



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

# GUIDE FOR EXTERNAL LAWYERS

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

**HOW TO:**  
**WORK,**  
**COLLABORATE &**  
**MEDIATE** IN THE  
**UNITED NATIONS WORKPLACE**

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The Office of the Ombudsman for United Nations Funds and Programmes (the “Office”) is a confidential, neutral, independent, and informal resource for all members of the UNDP, UNFPA, UNICEF, UNOPS, and UN Women workforce. The Office helps to prevent and resolve workplace-related conflicts regardless of the type of contract or position of the involved personnel.

Please feel free to contact the Mediation Unit if you have any questions about mediation services.

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# INTRODUCTION

United Nations (UN) personnel occasionally seek the assistance of external lawyers to represent them in litigations, arbitration proceedings, or investigations involving UN organizations. However, it is not uncommon for external lawyers to have limited familiarity with UN rules and procedures, which play a significant role in shaping the framework for mediations conducted by the [Office of the Ombudsman for UN Funds and Programmes](#) (the “**Office of the Ombudsman**” or the “**Office**”). This guide provides external lawyers with insight into the nuances of the mediation process in such a framework.<sup>1</sup>

Mediation can be used to address **workplace-related conflicts** within the five UN organizations that the Office serves ([UNDP](#), [UNFPA](#), [UNICEF](#), [UNOPS](#), and [UN Women](#)). As explained in paragraph 3.1. of the [Terms of Reference](#) for the Office, the term “conflict” is to be construed ***in its broadest sense*** and includes matters pertaining to conditions of employment, the administration of benefits, and managerial practices, as well as professional and staff relations matters.

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<sup>1</sup> For the purposes of this guide, the term “external lawyers” refers to lawyers who do not work for any of the UN organizations or the [Office of Staff Legal Assistance](#) (OSLA).

In 2020, all UN Funds and Programmes served by the Office signed a **Mediation Pledge**<sup>2</sup> and committed to exploring the possibility of mediation in every case. In practical terms, a member of the UN personnel of these five UN organizations who is considering filing a formal case or any of the five UN organizations that is exposed to litigation/arbitration may contact the Office of the Ombudsman to discuss the possibility of mediation. It is important to note that the Office retains the discretion to determine whether a particular case is suitable for mediation.

Mediation is **free of charge** and is significantly quicker than litigation, arbitration, or investigation. It allows achieving more creative solutions that meet the needs and interests of all involved.

The Office of the Ombudsman deals with a wide range of cases, including:

1. Supervisee-supervisor conflicts
2. Peer-to-peer conflicts
3. Group conflicts

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<sup>2</sup> The Mediation Pledge can be found in the [Annual Report 2020](#) and reads as follows: *“In the event of a workplace conflict between [the organization] and a member of its personnel, the organization is prepared to discuss the possibility of resolving the conflict through Mediation. At the request of the member of personnel or of [the organization], an initial discussion on the suitability of Mediation will be hosted by the Mediation Unit of the Office of the Ombudsman for United Nations Funds and Programmes. At any time during the mediation process after the initial discussion, if one or both parties believe that Mediation is not viable in their case, either party may withdraw and proceed with formal options to resolve the matter.”*

4. Disputes against UN organizations that involve or may lead to litigation or arbitration
5. Cases involving disciplinary matters<sup>3</sup>

**Common issues that parties refer to mediation include:**

- Performance issues such as performance evaluations, improvement plans, etc.
- Interpersonal relations between supervisors and supervisees and among peers
- Termination of employment and service contracts
- Issues related to wages, benefits, and entitlements
- Relocation, restructuring, and reorganization
- Misapplication of policies and procedures

Even the most serious issues can be mediated. For example, in its [bulletin](#) ST/SGB/2019/8 addressing discrimination, harassment, including sexual harassment, and abuse of authority, the Secretary-General also identified the mediation services offered by the Office of the Ombudsman as a suitable tool that may be used to address a situation of possible prohibited conduct relating to discrimination or harassment in an informal manner. Specifically, paragraph 4.10. of the bulletin reads as follows:

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<sup>3</sup> It is essential to note that mediations involving disciplinary measures differ from plea bargain negotiations in the United States. In disciplinary mediations, the focus is not on determining a possible sanction since the applicable UN staff rules already define the prescribed disciplinary measures.

