bait-and-switch techniques: once they are hired, their terms of employment seem to be different from those

The Ombudsman believes that to safeguard the good reputation of the organizations, hiring units should, without exception, honour the terms of a contract as advertised.

indicated to them when they were called to interviews and were actively sought to fill a vacant position. This practice constitutes a serious breach of the standards of conduct for the international civil service with regard to ethical hiring and recruitment practices. The Ombudsman is deeply concerned by the continued failure of a number of managers to respect fully the standards of conduct, which form the basis of policies and actions in the United Nations.” (<https://fpombudsman.org/wp-content/uploads/2014/11/Annual-Report-2007-english.pdf>)

RECOMMENDATION

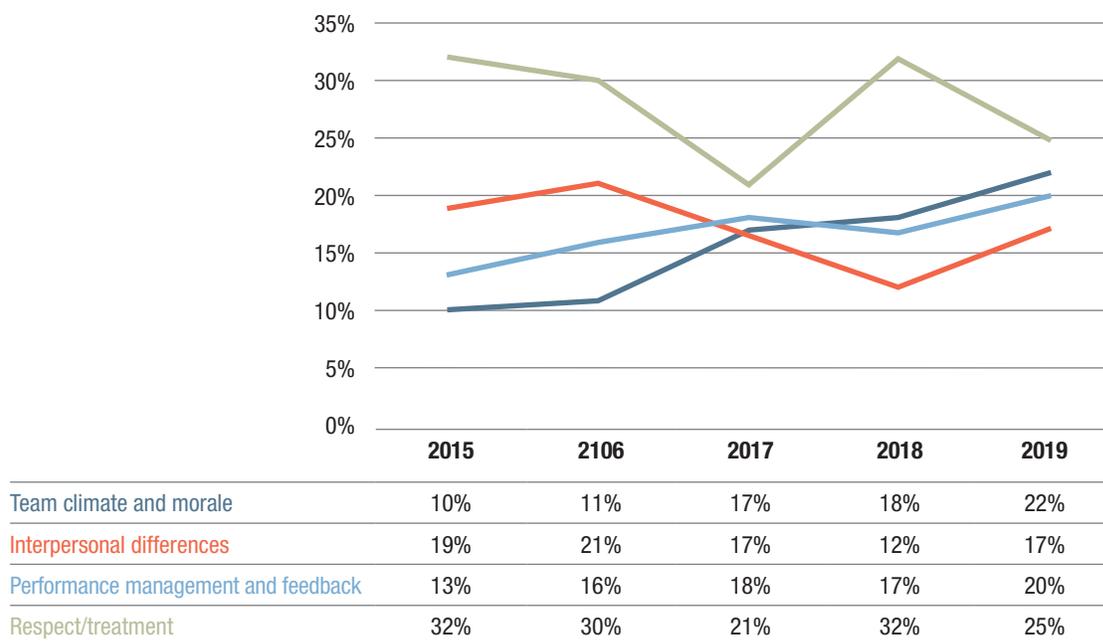
- **The Ombudsman recommends that hiring units ensure that they are in a position to meet all conditions advertised in an announcement for a consultancy.**

B. Performance management

Disputes and conflict arising from performance management continue to plague both managers and staff in the five organizations served. One of the primary reasons is the continuing lack of a strong feedback culture. It is disturbing to note in this connection that some visitors prefer to look for jobs elsewhere rather than try to resolve conflicts and other issues caused by performance management. During the reporting period, the Office dealt with cases both at early and later stages of performance management.

All five organizations renewed efforts to clarify and rationalize the procedures for managing performance. As shown in figure 5, performance evaluation is intertwined with team morale, interpersonal differences and respect and treatment. While commending improvements achieved by all five organizations in this area, in particular in the

Figure 5: Aspects of team dynamics, 2015-2019



latter category, the Ombudsman signals the need for more to be done, especially with regard to long-standing, recurring problems.

The potential for conflict and dissatisfaction often arises long before the formal preparation of the annual evaluation. If supervisors do not address performance issues in a timely fashion, there is a danger that teams or groups of colleagues will be adversely affected. Unfortunately, in almost all cases received there were failures to provide effective feedback and establish effective lines of communication. In the experience of the Ombudsman, it is critically important to provide continuous feedback and discussion about performance issues – indeed, if managers fulfil their responsibilities in this respect, supervisees should never be surprised by their final performance appraisal. With the increasing focus on mediation in the Office, there are opportunities for earlier intervention, especially via mediated conversations. Conflict stemming from performance appraisal can also result in physical and mental problems, stress and other negative manifestations.

