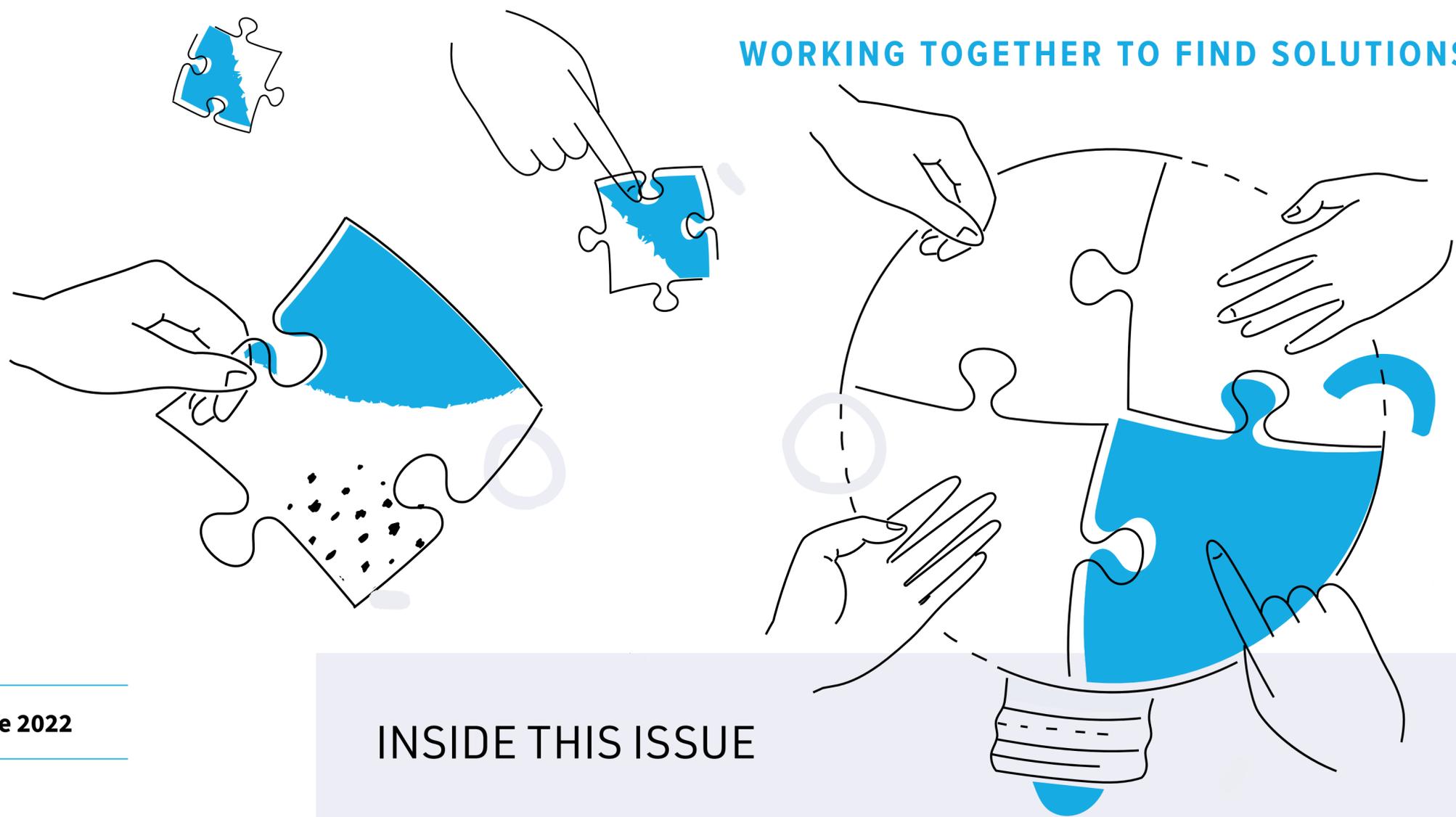


OFFICE OF THE OMBUDSMAN
FOR UNITED NATIONS
FUNDS AND PROGRAMMES

Mediating Around the World

Mediation Newsletter | 6th Edition | April-June 2022



WORKING TOGETHER TO FIND SOLUTIONS

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Peace at Work

The “Peace at work” project aims at producing a series of short interviews with the Office of the Ombudsman’s team, the Global Mediation Panel mediators and the Board Members, and other conflict resolution professionals with the goal to provide helpful insights regarding workplace mediation. The interviews are available to all personnel of the Funds and Programmes that the Office serves and can be viewed after the registration process on our website at <https://fpombudsman.org/what-we-do/mediation/>