*Affected individuals may, on a voluntary basis, attempt to address a situation of possible prohibited conduct in an informal manner, including with the assistance of the Office of the [...] Ombudsman [...], whose services may include [...] mediation.*

As highlighted in paragraph 4.11., an unsuccessful attempt to resolve the matter informally does not preclude it from being formally reported.

For a more extensive list of issues suitable for informal resolution, including mediation, please refer to the [Issue Definition](#) resource.

## WHAT IS MEDIATION?

Mediation is a voluntary, confidential, and informal conflict resolution process facilitated by an independent, impartial, and neutral mediator from the Office of the Ombudsman.

### Key Features of Mediation

- **Voluntary:** Mediation requires the consent of all parties involved, and participants can choose to exit the process at any time.

- **Self-Determination:** Mediation emphasizes self-determination, meaning any agreement reached must be mutually acceptable to all parties involved.
- **Future-Focused:** The primary goal of mediation is to seek mutually acceptable solutions that benefit all parties rather than assigning blame or seeking accountability. However, it can also lead to an apology when acknowledging past mistakes is essential.

### Informal Nature

Mediation is an informal process, as outlined in Rule 11.1 of the UN Staff Rules. This informality allows for a flexible and collaborative problem-solving approach, at the same time keeping the possibility of pursuing a formal conflict resolution process intact. As stated in Rule 11.1(b):

*Both the staff member and the Secretary-General may initiate informal resolution, including mediation, of the issues involved at any time before or after the staff member chooses to pursue the matter formally.*

In mediation, parties can brainstorm solutions that will address their needs in a more adaptive way compared to what it is possible to obtain through a formal process, but the possibility of engaging in formal resolution processes stays open. The Office of the Ombudsman employs a consistent mediation process and skillset to address a wide range of disputes without distinguishing between informal,



formal, structured, or unstructured mediation; ***mediation is always an informal process but can be used to address different conflicts.***

### **Confidentiality**

As per paragraph 3.12. of the [Terms of Reference](#) for the Office of the Ombudsman, all communications with the Office are strictly confidential. Information shared during mediation will not be disclosed to third parties without explicit consent.

Per Article 15.7 of the [Rules of Procedures of the UN Dispute Tribunal](#) and Article 15.1 of the [Rules of Procedure of the UN Appeals Tribunal](#):

*All documents prepared for and oral statements made during any informal conflict-resolution process or mediation are absolutely privileged and confidential and shall never be disclosed to the Dispute Tribunal. No mention shall be made of any mediation efforts in documents or written pleadings submitted to the Dispute Tribunal or in any oral arguments made before the Dispute Tribunal.*

This means that what is discussed in mediation cannot be mentioned, used as evidence, or employed in any other way before the UN Dispute Tribunal and the UN Appeals Tribunal. Consequently, the parties in mediation talk freely without fear that the information they share could be used against them.

The sole exception, as explained in paragraph 3.12. of the [Terms of Reference](#) for the Office of the Ombudsman, arises when there is an **imminent risk of serious harm**, and no other reasonable means

of confidentially addressing the matter is available. This typically involves concerns for someone's life or health.

Matters can be referred to mediation by various offices within the UN system, including the administration, the UN Dispute and Appeals Tribunals, Human Resources, the Office of Staff Legal Assistance, the Ethics Offices, and the like. It is important to note that the Office of the Ombudsman does not provide mediation services for conflicts involving vendors.

## THE ROLE OF THE MEDIATOR

The mediator in the mediation process is a **neutral, impartial, and independent facilitator**. This means that the mediator does not take sides, hold biases, or have any vested interest in the outcome of the dispute. The mediator's primary role is to guide the parties toward a mutually agreeable resolution.

The mediator does not act as a judge or arbitrator or impose a resolution on the parties. This ensures that the parties in mediation retain full control over the outcome of the process. Nevertheless, the mediator may suggest a proposal for resolution, but it is entirely up to the parties to accept or reject the mediator's proposal.

## Mediator Appointment Process

The Office of the Ombudsman offers mediation services through its staff mediators and external on-call mediators who are part of the [Global Mediation Panel](#). When appointing a mediator, the Office carefully considers the preferences of the involved parties. However, the appointment of a mediator is ultimately at the discretion of the Office. Several factors influence this decision, including but not limited to:

- Geographic location
- Language requirements
- Nationalities and backgrounds of the parties
- Complexity of the dispute
- Presence of gender-related issues
- Broader conflict context, including the potential for escalation
- Experience in specific types of cases.