The Office team dealt with many cases involving the lack of respect, inappropriate treatment and authoritarian attitudes as aspects of poor performance management. These factors affect not only individual staff members but the team as a whole, resulting in a loss of morale and a deterioration in the general work climate, as noted above. Proficiency in these interpersonal skills and coaching techniques is critical and further training is needed. The Ombudsman notes that a harmonious relationship between the manager and the staff member is an essential basis for a productive discussion regarding performance evaluation.

Performance improvement plan

In 2019 the Office dealt with multiple cases involving a performance improvement plan (PIP). The Ombudsman observed that the development and administration of PIP processes are not uniformly managed. The PIP process varies both among the funds and programmes and even within a single organization. In one organization, for example, there were cases of staff members for whom PIPs had been required but who had determined their own PIP deliverables; in the same organization, the deliverables of the PIP were those of the annual workplan on which the staff members had fallen behind. The Ombudsman also observed that in particularly complicated PIPs, the duration of the PIP often increased, resulting in more stress and anxiety for all involved. The Ombudsman believes that a lack of consistency in the implementation of PIPs decreases their usefulness as a means of improving performance.

Other tools available to develop performance include training, coaching and 360 assessments, some of which were used before the PIP. However, there were cases when a PIP was being implemented at the same time as other development mechanisms and even cases where the PIP was the first step in performance development. While these do not necessarily indicate inconsistency in PIP implementation, they do suggest the absence of a clear, logical approach to performance improvement.

The Ombudsman has also noted that when a PIP is implemented, the professional relationship between supervisor and supervisee can become strained. Both parties

In the experience of the Ombudsman, it is critically important to provide continuous feedback and discussion about performance issues – indeed, if managers fulfil their responsibilities in this respect, supervisees should never be surprised by their final performance appraisal.

explained that challenges existed in the working relationship well before the PIP was being considered or implemented. There are many side-effects of allowing poor working relationships to continue to deteriorate: one is the likelihood that the purpose and efforts of those involved with a PIP will be undermined. Furthermore, staff who were or had been on a PIP often reported that they felt that they were being “pushed out of the organization.” This may indicate that fear, anxiety and mistrust had already existed in their relationship with their supervisor, unit, or organization. In this context, the Ombudsman believes that there is a greater chance that the PIP will succeed if there is a healthy working relationship between supervisor and supervisee.

RECOMMENDATIONS

- **The Ombudsman commends the organizations for continued efforts to establish clear guidelines for performance management and recommends that they redouble their work in this area.**
- **The Ombudsman notes and encourages the value of early intervention to solve problems relating to performance evaluation and recommends that all organizations adopt this approach.**
- **The Ombudsman recommends that all parties pay particular attention to improving communication as an essential means to strengthening a feedback culture.**
- **The Ombudsman recommends that the organizations adopt a more stringent approach to the implementation of the performance improvement plan mechanism to ensure uniformity and consistency of its application.**

C. Organizational duty of care

In annual reports over the years, the Ombudsman has discussed workplace culture, diversity and mental health. The Ombudsman acknowledges efforts made by the five organizations to create a mentally healthy and diverse workplace through training, recruitment drives, workshops and raising awareness. The members of the Chief Executives Board for Coordination (CEB) have underlined the core principle of duty of care in ensuring a safe and healthy living and working environment noting that it is a shared engagement and responsibility of the organization and personnel to promote and sustain security, safety, health and wellbeing of United Nations personnel as far as it is reasonably practicable. The cross functional task force on duty of care listed inclusion and respect for dignity, defined as where organizations treat personnel in good faith, with due consideration for individual circumstances, as major principles of the duty of care. Putting these principles into practice can be challenging. The Office of the Ombudsman has received requests by staff for guidance on how to manage a healthy workplace when staff struggle with mental health issues. In addition, staff have approached the Ombudsman to complain of the lack of due consideration by the organization when translations of important meetings and policies from English to other languages are not readily available.

