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**AUDIT OF RETRENCHMENT BENEFITS FOR UNHCR IMPLEMENTING PARTNER
PROJECT PERSONNEL**

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**AUDIT OF RETRENCHMENT BENEFITS FOR UNHCR IMPLEMENTING
PARTNER PROJECT PERSONNEL (AR2005/162/07)**

EXECUTIVE SUMMARY

In October 2005, OIOS conducted an audit of the payment of retrenchment benefits for UNHCR implementing partner project personnel. These are lump-sum payments made on redundancy, either voluntarily by employers through collective agreements or mandated under statutory provisions. UNHCR's policies and guidelines on this topic were selected for a global review, as OIOS had observed a few country operations (notably Pakistan and Sudan) where UNHCR has been committed to pay retrenchment benefits amounting to millions of US Dollars.

OIOS' audit included a review of international conventions that could have a bearing in the subject and other available literature, as well as a horizontal assessment of the current practices and procedures adopted by some UNHCR country operations. A draft of the report was shared with the Division of Operational Support (DOS), the Division of Finance Supply Management (DFSM) and the Office of the Director of the Sudan Situation (DOSS) in December 2005. Subsequently meetings were held with DOS and DFSM to discuss the audit findings, to clarify issues and to discuss the feasibility of implementing the recommendations. The formal comments, which were received in March 2006, are reflected, as appropriate, in this final report.

Main Audit Findings and Recommendations

- UNHCR's provisions (on the remuneration and benefits made for implementing partner personnel) are mentioned in the Sub-Project Agreement. In OIOS' opinion clearer and more concise guidelines are required. In the absence of this UNHCR has been exposed to excessive retrenchment benefit payments. Some country operations have resorted to agreements with partners that do not adequately safeguard UNHCR's interests. In OIOS' view, therefore, there is a potential risk of further disputes and/or unusual type agreements being entered into if the matter is handled inconsistently by country operations.
- From UNHCR's perspective there is no firm legal liability to pay retrenchment benefits for implementing partner personnel. Nonetheless, UNHCR has often paid these on the grounds of a moral obligation or in the interests of maintaining good relations with the partner (often the governmental partner). For example, OIOS estimated that financial implications to pay retrenchment benefits to implementing partner personnel in Pakistan could reach US\$ 1 million, and for the Commissioner of Refugees (COR) in Sudan it could reach US\$ 5 million.
- The formulation applied in Sudan far exceeded that legally mandated in national law, and the long-term agreement was entered into with COR without seeking advice from Headquarters. *As of March 2006, it has been agreed, in principle, to re-open the negotiation process at the Representation level with COR.*

- Conventions adopted by the International Labour Organization on the termination of employment widely recognise the right of employees for financial compensation to offset or mitigate the adverse effects of loss of employment. A large number of national systems also acknowledge that in certain circumstances retrenchment benefits are to be paid on loss of employment.
- OIOS noted that international partners typically have well defined personnel policies that generally contain a provision for retrenchment benefits. However, there was a lack of clarity with reference to those for local partners where a provision in their employment contracts for retrenchment benefits was often absent. The main concern is with government partners where, as civil servants, they have an expectation that retrenchment benefits will be paid on separation. Such provisions are normally clearly outlined in the local employment law.
- OIOS recommended that UNHCR management take corrective action by issuing clear guidelines and establishing procedures for the payment of termination benefits to implementing partner personnel. This should include procedures to ensure the legal and financial ramifications, including future potential liabilities, are thoroughly reviewed and considered prior to UNHCR embarking on any formula/policy and entering into any subsequent locally signed agreement.
- *DOS has agreed to clarify the relevant clauses in the Sub-Project Agreement to further guide managers through the steps of its negotiation, planning and signing, highlighting clauses related to personnel and UNHCR/implementing partner legal liabilities. Instructions issued would also highlight that in principle, no special agreements or commitments, apart from those already authorized should be entertained by field operations without the prior approval of the Legal Affairs Section, the Division of Finance and Supply Management and DOS.*