## Styles of Mediation

Mediation can take various forms, depending on the mediator's approach:

- **Facilitative Mediation:** Most mediators of the Office use facilitation techniques, helping parties communicate and collaborate effectively.

- **Evaluative mediation:** In appropriate cases, mediators may offer a neutral evaluation of the case. This involves providing feedback to parties about the reasonableness of their positions or proposals, especially when those do not align with their best interests. This feedback can be invaluable, as mediators have insights from both sides, often including confidential information that cannot be disclosed. Parties are strongly encouraged to engage with and consider such feedback, as it can contribute to finding mutually acceptable solutions.

## REPRISALS

Per the [Terms of Reference](#) for the Office, any contract holder utilizing mediation services shall not be subjected to **reprisals**, whether in the form of threats or actual actions. Paragraph 1.4. of the Terms of Reference states that:

*Any staff member who engages in such reprisal may be subject to disciplinary measures, in accordance with Chapter X of the Staff Rules, if such misconduct is established.*

It is worth mentioning that approaching the Office of the Ombudsman is not a protected activity and is

not subject to retaliation protection. For more information about the difference between reprisal and retaliation, please see **the article published in our newsletter**.<sup>4</sup>

# PREPARATION IS KEY

## Distinction in Dispute Resolution: Staff vs. Non-Staff Personnel

Although all personnel can access the services of the Office, a significant distinction exists between the means of formal dispute resolution available to staff and non-staff personnel.

### For Staff Members:

[Staff members](#) have access to the following structured dispute-resolution processes:

- **[Request for Management Evaluation \(RME\)](#)**: This typically serves as the initial step to challenge an administrative decision.

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<sup>4</sup> [Reprisal for Seeking the Assistance of an Ombudsman](#), Mediating Around the World, Mediation Newsletter, Issue number 3, page 6.

- [United Nations Dispute Tribunal \(UNDT\)](#): If dissatisfied with the outcome of the RME, staff members may proceed to the UNDT.
- [United Nations Appeals Tribunal \(UNAT\)](#): For further review of the UNDT decision, staff members or the UN organizations can appeal to the UNAT.

### **For Non-Staff Personnel:**

Non-staff personnel, including independent contractors and interns, do not have access to the [RME](#), [UNDT](#), or [UNAT](#) processes. Instead, their disputes are addressed through **arbitration**, following the dispute resolution clause stipulated in their contract.

For a comprehensive overview of the matters related to **access** to the UN's **internal system of justice**, additional information can be found [here](#).

Access to the [Office of Staff Legal Assistance](#) (OSLA), which provides **legal advice** and representation to the UN workforce, is also contingent upon an individual's contract modality. While staff can request free legal advice through OSLA, this office cannot extend its assistance to non-staff members, e.g., individual contractors, interns, UN Volunteers, etc., who may retain an external lawyer at their own expense.

## Deadlines to file a formal action if mediation does not work

### Dispute Resolution Deadlines and Extension

The deadlines for initiating formal dispute resolution mechanisms vary depending on the type of contract involved. The Office of the Ombudsman can request an extension of some of these deadlines.

#### For Staff Personnel:

- Staff members are subject to specific [deadlines](#) outlined in the [UN Staff Rules](#). For example, Rule 11.2 addresses the submission of an [RME](#), and Rule 11.4 specifies the deadline for filing an application with the [UNDT](#).

#### For Non-Staff Personnel:

- Non-staff personnel, on the other hand, must adhere to the time limits stipulated in the dispute resolution clause of their contract.

### Ombudsman's Authority to Request Extensions:

As per Rule 11.1(c) of the [UN Staff Rules](#), the Office of the Ombudsman can conduct informal resolution, including mediation, which may lead to the extension of the deadlines applicable to the [RME](#) and the [UNDT](#) filing, as specified in Rules 11.2(c), (d), and 11.4(c) of the [UN Staff Rules](#).

The process of requesting an extension of the deadlines typically involves obtaining the agreement of both parties to participate in mediation. Once both parties agree, the Office may request an extension from the organization's administration, and the designated official of the specific organization will issue a decision. In most cases, these extension requests are approved.

### **Initiating Contact and Minimum Timeframe:**

It is crucial to initiate contact with the Office of the Ombudsman as soon as possible and allow a minimum of 10 days for the extension request process to ensure a smooth resolution process.