The cross functional task force on duty of care listed inclusion and respect for dignity, defined as where organizations treat personnel in good faith, with due consideration for individual circumstances, respecting and preserving dignity as one of the duty of care principles. Putting this principle into practice can be challenging.

1. Conflict management and mental health at work

During the reporting period, the Office was contacted by staff who were undergoing treatment for mental illness such as post-traumatic stress. These staff members reached out to the Ombudsman because the processing of their administrative claims had stalled and communication with the organization was difficult. They believed that they were being treated unfairly and consequently their underlying mental-health condition was exacerbated by the interaction with the organization regarding their claims. For example, some staff members on extended sick leave had been instructed to provide sensitive, private medical history to the local human-resource focal point. This is contrary to established administrative practice that requires staff members to submit such information directly to the United Nations medical services. Nevertheless, staff members already feeling anxious because of absence from work for an extended period reported that they were given to believe that they had to disclose their medical condition directly to the country office. In other cases, where the mental health of the staff is a key factor, the processing of administrative claims can involve more than one office. This is particularly true if the mental-health issue is attributed to working conditions. In order to finalize different administrative requests, the staff member is left with the responsibility of coordinating and communicating with multiple offices that do not necessarily communicate with one another. In frustration, these staff members came to the Ombudsman for help in trying to find a solution.

RECOMMENDATION

- **Each organization should designate a focal point who would (a) be responsible for coordinating the various administrative processes for staff who are being treated for mental health issues and (b) act as an interface between the staff member and the administration.**

In other cases, the Office has been requested to help to clarify best practices when staff are combating alcoholism or anxiety. If the performance of these employees is adversely affected, should their condition appear in the performance evaluation? Should they disclose the information to their supervisor, colleagues or to human resource units? What happens when there is gossip in the workplace about their condition – how should they address it? The guidelines provided by the organizations on this subject are often outdated. Affected staff come to the Ombudsman knowing that it is a safe place where they can explore options on how to address their concerns.

RECOMMENDATION

- **Clear guidelines should be made available to staff on how to manage workplace relations and administrative processes when a staff member is being treated for alcoholism or anxiety.**

2. Multilingualism in the workplace

Language proficiency is a key component of the United Nations workplace. The United Nations has six official languages but some of the five organizations served by the Office of the Ombudsman have designated three working languages: English, French

and Spanish. A working language often signifies that day-to-day communication, official business correspondence and training of staff will take place in one of the working languages. The Office has received complaints from staff about the growing lack of diversity regarding the use of the working languages. Webinars and trainings are often conducted exclusively in English. Staff are invited to participate in workshops where the language of instruction is often English with no provision for translation. Staff have complained that in these situations, they have to rely on attendees who are proficient in one of the other working languages to translate key components of the workshops or meetings.

Cases have been reported to the Ombudsman where the predominant use of an official language other than the working languages of the United Nations is so pervasive that it leaves staff who do not speak that language feeling excluded. Although working languages are used for official correspondence, unofficial or informal communication among some staff takes place using another language in the workplace. The United Nations celebrates diversity in its workplace, but it should not be at the expense of inclusiveness.

RECOMMENDATION

- **The Ombudsman recommends that the organizations ensure that there is a translation of all relevant policy and regulatory documents in all working languages, particularly in highly critical areas such as human resources, budget and finance. When meetings or trainings are conducted, organizations should make provision for translation into the working languages in countries where the working language is not English.**

D. Investigations

The Office received a number of cases in which the visitors were involved at some stage of the investigation process: they had either been informed that they were the subject of an investigation or had been requested to participate in an interview with the investigating unit in their professional capacity or they had been informed of the outcome of the investigation and in some instances of the disciplinary measures proposed. In all cases, the Ombudsman noted that the visitors were profoundly disturbed by the process – sometimes even when they had been cleared of any misconduct. While the Ombudsman made it clear that it was not possible for the Office to intervene in the investigation process, support was provided in the form of reassuring staff that an investigation was in the interest of all concerned and that the fact of being called to answer questions by the investigating body should not be a cause of alarm but rather a confirmation that the organization was fulfilling its responsibilities to foster a workplace where misconduct was not tolerated. In cases that stretched over several months, the Ombudsman explained that the investigation services were severely understaffed and that it was important to understand and appreciate the constraints under which they had to operate.