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I. INTRODUCTION

1. In October 2005, OIOS conducted an audit of the policies, procedures and practices for the payment of retrenchment benefits for implementing partner project personnel. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.
2. Retrenchment benefits for implementing partner project personnel have been reviewed by OIOS as part of its audits of UNHCR country operations. Also in June 2005, OIOS conducted a review of the retrenchment benefits for UNHCR Implementing Partner staff in Pakistan that culminated in several recommendations that were accepted and are under implementation. This is the first time however that retrenchment benefits have been subject to a comprehensive and global review.
3. UNHCR's main guidance with regard to partner project personnel is outlined in the Sub-Project Agreements, wherein it is stated under Article 6 "Agency Personnel shall not be considered in any respect as being UNHCR staff members or as having any other contractual link with the Office." Also, "the Agency shall, at its own expense, comply with all laws and regulations of its country of residence or operation, if different, and assume all liabilities and obligations imposed by any law or regulation with respect to its performance under this Agreement". Clause 15.6 of Appendix-1 refers to the contract between the implementing partners and their staff and requires that the Government or Agency shall "establish contracts with personnel recruited or seconded under the Sub-Project governed by the UNHCR Agreement, in accordance with the applicable regulations, including *inter alia*, a description of duties and functional responsibilities and remuneration, including applicable benefits and employment termination indemnities". Furthermore, UNHCR programme budgeting cycle warrants that any retrenchment of separation payments be budgeted for and expensed in the year of retrenchment. UNHCR does not provide for an accumulated provision for such payments.
4. The findings and recommendations contained in this report have been discussed with the officials responsible for the audited activities during the exit conference held on 28 October 2005. A draft of this report was shared with the Division of Operational Support (DOS), the Division of Finance Supply Management (DFSM) and the Office of the Director of the Sudan Situation (DOSS) in December 2005. Subsequent to this, meetings were held with DOS and DFSM to discuss the audit findings, to clarify issues and to discuss the feasibility of implementing the recommendations. The formal comments, which were received in March 2006, are reflected where appropriate in the report.

II. AUDIT OBJECTIVES

5. The main objectives of the audit were to:
 - Identify key definitions relevant to the retrenchment of employment
 - Review selected country operations with reference to liability for retrenchment benefits
 - Assess if UNHCR complies with the applicable regulations, rules and legally

binding documents with regard to retrenchment benefits including the applicability of international conventions

- Assess if other UN agencies pay retrenchment benefits to implementing partner project personnel
- Assess if UNHCR is liable to pay retrenchment benefits to personnel of implementing partners
- Identify any areas where there is a lack of detailed rules and procedures for implementation

III. AUDIT SCOPE AND METHODOLOGY

6. The audit focused on UNHCR policy aspects, as well as a review of selected country operations where retrenchment benefits had been paid from 2001 to 2005. The operations included Bangladesh, Greece, Kenya, Pakistan, Sudan, Syria and Sierra Leone. OIOS also conducted detailed research, which included an examination of international conventions that could have a bearing in the subject, as well as available literature. The audit conducted a horizontal assessment of the current practices and procedures in UNHCR for the payment of retrenchment benefits for implementing partner project personnel including a review and assessment of policies relating to retrenchment benefits. OIOS held discussions with the Legal Affairs Section and other relevant sections, units and personnel, analysed applicable data and reviewed available documents and other relevant records.

IV. AUDIT FINDINGS AND RECOMMENDATIONS

A. Definition

7. Retrenchment benefits (also called severance pay) are lump-sum payments made to redundant employees, either voluntarily by the employer through collective agreements or as mandated under statutory provisions. The burden of these payments is usually borne by the employer. OIOS' examination highlighted that the definition and terminology used for retrenchment benefits varied considerably within UNHCR. In Pakistan and Bangladesh, the term 'retrenchment benefits' is often used to indicate the amounts payable when employment had been discontinued. In Sudan the terms 'gratuity' and 'after service benefits' were applied to specify the sums owed to the employee. Other countries use the expression 'termination benefits' for end of service payments.

8. OIOS is using the term 'retrenchment benefits' to denote the amounts, if any, payable by the implementing partner to its personnel for loss of employment resulting from reductions in the workforce. It should be clear that retrenchment benefits are a compensation for loss of employment and do not constitute a reward for years of service.

9. The terms and conditions of employment for implementing partner project personnel are generally stipulated in a contractual relationship between the employee and the organisation. This contractual relationship operates within the legal framework as set out in the respective national legislation. The obligation to pay

retrenchment benefits generally arises from contractual arrangements between the organisation and employee, legislative requirements, industry practice and business practice. Retrenchment benefits could include (a) statutory end-of-service payments [the levels of which are set out in legislation and where applicable] (b) compensation amounts as negotiated as per collective bargaining agreements including ex gratia severance payments.

B. International Conventions on Retrenchment Benefits

10. In the absence of supranational standards, the International Labour Organisation (ILO) has published conventions on retrenchment of employment such as 116 and 158. By publishing these international conventions considerable progress has been made in the adoption of new international standards. There is a general trend to acknowledge employer responsibilities in this regard, in accordance with the 'Termination of Employment Convention 1982', adopted by the General Conference of the ILO in June 1982. Article 3 of the 1982 Convention states: 'For the purpose of this Convention the terms *termination* and *termination of employment* mean termination of employment at the initiative of the employer'.

11. Article 12 of the 1982 Convention further provides that 'A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to:

- a. A severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or
- b. Benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
- c. A combination of such allowance and benefits.