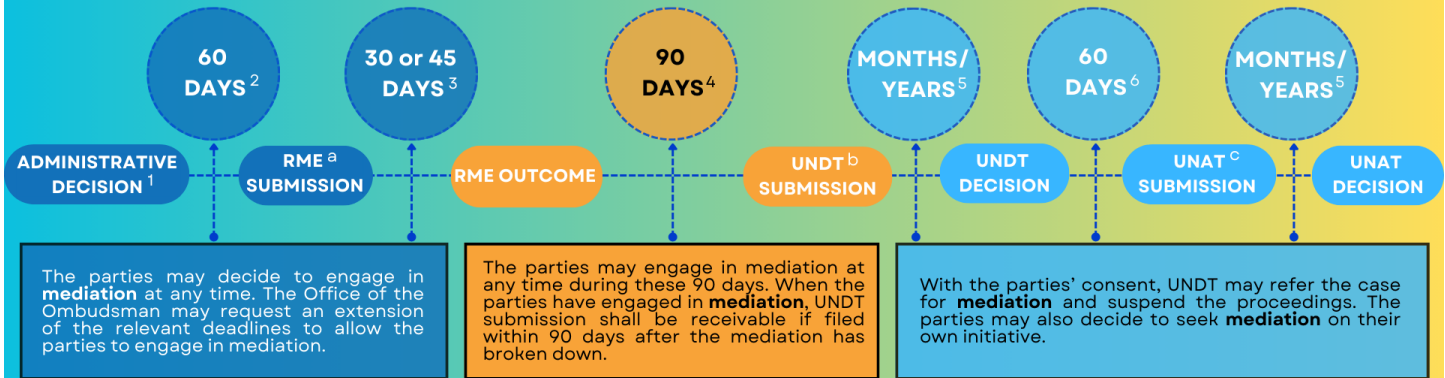
Please note that while the Office of the Ombudsman can request an extension of the deadlines applicable to the [RME](#), that does not have the effect of suspending the implementation of the contested administrative decision, which can be achieved only following the procedure outlined in Rule 11.3 of the [UN Staff Rules](#).

Mediations that involve **investigations** present unique circumstances, and the rules governing such mediations can vary significantly across different organizations. Notably, certain organizations permit the suspension of investigations while mediation is ongoing, and others do not.

Please see **a diagram** that outlines the applicable deadlines. ***As explained, mediation is possible at any stage of the formal proceedings.***



## YOU CAN **MEDIATE** ANY TIME & DEADLINES MAY BE EXTENDED



**a. RME** - Request for Management Evaluation    **b. UNDT** - United Nations Dispute Tribunal    **c. UNAT** - United Nations Appeals Tribunal

**1** - An **administrative decision** is a decision that has an administrative nature, adversely affects the contractual rights of a staff member, and has a direct, external legal effect.

**2** - Under UN Staff **Rule 11.2**, an RME shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

**3** - Under UN Staff **Rule 11.2**, the Secretary-General's response, reflecting the outcome of the RME, shall be communicated in writing to the staff member within 30 calendar days of receipt of the RME if the staff member is stationed in New York, and within 45 calendar days of receipt of the RME if the staff member is stationed outside of New York.

**4** - Under UN Staff **Rule 11.4**, a staff member may file an application with the UNDT against a contested administrative decision within 90 calendar days from the date on which the staff member received the outcome of the RME. See also Article 7 of the UNDT Rules of Procedure.

**5** - Depending on the complexity of the case, the issuing of the judgment by the UNDT and the UNAT may take from a few months to years.

**6** - Under UN Staff **Rule 11.5**, either party may file an appeal against the UNDT's judgment with the UNAT within 60 calendar days following receipt of the UNDT's judgment.

# UNIQUE ASPECTS OF MEDIATION BY THE OFFICE

While mediations facilitated by the Office of the Ombudsman share some similarities with workplace and commercial mediations in various jurisdictions and mediation programs, there are distinct features that set them apart:

1. **Intake:** before recommending mediation, the Mediation Unit conducts a comprehensive intake process to assess whether mediation is the best fit to address the particular conflict. During that session, the ombuds/mediation professional will explore all options with the visitor of the Office.
2. **Pre-Mediation Meetings:** Significant importance is placed on pre-mediation meetings with the mediator. These meetings are typically conducted individually, allowing parties and their legal representatives to openly discuss goals, interests, and potential alternatives. Multiple pre-mediation meetings may take place before a joint session. Typically, pre-mediation calls are conducted over Zoom, but in the headquarters and some country offices, in-person meetings may be requested as well.
3. **Co-Mediation:** Mediation may involve multiple mediators, especially in group cases.
4. **Mediation Statements:** Though not mandatory, mediation statements are strongly encouraged. These statements should include candid assessments of the case, highlighting strengths and

weaknesses. They may also outline initial demands, potential concessions, confidential expectations, and propose a reasonable outcome (ideally more than one). Mediation statements can be in written or verbal form.