Nevertheless, the visitors clearly remained disturbed and explained that they felt that team spirit had been eroded, that morale had been affected and that an atmosphere of mistrust and secrecy had overtaken the workplace, especially when a long time had passed from the initial notice that an investigation was being undertaken to the

conclusion of the investigation. Visitors explained, for example, that they had obeyed the instruction not to discuss the situation with anyone, including family members, but the consequence of this was that they were afraid to discuss anything that might be viewed as a comment on the situation or an indication that they had disobeyed the instruction to keep everything confidential. In some cases, this fear had strained family relations because the staff were carrying the burden of the investigation home and were afraid to explain to the family members the reason for the change in their demeanour.

The intervention of the Ombudsman aimed at assisting staff and management in dispute resolution in these cases falls into two major areas: (a) conflict in the workplace in the aftermath of the investigation process and (b) mediation between the staff member and the organization when disciplinary charges have been made.

In the aftermath of the investigation process

The Ombudsman has helped to restore team spirit and re-establish trust in the workplace between staff and management after an investigation has taken place in a number of ways. It has been most important to listen to staff concerns with an unbiased mind – the hallmark of an ombudsman – and look for common ground on which harmonious relationships can be restored. Providing a safe space where staff can come together and share points of view is very helpful but even then, some staff feel scarred by the process and do not find it easy to speak with others for a variety of reasons. The Ombudsman has found that two of the training courses regularly offered by the Office are very helpful in this regard: Challenging Conversations at Work (and Beyond) and Civility and Respect, an issue the importance of which the Secretary-General has emphasized. These two courses and the entire offline and online training portfolio of the Office are described in section I.B.

The Ombudsman has found a particular challenge in engaging staff in the restorative process when the investigation has concluded but no further action has taken place. The reassurances that the organization cares about maintaining a decent, harmonious workplace begin to sound hollow when indignities suffered appear to be ignored, no information is forthcoming, and the situation continues unabated.

Disciplinary process

On conclusion of the investigation process, staff members often visit the Office of the Ombudsman to explore options open to them, in particular to ascertain what possibilities there may be for informal resolution as an alternative to formal litigation at the United Nations Dispute Tribunal. In these cases, the Ombudsman can arrange for a mediation between the organization and the staff member. The Ombudsman is pleased to report that in a number of cases the mediation process has resulted in an equitable settlement agreement between the staff member and the organization that does not undermine the principles of justice. While disciplinary measures are appropriately enforced in these cases, a considerable amount of time and financial resources are saved by taking advantage of the alternative dispute-resolution mechanisms offered by the informal system of justice.

Support was provided in the form of reassuring staff that an investigation was in the interest of all concerned and that the fact of being called to answer questions by the investigating body should not be a cause of alarm but rather a confirmation that the organization was fulfilling its responsibilities to foster a workplace where misconduct was not tolerated.

RECOMMENDATION

- **The Ombudsman recommends that increased financial and human resources be made available to the offices of investigation to enable the staff of those offices to address allegations of misconduct brought to their attention promptly and to conclude their investigations in a timely manner.**

E. Respectful Workplace Facilitators

The Office of the Ombudsman launched the Respectful Workplace Facilitators (RWF) programme in 2019 with the aim of building additional local capacity in the country offices to address conflict resolution and coaching for staff experiencing conflict in the workplace. Currently at the pilot stage, the programme is modelled after similar, highly

successful programmes at the World Bank, the International Monetary Fund and, more recently, the International Organization for Migration and the World Food Programme. In particular, the programme at the World Bank has been running for 15 years and includes a network of 260 staff in 105 countries that together help to address in excess of 750 cases per year.

Initial support to the RWF programme of the Office was provided by UNDP. At the time of submission of the present report, UNFPA and UN-Women have formally joined the programme, enabling the pilot to be delivered in over 40 country offices.

RWFs are neutral, confidential, and informal resources who do not themselves intervene to resolve conflicts. Specifically, RWFs work with all employees by listening to concerns, asking questions, exploring options, and assisting colleagues to identify the resources and policies corresponding to the issues raised. The RWF programme empowers people to have more effective conversations, work through their issues, and when appropriate, raise more serious issues through the appropriate formal channels. It thus provides an additional organizational resource in integrated issue-resolution and conflict-management systems that the Ombudsman strongly recommends all five organizations adopt. The

programme works synergistically with the Office of the Ombudsman, staff associations, offices of human resources, ethics and investigations, the leadership of country offices, focal points for addressing sexual harassment and sexual exploitation and abuse and other key stakeholders.