12. The 1982 Convention reflects the cornerstone of modern employment law and lays down in clear terms an employee's right not to be unfairly or unjustifiably dismissed from service. The right not to be unfairly or unjustifiably dismissed is encompassed in most national legal systems, sometimes as a constitutional right, but mostly as a statutory right and occasionally as a right secured by collective agreements. Typically retrenchment payments are more prevalent in low-income countries, where low wages and absence of credible social security programmes is the norm. Modern jurisprudence therefore commonly recognises the right of an employee to financial compensation to offset or mitigate the adverse effects of loss of employment.

C. Practices Followed by Other International Organisations

13. The audit showed that international organisations have in general not been held liable for the payment of retrenchment/termination benefits to implementing partner personnel or staff of other cooperating organisations. At UNON, where they have contractual arrangements with implementing partners, OIOS reviewed the

'Guidelines for its standard Memorandum of Understanding (MOU) and Letters of Agreement' (LOA) and noted those that are widely used as a means for executing specific activities, do not contain any provision for the payment of retrenchment benefits. The agreements UNESCO enters into with implementing agencies at Nairobi also did not make any reference to any kind of retrenchment or end-of-employment benefits either.

14. Moreover, in Pakistan OIOS reviewed and compared UNHCR's governing clauses with those of other international organisations including ILO, UNICEF, UNDP and WFP and observed that these agencies did not pay retrenchment benefits. The WFP agreement with the International Rescue Committee in Pakistan also did not mention retrenchment benefits. Taking this into consideration, it was unclear why UNHCR among all the international agencies was singled out in Pakistan to be held liable for such payments. A possible explanation was that the projects implemented by other agencies were mostly one-off projects, while UNHCR's association or involvement with refugee assistance was protracted and implemented over an extended period.

D. Retrenchment Benefits and UNHCR Sub-Project Agreements

15. UNHCR's guidelines with regard to retrenchment benefits for implementing partner personnel are not, in OIOS' opinion, clearly outlined in the Sub-Project Agreements concluded with implementing partners and this may be one of the reasons that they are inconsistently interpreted and various formulae have been developed for the payment of retrenchment benefits at the field level, as outlined in the following paragraphs.

(a) Pakistan

16. UNHCR funded retrenchment benefits during two distinct periods from 1991 to 1996 and again from 2003 to 2005. The method of funding and implementation as well as the actual beneficiaries were substantially different in the periods concerned. In the former period, benefits were paid under specifically formulated projects, while in the latter period retrenchment benefits were paid from project savings in Care and Maintenance projects. Erroneously however in the first period, benefits were paid even to project personnel who were not retrenched or separated, and only from 2003 onwards, benefits have been limited to project personnel actually retrenched.

17. OIOS could not establish a legal liability to pay retrenchment benefits for UNHCR Pakistan or its implementing partners. The standard UNHCR governing clauses, that exclude such liabilities, were included in the Sub-Project Agreements. OIOS could not ascertain the applicability of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, or any other available Pakistan labour (case) law to UNHCR or its partners, and neither the Representation in Islamabad nor its partners could provide documentary evidence or otherwise demonstrate UNHCR's liability or that of its partners. *UNHCR's local legal adviser, though not able to legally demonstrate such liability either, was of the opinion that the Pakistani national laws governing commercial entities equally applied to international NGOs and other non-profit organisations, and that the implementing partners and UNHCR were thus liable to pay retrenchment benefits.*

18. *The Representation strongly felt that UNHCR had a moral responsibility to pay such benefits, and that this was in the interests of maintaining good relations with the Government and partners, stressing that a decision not to pay could impede the work of UNHCR, and perhaps compromise the safety of UNHCR staff and property.* As assessed by the Representation, the financial implications of the payment of retrenchment benefits for partner staff could reach US\$ 1 million.

(b) Sudan

19. The laws and practices relating to retrenchment benefits payments have undergone substantial changes in the last decade. In 1995 the policy established by UNHCR made a clear distinction between UNHCR's implementing project personnel who resigned and those whose services were terminated or were made redundant. The 1995 formula for the Commissioner for Refugees (COR) and other partners was that terminated personnel were entitled to one month gross salary for every completed year of service, up to a maximum of six months' salary. Personnel who had worked for more than 6 years would receive in addition 20 per cent of their monthly gross salary for the 7th and subsequent years. Until recently (2004), this formula was used to calculate the retirement benefits to terminated staff of other partners such as Benevolence International and the Sudanese Red Cross. This formula was quite conservative and the resulting retrenchment benefits did not add substantially to UNHCR's financial burden.