Interests of the Parties

Andrew Lee

▶ Click to watch

Mediation Techniques

Justice Abha Nayar Patel

▶ Click to watch

Exploration Technique

Joyce Aluoch

▶ Click to watch

Creative Solutions

Georges Feghali

▶ Click to watch

Coaching and Rehearsing

Tat Lim

▶ Click to watch

Overall Supervisor's Role in Workplace Conflicts

Anna Doyle

▶ Click to watch

Mediation training to HR Professionals from UN Women

Mediation Guide for HR Professionals

In April-May 2022, the Mediation Unit conducted a training session for Human Resources professionals of UN Women. This program, which was successfully conducted in previous years for UNICEF and UNDP HR colleagues, is an intensive learning course on mediation through direct experience, observation, enhanced practice, and reflection.

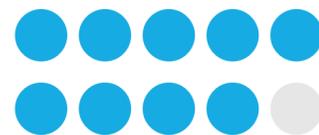
It included a general session and a practicum. During the general session, we discussed the principles of mediation, the main participants, and the benefits of the process, and provided tools that assist HR professionals in their day-to-day work. During the practicum, HR colleagues had the opportunity to practice their skills in a performance evaluation roleplay serving as mediators and disputing parties (both as supervisees and supervisors).

40 HR colleagues joined the program, which was offered in Spanish and English. The program helped HR colleagues to hone their skills in dealing with workplace conflicts, identifying the escalation level of conflicting situations, and learning referral techniques for appropriate disputes that can be submitted to the Office of the Ombudsman.

In their feedback, the participants shared that the practical experience helped them understand the issue from different perspectives because in the roleplay they acted both as supervisors and supervisees. The colleagues considered the training extremely useful, with an average rating of 9 out of 10, and the majority of them indicated that they would attend future training sessions (with an average rating of 9.3 out of 10).

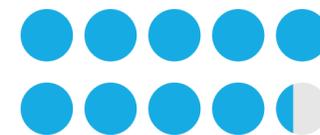
40

HR colleagues joined the program



9/10

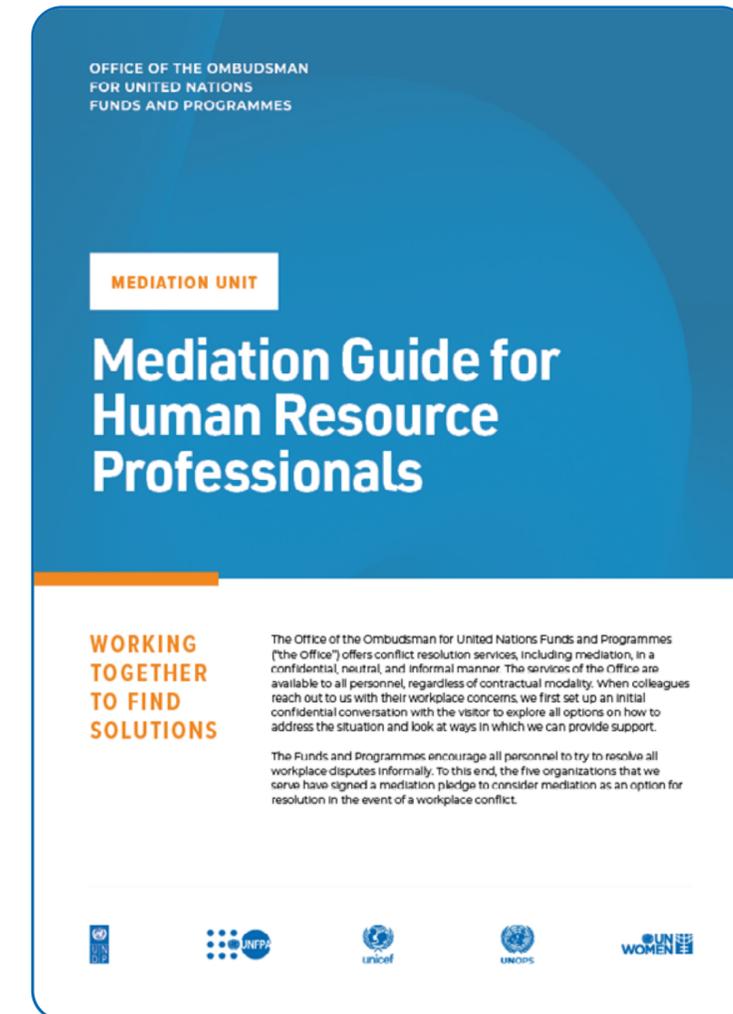
considered the training extremely useful



9.3/10

indicated that they would attend future training sessions

As a result of the mediation training programs offered to UNICEF, UNDP, and UN Women HR professionals, the Office of the Ombudsman has developed a Mediation Guide for Human Resource Professionals that explains Do's and Don'ts for HR professionals in conflict management, including support mechanisms to use when colleagues approach HR with their workplace conflicts. Please access the Guide below.