The RWFs are nominated by and voted into office by their peers on the basis of their recognized trustworthiness and integrity, as well as their capacity to maintain confidentiality and their desire to help to facilitate respectful workplaces. Once nominated, an RWF must undertake rigorous in-person training and engage in ongoing peer coaching and online learning to build key skills around listening, asking questions, and other aspects of conflict coaching.

The training itself is fully immersive and experiential, beginning and ending with an online learning community. After the comprehensive in-person training, the RWF nominees will engage in distance and online learning for the rest of the year, including a state-of-the-art collaboration tool that is designed to build a community of practice. The Office will also hold monthly webinars tied into the modules of the in-person training,

The RWF programme empowers people to have more effective conversations, work through their issues, and when appropriate, raise more serious issues through the appropriate formal channels. It thus provides an additional organizational resource in integrated issue-resolution and conflict-management systems that the Ombudsman strongly recommends all five organizations adopt.

as well as many additional learning opportunities through personal action plans and accountability partners. These include regular check-ins with members of the Office that are meant to enhance skills and address early challenges. This continuous, innovative training is based on and responds to the needs of staff on the ground.

At the time of submission of the present report, the country offices participating from UNDP are: Barbados, Bosnia and Herzegovina, Botswana, Brazil, Cambodia, Egypt, Ethiopia, Jordan, Kenya, Kuwait, Kyrgyzstan, Malaysia, Mexico, North Macedonia, Peru, Samoa, Senegal, Sierra Leone, South Africa, Sri Lanka, Sudan, Turkey and Zimbabwe. The country offices participating from UN-Women are: Bangladesh, Ethiopia, Jordan, Mali, Mexico, Papua New Guinea, Uganda and Ukraine.

The list of country offices participating from UNFPA is being finalized.

RECOMMENDATION

- **As noted, the RWF programme is currently supported by UNDP, UNFPA and UN-Women. In view of the proven success, potential benefits and applicability of this extremely cost-effective initiative, the Ombudsman recommends that all the organizations served by the Office contribute to its expansion.**

F. Mediation

Organizations around the world, including the United Nations system, have been trying for years to make mediation the “natural” step to deal with employment disputes, where other informal interventions, including face-to-face negotiations, have not been successful. The use of mediation early on, before formal adjudicatory processes are initiated, has the potential to save significant time and resources. As discussed in previous annual reports, a greater use of mediation also protects and strengthens important individual and organizational interests and values, such as self-determination, confidentiality and, when possible, reconciliation.

Despite its value and potential, worldwide acceptance of mediation remains far from being fully embraced as an alternative dispute-resolution mechanism with multifaceted application. In fact, the number of mediated disputes remains a small fraction of those litigated. The fundamental reason is that mediation, as for any professional service, requires a balance between demand and supply. The supply side of mediation includes, among other things, having an appropriate number of trained mediators offering the service and a solid regulatory framework guaranteeing, for example, full confidentiality of the proceedings and easy enforcement of the mediated agreements. While the demand side includes training in, and promotion of, the mediation service, greater incentives are needed as well as the requirement that parties make serious initial efforts at mediation. In this context, it is important to remember that if a potential litigant is asked to give serious consideration to mediation before seeking recourse through the formal system, it does not mean, of course, that the person can, or will be forced to, settle the dispute informally. In recognition of this principle, successful dispute-resolution programmes worldwide include clear procedural disincentives to those who try to bypass mediation, when the process is deemed suitable. In fact, decades of attempts to stimulate mediation demand primarily via training and

Successful dispute-resolution programmes worldwide include clear procedural disincentives to those who try to bypass mediation, when the process is deemed suitable.

awareness-raising have clearly demonstrated that much more is required in the form of incentives and initial efforts at mediation.