5. **Joint Meetings:** The occurrence of joint meetings depends on the nature of the mediation. Litigation-related mediations typically omit joint sessions due to multiple layers of the organizational decision-making process regarding settlements. In contrast, joint sessions are more common in arbitration-related mediations, but frequently, the ultimate decision-maker does not participate in the process.
6. **Representation:** UN organizations are typically represented by their legal departments. Staff members are encouraged to contact [OSLA](#) for legal representation, while non-staff colleagues are advised to engage external lawyers before arbitration. Though not required, legal representation is typically helpful, and consulting a lawyer is highly recommended before signing a settlement agreement.
7. **Opening Statements:** During pre-mediation or joint sessions, parties are asked to make an opening statement to present their perspective. It is advisable to be concise, precise, and constructive. Typically, parties present their stories directly, and external lawyers supplement them with legal arguments.

8. **Mediation Advocacy:** Mediation advocacy differs significantly from litigation advocacy and requires a unique approach. Lawyers are encouraged to familiarize themselves with the Office of the Ombudsman's [Guide on Mediation Advocacy](#) before participating in mediation.
9. **Settlement agreement:** The agreement reached through the mediation process is generally formalized in writing and signed by the parties. Under Rule 11.4(g)(iii) of the [UN Staff Rules](#), the UNDT has jurisdiction over an application filed by a staff member to enforce the implementation of an agreement reached through mediation. Cases concerning the enforcement of a settlement agreement are the only circumstance in which, under Article 15.1 of the [Rules of Procedure of the UN Appeals Tribunal](#), a document prepared in mediation can be disclosed to the Appeals Tribunal. It should be noted that in the context of conflicts between supervisors and supervisees, the agreement reached by the parties is generally recorded in an email and not signed by the parties.

## CONTACTS

Mediation may be requested by emailing the Office at [ombudsmediation@fpombudsman.org](mailto:ombudsmediation@fpombudsman.org) or [mediation@fpombudsman.org](mailto:mediation@fpombudsman.org) with a brief description of the situation. Once a need for mediation is expressed and the Mediation Unit determines that mediation is appropriate, the Mediation Unit will obtain both parties' consent to the mediation process to start the process.

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## RESOURCES & LINKS



[Office of the Ombudsman for the United Nations Funds and Programmes](#) – the Website of the Office of the Ombudsman

Mediation Guide – Office of the Ombudsman

Guide for Parties on How to Prepare for Mediation –Office of the Ombudsman

Mediation Advocacy Guide – Office of the Ombudsman

[Mediation Process](#) – Office of the Ombudsman

[Formal Deadlines and Extension](#) – Office of the Ombudsman

[Global Mediation Panel FAQ](#) – Office of the Ombudsman

[Issue Definition](#) – Office of the Ombudsman

[Annual Reports](#) – Office of the Ombudsman

[Terms of Reference](#) – Office of the Ombudsman

[Code of Conduct of the Mediators of the Global Mediation Panel](#) – Office of the Ombudsman

[Agreement to Mediate](#) – Office of the Ombudsman

[A Staff Member's Guide to Resolving Disputes](#) – Office of Administration of Justice

[Staff Rules](#) – United Nations

[Rules of Procedure](#) – United Nations Dispute Tribunal

[Rules of Procedure](#) – United Nations Appeals Tribunal

[UN Internal Justice System Timelines](#) – Office of Administration of Justice

[OSLA](#) – Office of Staff Legal Assistance

# MEDIATION VIDEOS



## CASE 1

- Interpersonal
- Performance
- Stress
- Separation



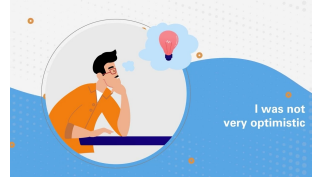
## CASE 2

- Office Reorganization



## CASE 3

- Performance
- Harassment
- Interpersonal misunderstanding



## CASE 4

- Professional Services Performed but Subsequent Payment was not Issued



## CASE 5

- Organization's Perspective on Mediation