When are human beings free to choose their behavior?

Methodologies for more conscious and effective relational patterns in the workplace



Gabriela Ourivio Assmar

Mediator of the Global Mediation Panel

When we, humans, choose a conflict resolution methodology we normally believe that we are making a rational choice, based on costs, benefits and a track record of what we understand as a good result in similar cases. Although some surveys show that mediation has average settlement rates of around 60%-80% worldwide, disputants tend to choose courts. Why? A primary reason is that while amicable settlement may be likely once mediation is underway, there are obstacles to party agreement to mediate.

The challenge, put precisely, is to bring two or more people to the mediation table and to establish trust in the neutral after conflict has arisen and the parties feel that anything coming from the other side must be a trap. Even when people believe that mediated settlement would be far more advantageous than an adversarial process, we tend to go to authority figures with the power to decide (parents, judges, bosses) and to gravitate towards existing dispute-resolution systems that do not require a previous agreement about anything. Readers need look no further than their own experiences with conflict to appreciate its impact on communication and the willingness to collaborate.

This is precisely why it is so important for businesses to have conflict resolution systems in place prior to any crisis. In moments of conflict, team members need the intervention of an Ombudsman or mediator who will listen to them in a protected environment, recreating trust and, thus, enabling them to reengage the neocortex of their brains, where creative and inclusive solutions can be developed. Collaborative resolution cannot be mandated, but an initial conversation with an experienced professional can be a first step on the path that leads the parties away from an environment of toxic distrust and towards one of fertile trust, built on confidence in the neutral and in the dispute-resolution process.

Mediation is not magic. Where solutions depend on individual choices and conscious decisions to change behavior, mediation is likely to be effective. Yet the resolution of individual disputes may not change broader relational patterns in a workplace. Relational patterns, in turn, may ground systemic conflicts, which are often repetitive, more difficult to identify and easier to ignore than individual disputes. They cause that general discomfort “in the air” and no one rationally wants to be the messenger of bad feelings. There may be no one person to blame and no one factor that explains the problem. They are complex.

As Carl Gustav Jung said: “Until you make the unconscious conscious, it will direct your life and you will call it fate.” People in the workplace are often driven by silent behavioral messages of the networks of which they are part. Belonging is a basic need that may override the goals of an organization. As author Danah Zohar has observed, this deeper influence of belonging can only be realigned with the purpose of the organization through methodologies that include a perception of connectedness known as spiritual intelligence. Brazil is a pioneer in the introduction of such systemic methodologies to conflict resolution, bringing to consciousness the collective relational patterns of the relevant group. This expansion of mediation tools has proven quite effective even in the judiciary. Research suggests that systemic treatment of conflict yields successful and sustainable agreements that are, on average, 60% higher than success rates through pure dialog and negotiation mediation tools.

Dignity in Mediation



Katarzyna Przyłuska-Ciszewska
Mediator of the Global Mediation Panel

Human dignity is self-esteem and respect for oneself expressed in the desire for respect from others based on one's personal, moral, social, or spiritual values. This definition of dignity indicates a dual nature of that notion composed of personal dignity and personality dignity. Personal dignity belongs to every human being just because they are humans while personality dignity is conditioned on the efforts made by the person and their achievements. Pursuant to the Universal Declaration of Human Rights,¹ the acknowledgment of the innate dignity and equal and inalienable rights of all members of the human community is grounds for freedom, justice and peace in the world. According to the United Nations Charter², the aim of the United Nations includes the restoration of faith in fundamental human rights as well as individual dignity and value. In line with the Charter of Fundamental Rights of the European Union,³ human dignity is inviolable and must be respected and ensured.

Most human conflicts are caused by purposeful or negligent violation of the dignity of another person. The purposeful violation of dignity includes humiliation, abuse, and manipulation. The negligent violation of dignity includes the refusal to acknowledge the right have an opinion, belittling, ignoring, or depriving a person of any right.

The most important aspect of mediation for the mediator is the constant awareness of the need to carry out the process with dignity and respect for all parties. The mediator can create an environment of respect by remaining neutral, by showing compassion to the parties, and by communicating in a way that affirms their dignity. Establishing and adhering to procedural rules is also a form of respect as it creates a safe space for dialogue, particularly important in mediation between a victim and the perpetrator of a crime or in intra-organization mediations.