As mentioned in the introduction, 2019 was a momentous year for the Office, in great part because of the significant expansion of mediation services. This was largely due to the initiative of one of the organizations served by the Office that supported the strengthening of both the supply and the demand side of mediation. This investment has already caused a significant increase in the use of mediation during the first quarter of 2020. The ways in which this was brought about and the significance of such a leap forward in mediation is detailed below.

In 2018, the UNICEF Executive Director commissioned the Independent Task Force (ITF) on Workplace Gender Discrimination, Sexual Harassment, Harassment and Abuse of Authority in an effort to make UNICEF the best possible workplace in the interests of the staff and the children it serves. The ITF report found a number of areas where significant improvements were needed to make the organization a safe and caring workplace environment. The ITF report called for immediate measures to improve the culture at UNICEF and to redouble efforts to take urgent action to reaffirm and exemplify the core UNICEF values of care, respect, integrity, transparency and accountability.

In response to the ITF report, in early 2019 the Executive Director committed to a number of immediate measures, including those that would expand UNICEF mediation services through a dedicated mediation capacity. The latter also included the creation of a team of on-call external mediators within the Office of the Ombudsman with a mandate to provide systematic, informal conflict-resolution options for workplace disputes.

This strengthened mediation capacity now allows all personnel to raise concerns, where appropriate, in a faster, less intrusive way than a formal investigation process. To that end, the Office continues to work on expanding its Global Mediation Panel, consisting of on-call external mediators available to mediate workplace disputes anywhere in the world.

To meet the immediate and growing demand, the initial members of the Global Mediation Panel have been identified, selected and trained by the Office in consultation with some of the world's leading mediation organizations as well as with the ombudsman offices of other international organizations. A worldwide exercise to select additional mediators is currently under way, with the goal of having one or two on-call mediators available in every country where UNICEF has a presence, so that their deployment can be both immediate and more cost-effective than at present.

The Office of the Ombudsman, whose staff now includes a Mediation Specialist and a Mediation Officer, ensures that the external mediators operate in the context of United Nations regulations and rules and abide by a mediation code of conduct developed by the Office to provide consistent professional services to every contract holder in the five organizations.

The Office has also established requisite quality control mechanisms of mediation services to ensure that such services meet staff expectations. In addition to submitting to the Office evaluation surveys provided immediately after the conclusion of the process,

It is important to remember that if a potential litigant is asked to give serious consideration to mediation before seeking recourse through the formal system, it does not mean, of course, that the person can, or will be forced to, settle the dispute informally.

mediation users may address their concerns in relation to the services provided by the external mediators of the Global Mediation Panel to the Mediation Specialist and, should they be unsatisfied with the answer, contact the Ombudsman directly. Finally, also in consultation with the Chairperson of the UNICEF Global Staff Association and the Chair of the UNDP/UNFPA/UNOPS/UN Women Staff Council, the Office has established an International Advisory Board, consisting of eminent alternative dispute-resolution practitioners and academics, from which complainants may seek recommendations should the response given by the Ombudsman be unsatisfactory. To ensure transparency and easy access to all the resources relating to the Global Mediation Panel and the International Advisory Board, the Office of the Ombudsman has posted on its website the profiles of the external mediators and the board members, in addition to other relevant materials such as the agreement to mediate, the code of conduct of the mediators, the mediation evaluation form and a user-friendly guide to mediation.

Consistent with the need explained at the beginning of the present section to consider both the supply and the demand side of mediation, in 2019 UNICEF began working on policy updates capable of increasing recourse to mediation, both by staff and management. At the time of submission of the present report, new UNICEF rules have been adopted, spelling out that staff members are “strongly encouraged to first attempt to have the matter resolved through informal resolution mechanisms”, including mediation, “to avoid unnecessary litigation”. At the same time, in appropriate cases, “alternative means of arriving at a settlement, such as mediation, may be identified and suggested to the staff member” by the organization. Further, a staff member who wishes to pursue informal-resolution mechanisms should approach the Office of the Ombudsman “without delay, particularly if he or she has already discussed the concerns with the relevant managers but has not been able to find a mutually agreeable solution”. While these policy changes fall short of the “opt-out” mediation model proposed in previous annual reports, as they do not set forth any explicit obligation to participate at least in the first mediation meeting, these changes, if effectively promoted, will most likely increase the use of mediation, in suitable cases.

