

UN OMBUDSMAN AND MEDIATION SERVICES

MEDIATION PRINCIPLES AND GUIDELINES

(7 July 2010)

Overall Structure of the Mediation Service

The Mediation Service was established by the General Assembly¹ as part of the United Nations Ombudsman and Mediation Services (UNOMS) to strengthen the United Nations internal justice system and to assist the staff of the United Nations Secretariat, Funds and Programmes, UNHCR and related personnel in the informal resolution of work related disputes. The Mediation Service, which is part of the integrated Office of the Ombudsman, handles mediation cases which have been requested by the parties to the dispute or which have been referred by management evaluation units, the United Nations Dispute Tribunal (UNDT), the United Nations Appeals Tribunal (UNAT), or other offices such as the Office of Staff Legal Assistance (OSLA).

What is Mediation?

1. A voluntary process which only takes place with the consent of all of the parties involved.
2. An informal process in which a trained neutral person, known as a mediator, assists the parties to work toward a resolution of a dispute with the parties themselves remaining in control of the final decision.
3. A process in which any statement made or document prepared during the mediation proceedings or in a private discussion with the mediator(s) remains privileged and confidential. The mediator(s), UNOMS staff and the participants cannot be required to testify in the UN formal justice system about what happened during mediation.
4. It is without prejudice which means that if the matter is not resolved during the mediation process the parties can still go forward with formal proceedings so long as they meet the applicable timelines. Discussions held, positions put forward and documents produced for the purpose of mediation cannot be used against a party in Tribunal proceedings.

Benefits of Mediation

5. Mediation is an opportunity for the parties to work together with the assistance of a neutral third-party to develop their own resolution of the dispute. The parties remain responsible for designing their own solution. The mediator(s) does not make a binding decision for the parties but seeks to assist the parties in reaching a mutually agreeable resolution of the dispute.

¹ ResolutionA/RES/62.228

6. The mediation process may save time and money and reduce the amount of stressful workplace conflict. In mediation, the parties can usually resolve their disputes more effectively and conveniently than through litigation.
7. Mediation is not a legal process and therefore does not generally require the presence of legal counsel. However, a party may bring a representative, a colleague or an attorney if, after a discussion with the Mediation Service, a party believes it will be helpful to do so.
8. If an Application has been filed in the formal justice system with the UN Dispute Tribunal, the parties may, on their own initiative, choose to try mediation or they may agree with a proposal of a Tribunal Judge to refer the case to Mediation Services. If so, the Tribunal proceedings will be temporarily suspended while the mediation proceedings are taking place.

The Mediator's Role

9. A mediator is impartial and independent and does not have any personal interest in the potential outcome. His/her role is to create a confidential, safe environment which encourages all of the parties to participate in a problem-solving process.
10. A mediator is not a judge. He/she does not determine the outcome of the dispute. A mediator uses his/her skills to allow the parties to be heard in a respectful, non-judgmental way and assists them in reaching their own solution.

Availability of Mediation

11. Mediation is available to all staff members and related personnel of the United Nations Secretariat, Funds and Programmes and UNHCR. However, enforcement of agreements may be different based on the types of contracts.

12. Mediation may be requested by:

- One of the parties to the dispute.
- All of the parties to the dispute.

or may be referred by:

- The management evaluation units
- The UN Dispute and Appeals Tribunals.
- The Office of Staff Legal Assistance or other similar offices

13. The agreement of all parties to a dispute is required for mediation to proceed.

Disputes Eligible for Mediation

14. Work related disputes are eligible for consideration for mediation proceedings. A work related dispute or difference is any formal or informal dispute or issue arising out of an existing, prospective or past employment relationship between and among the UN and its staff and related personnel. A work related dispute may be either written or oral in nature.

Screening of cases

15. All requests for mediation will be promptly reviewed by the Mediation Service to ensure that mediation is an appropriate method for resolving the dispute in this matter. The parties and the referring entity, if any, will be promptly notified once a determination is made by the Mediation Service whether the case is appropriate for mediation and accepted as a referral.
16. In accordance with Article 8 of the Statute of the United Nations Dispute Tribunal and Staff Rule 11.1 (d), a staff member may not file an Application with the UN Dispute Tribunal if the dispute arises from a contested decision that has already been resolved by an agreement reached through mediation.

Timelines

17. In accordance with Staff Rule 11.1 (b), a staff member or the Secretary-General or his designated representative may request initiation of mediation proceedings at any time. Mediation may be requested before or even while the matter is pending before the UN Dispute or Appeals Tribunals.
18. In accordance with Staff Rules 11.1(c), the conduct of mediation proceedings may result in an extension of the timelines applicable to a management evaluation. In the case of a matter currently pending before the UN Dispute Tribunal, the case will be suspended by the Tribunal in conformity with article 15.4 of the UNDT Rules of Procedure while the matter is proceeding in the mediation process.
19. The time-frame for completion of mediation proceedings normally will not exceed three months. However, in exceptional circumstances the Mediation Service will notify the management evaluation units or the Registrar of the UN Dispute Tribunal or Appeals Tribunal that mediation proceedings will require an additional period of time. This notification applies to cases that were being handled by the management evaluation units or the Tribunals when mediation commenced.

Enforceability of Mediation Agreements

20. In accordance with Staff Rule 11.1(d) an Application shall not be receivable by the United Nations Dispute Tribunal if the dispute arising from a contested decision has been resolved by an agreement reached through mediation. However, a staff member may submit an Application directly with the Dispute Tribunal to enforce the implementation of an agreement reached through mediation within ninety calendar

days after the deadline for implementation has specified in the mediation agreement or, when the mediation agreement is silent on the matter, within ninety days after the 30th day from the date on which the agreement was signed.

21. A non-staff member who becomes a party to a Mediation Settlement Agreement may not file an Application to the UN Dispute Tribunal to enforce the Settlement Agreement because he/she is not covered under the formal administration of justice provisions. However, the non-staff member may contact the Mediation Service to request further mediation.

HOW TO CONTACT THE MEDIATION DIVISION:

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