An effective mediator assumes the role of an attentive listener, mentor, or even something close to a confessor, without reprimanding or providing any "best solutions". A neutral is almost a geometrical figure, the third dimension of bilateral dialogue, changing the dynamics and structure of communication. The dialogue should be managed by mediators who adhere to these basic principles:

1. Respecting the dignity of the parties;
2. Leading and guiding the process with dignity;
3. Creating an environment and culture of dignity.

These conditions of respect during mediation influence the decisions made by the parties and their attitude towards proposals for resolution. By extension, any agreement reached between the parties is more likely to be performed where the parties view the agreement as a product of a process that respected their dignity and that accounted for their interests and input.

Mediators have much to consider when designing and managing mediations. The mediator's ability to manage the process wisely and fairly may be also ensured by the mediator's awareness of his/her impact on the conflict and by the recognition of his/her own weaknesses just like the parties' weaknesses. The mediator is encouraged to perceive the parties' human values, respect those and approach those with compassion, which will prevent them from discounting those values at the cost of an easy settlement. Protection of dignity and the awareness of its universal importance for all participants is a central concern. Mediators who acknowledge the value of participants through respect and compassion create the conditions for a successful resolution to their conflict. In other terms, the art of mediation is restoring interrupted dialogue with dignity.

Fairness And Good Faith in Workplace Mediation



Prof. Dr. Renate Dendorfer-Ditges¹
Mediator of the Global Mediation Panel

¹ Thankfully supported by Philipp Wilhelm

Fairness and good faith are multi-layered and intertwined concepts. On the one hand, they relate the protection of structurally weaker parties and equal treatment of parties. This is of particular importance in workplace mediations, where super- and subordinate relationships between conflicting parties are common. On the other hand, the concepts evoke attitudes about internalized ethics and compliance with social and legal norms.

Procedural fairness

Procedural fairness concerns expectations that actions are perceptible and verifiable by the parties. Only the guarantee of procedural fairness enables the parties to perceive the involvement of the mediator as acceptable and, ideally, beneficial for the resolution of their conflict. This guarantee is therefore an essential prerequisite for a successful workplace mediation.

The Code of Conduct of the Mediators of the Global Mediation Panel codifies this expectation. According to Art. 3 of this Code of Conduct, the mediator must act impartially towards all parties. However, this provision does not only stipulate the mediator's duty to act impartially, but also addresses the expectation that such impartiality must be perceptible and verifiable. It specifically stipulates that the mediator must "endeavor to be seen to act" impartially by the parties.

According to Art. 10 of the Code of Conduct, the mediator shall conduct the mediation process with fairness to all parties, which requires that each party be given an adequate opportunity to participate in the discussions within the mediation process. This provision concerns the mediator's procedural dealings with the parties, but not the outcome of the mediation proceeding. The fairness criterion therefore requires equal treatment of the parties and balanced communication.

This is not a particularity of the Global Mediation Panel. Similar provisions are included in mediation regulations around the globe. For example, European Union Directive 2008/52/EC (OJ L 136, 24.5.2008, p. 3–8) defines "mediator" as a person conducting a mediation in an impartial way. Art. 7.3 of the 2014 International Chamber of Commerce (ICC) Mediation Rules stipulates that in establishing and conducting the mediation, the mediator shall treat the parties with fairness and impartiality.

Mediating in good faith

Procedural fairness also extends to parties in various sets of mediation rules. Notably, Art. 7.4 of the 2014 ICC Mediation Rules stipulates that each party must "act in good faith throughout the mediation". The obligation to act in good faith is also recognized in the Agreement to Mediate used by the Office of Ombudsman for the United Nations Funds and Programmes. According to No. 1 of this Agreement, each party will seek to understand the other party's point of view, concerns and interests and will seek to treat the other party with respect.

Substantive fairness

Fairness also functions as an ethical compass for legal and value-based behavior in legal transactions. In light of the generally applicable principle of good faith, substantive fairness is usually associated with conduct that is perceived as reliable, honest and considerate. Fair conduct may also be associated with equal treatment in dealings between parties and transparency in their collaborations. Similarly, substantive fairness plays a decisive role in the mediation process. The parties should be enabled to find and articulate their own subjective standards of fairness, not only for the course of the mediation proceedings but also for an assessment of the potential settlement agreement. A "fairness check" can be carried out for this purpose at different stages of the mediation process with the assistance of the mediator.

We would greatly appreciate your feedback to our mediation services.

PROVIDE FEEDBACK

**OFFICE OF THE OMBUDSMAN
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The Mediation Unit would like to thank all contributors to this newsletter, as well as our team who worked on this issue: Abel Belachew (Design and Layout), Maria Migoya Fernandez (Mediation and Conflict Resolution Officer), and Mushegh Manukyan (General Editor, Manager of the Mediation Unit).