The specific circumstances that prompted UNICEF to invest in the mediation capacity of the Office and to adopt pro-mediation policies are specific to that organization. Nevertheless, the underlying needs and potential benefits are the same for all the organizations served by the Office.

RECOMMENDATION

- **The Ombudsman recommends that all of the organizations served by the Office contribute to the expansion of the mediation capacity and adopt pro-mediation policies.**

G. Arbitration

In the light of the recommendations in section II.D of the 2018 annual report and section II.E of the 2017 annual report, the Ombudsman wishes to reiterate the importance of the availability of legal recourse through arbitration for non-staff personnel working in the five organizations. In fact, the contracts of these members of personnel specify arbitration, subject to the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, as the legal remedy in cases of a dispute that cannot be resolved informally.

However, the costs involved in arbitration, which can be substantial, the administrative challenges and the unfamiliarity with the process often deter contract holders from initiating arbitration proceedings.

Since its inception, the Office has dealt with only a few visitors who have pursued arbitration. In the past, it was generally recognized that arbitration offered a more efficient and less costly means of resolution than litigation. Nevertheless, the practice of arbitration has changed significantly over the course of recent decades and has often become more expensive and more time-consuming than litigation. It is often difficult for parties to agree on whether to choose an administered arbitration (through a permanent arbitration institution with specific arbitration rules) or to opt for ad hoc arbitration proceedings. While there is some indication that parties would prefer to have recourse to administered arbitrations, they choose ad hoc arrangements more frequently, most likely because they are unable to agree on a specific arbitration institution or rules.

Non-staff personnel face a number of difficulties in having recourse to the UNCITRAL Arbitration Rules, which are frequently used in high-profile international commercial, investment, or State-to-State arbitrations and may include impracticalities for disputes arising in the United Nations workplace. For example, pursuant to the UNCITRAL Arbitration Rules, if parties fail to agree on the choice of an appointing authority, the Secretary-General of the Permanent Court of Arbitration at The Hague will designate the appointing authority. In view of this, it would be far more expedient to designate a specific appointing authority for arbitration proceedings that would take into account the context and nature of disputes in the United Nations workplace. Further practical measures aiming at efficiency in the arbitration of disputes in the United Nations workplace include limiting the scope of submissions, setting page limits, establishing a fixed duration of the proceedings based on documents only and pursuing arbitration based on specially designed arbitration rules.

If non-staff personnel were to understand the features of ad hoc arbitration proceedings pursuant to the UNCITRAL Arbitration Rules and if this mechanism were made available to them, the obstacles for recourse to arbitration for United Nations workplace disputes would be reduced.

Under the current contractual requirements governing arbitration, the lack of easily accessible legal services provides a further significant obstacle for non-staff personnel. International law firms and counsel typically show no meaningful interest in workplace disputes because such cases are not profitable and are often handled on an ad hoc basis (for high-profile cases) or within pro-bono programmes. The lack of access to high-quality counsel may understandably add to the impression that UNCITRAL ad hoc arbitrations do not represent an adequate recourse for non-staff members. However, those concerns can be mitigated through the training and creation of necessary legal resources for non-staff personnel. To that end, the Ombudsman will introduce a specific training session on arbitration proceedings under the UNCITRAL Arbitration Rules that will provide the basic introduction and skills to arbitration.

Similarly, when arbitration is carried out pursuant to the UNCITRAL Arbitration Rules, the costs of the arbitration (including those of arbitrator(s) and legal fees), have to be borne by the unsuccessful party or parties. However, the arbitral tribunal has the power

It would be far more expedient to designate a specific appointing authority for arbitration proceedings that would take into account the context and nature of disputes in the United Nations workplace.

to apportion such costs between the parties – which in practice, tribunals frequently do – if it determines that apportionment is reasonable, taking into account the circumstances of the case. The Ombudsman appreciates that providing direct funding to arbitration costs may generate frivolous claims against the five organizations served. The Ombudsman, therefore, advises that the initial administrative fees be funded through a dedicated arbitration facility, which may include training, case management, and access to experienced arbitrators and qualified counsel (but not the costs for the services of counsel and arbitrators). Such training and “access services” may empower non-staff members to prosecute their claims. These efficient, high-quality tools will be available not only to non-staff personnel but also to the management of the five organizations, which will allow both parties to appoint well-versed arbitrators and counsel, thus benefiting the entire dispute-resolution system.

Against this background of the desirability of establishing a neutral, independent arbitration facility within the five organizations, the Ombudsman further seeks to act on his recommendations contained in the 2017 and 2018 annual reports and demonstrate the need for and practicality of the proposed arbitration facility. Thus, building on those recommendations, the Ombudsman will start developing a limited list of experienced arbitrators and counsel who are willing to work on disputes arising in the United Nations workplace on a pro-bono or reduced-fee basis. Along with the Global Mediation Panel initiative that the Ombudsman is actively developing, the Office will post the profiles of those arbitrators and counsel on the website. The Ombudsman anticipates that when the five organizations see the value of such services, they will be more inclined to fund the initiative.

RECOMMENDATION

- **The Ombudsman recommends that the five organizations fund an independent arbitration facility. In the meantime, the Ombudsman recommends that the five organizations support the development of a specialized training programme and the provision of other arbitration access services.**

III. The way forward

The restructuring described in the introduction to the present report has placed the Office of the Ombudsman in an ideal position to build on the successes in broadening and expanding the global alternative dispute-resolution facilities that it provides.

As one means of enhancing its capacity to respond in an expeditious manner to the increasing demand for its services, the Office is currently planning to establish a presence in Western Africa. In addition to cost-savings, the new location provides another base from which services can be provided in an optimal manner to country and regional offices in Francophone countries as well as facilitating live interaction between the Office and staff in countries in the same or similar time zones.

Thanks to the significant resources invested in recent years, the Office has created training courses via online methodologies, in particular the e-learning course presented in Section I.B. The aim has been to strengthen the capacity of the workforce of the five organizations to prevent and manage conflict and to enhance their problem-solving skills. Additional distance-learning programmes will be available in the second part of 2020, as part of a demand-driven plan to create within the Office a new unit devoted entirely to training. In parallel, as soon as public health conditions allow it, the Office plans a mas-

sive expansion of its in-person training offerings. This rapid increase is made possible by leveraging the world-wide network of on-call mediators that the Office continues to develop.

In this sustained endeavour, the Ombudsman is encouraged by the targeted efforts undertaken by the five organizations to ensure a decent workplace. Calling on the various human resources offices, the staff associations and other stakeholders, the Executive Heads have placed themselves at the forefront in adopting, for example, strategic measures to combat harassment in all its forms. The Ombudsman has supported these efforts to the maximum that the terms of reference of the Office allow but is nonetheless constrained to recall that the terms

of reference do not allow the Ombudsman to be an active member of any organizational body or committee, above all to protect the principles of engagement of the Office: independence, neutrality, confidentiality and informality. Within these mandatory boundaries, the Ombudsman looks forward to bringing his unique perspective to the support of the five organizations in maintaining a workplace worthy in every respect of the high calling of all those serving the United Nations.

Additional distance-learning programmes will be available in the second part of 2020, as part of a demand-driven plan to create within the Office a new unit devoted entirely to training.

Office of the Ombudsman for UN Funds Programmes Team (2019-2020)



Ati Alipour
Mediation Consultant



Kevin Brown
Consultant Ombudsman



Donna Douglass-Williams
Consultant Ombudsman



Maria Migoya Fernandez
Mediation Officer



Vikram Kapoor
RWF Programme
Consultant



James Lee
Senior Conflict
Resolution Expert



Mushegh Manukyan
Mediation Specialist



Michael Rosenblum
Administrative Assistant



Linda Schieber
Consultant
Ombudsman



Left to right: Eskandar Rastegar – Consultant Ombudsman, Sharon Gordon-Smith – Administrative Assistant, Giuseppe De Palo – Ombudsman, Tamar Gur – Training and Conflict Resolution Consultant, Nancy Ross – Administrative Associate, Kentaro Kanyomozi – Ombudsman Specialist



*Empowered lives.
Resilient nations.*



United Nations Entity for Gender Equality
and the Empowerment of Women

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

UNDP, UNFPA, UNICEF, UNOPS and UN WOMEN

304 East 45th Street, 6th Floor
New York, NY 10017

Tel: +1 646 781 4083

Fax: +1 212 906 6281

ombudsmediation@fpombudsman.org

www.fpombudsman.org