20. The 1995 formula was used until 2004 even though the national laws underwent far-reaching changes in 1997. The 1997 Labour Code of Sudan stipulates that:

- i. Any worker who has spent a period of continuous service with his employer of not less than three years shall be entitled to full severance pay to be calculated as follows:
 1. if he has completed a period of not less than three years and not more than 10 years, he shall be entitled to one month basic salary for each year of service;
 2. if he has completed more than 10 years, he shall be entitled to one and a half months basic salary in respect of each year after the succeeding five years, and if he had completed more than 15 years, he shall be entitled to one and three quarters of a months basic salary for each additional year of service provided that the gratuity shall not exceed thirty months basic salary.
- ii. The gratuities are calculated on the basis of the last monthly basic salary.

21. Despite the clear provisions in the law, in September 2003, UNHCR agreed to pay retrenchment benefits to COR project personnel, which differed from Sudanese law. The new formulation was developed by COR and was excessive in comparison to national law and did not take into account the benchmarks envisaged.

22. The decision to select COR's methodology was taken by a Joint Technical Committee composed of staff of UNHCR and COR's Finance Director. Three

formulations were presented and deliberated upon by the Committee from COR, UNHCR and ILO. The ILO formula resulted in the lowest payment, followed by UNHCR, with the highest presented by COR. Despite being the highest cost, an agreement was signed with COR to pay retrenchment benefits in accordance with its formula. The decision by the Technical Committee and the subsequent agreement signed by COR and endorsed by the UNHCR Representative was sent to Headquarters in July 2003. As this was after the agreement had been signed it was therefore a *fait accompli*. The Technical Committee's agreement contained an unusual clause stipulating that the formula agreed would apply to all personnel separations 'without any alterations in future'. The MOU was signed thereafter in September 2003, without Headquarters approval.

23. OIOS reviewed and assessed UNHCR's financial liability by signing the MOU. According to the agreed formula, all project personnel would receive three months gross salary for each year of service plus a lump sum of seven months gross salary.

24. OIOS' calculations showed that the 2003 COR formula was 4 to 6 times more generous than the 1995 UNHCR policy, and about 2.5 to 3.5 times more than the 1997 Sudanese Labour Code. It is also important to note that the Sudanese Law envisages a cap of 30 months basic salary as the maximum amount payable, while the COR formula was open ended without any maximum limits. Furthermore, the COR formula is index-linked to the last salary drawn and therefore any increase in salary would trigger a corresponding increase in benefits. Based on the agreement, UNHCR paid US\$ 600,000 in 2004 to 101 staff. With additional retrenchments expected over the next few years, OIOS estimated that the total financial implication of the MOU was about US\$ 5 million.

25. In OIOS' opinion, considering the financial value of this separation package, the Bureau should have been involved in such discussions and negotiations from the outset. Advice of the Legal Affairs Section should also have been sought considering that the MOU committed UNHCR to significant potential liabilities. It was not clear who authorized the Representation to enter into such a long-term commitment for UNHCR. In the view of OIOS, UNHCR should determine the accountability of those staff members responsible for committing UNHCR to an open-ended and substantial liability over and above the national law.

26. OIOS understands that in 2005 COR requested an increase in salary for project personnel, which would further increase the cost of future retrenchments, since the formula is index-linked. OIOS emphasized in its June 2005 Audit Report on Sudan Operations that UNHCR should not accept any increase, pending resolution of this ongoing issue with COR. Following OIOS' recommendation made in its audit report, present UNHCR management at the Representation tried to renegotiate the formula. At that time, these efforts were not successful and COR did not agree to any modifications.

27. While it would be problematic for UNHCR to repudiate a signed agreement, OIOS believes that it is still worthwhile pursuing the matter. Even a marginal reduction in the variables involved would yield substantial financial savings taking into consideration that COR has some 800 personnel funded by UNHCR. Also, in Article IV clause (2) of the COR agreement, payment is 'subject to the availability of

funds'. In the current context of reduced availability of funds, the lack of resources could also be a useful argument to renegotiate the formula. In addition, Article IV clause (3) states that the COR formula shall be of 'indefinite duration'. Such a clause that binds UNHCR in perpetuity is flawed and contrary to basic legal principles, and the existence of such a clause *prima facie* vitiates the agreement. The MOU does not preserve the privileges and immunities of UNHCR and does not contain a clause relating to resolution of disputes or other mandatory clauses. It also does not observe the Sudanese Labour code that places a cap of 30 months salary as the maximum amount payable in retrenchment benefits.

28. *In response to the draft report, UNHCR informed OIOS that the Director of Operations for the Sudan Situation (DOSS) sent a memorandum to LAS, dated 5 January 2006, requesting their legal opinion on the formula of payment of retrenchment benefits as implemented for the COR staff. LAS confirmed the legally binding nature of the MOU signed with COR, but provided arguments for termination of the current MOU and re-negotiation of the agreed formula. UNHCR added that, on the basis of LAS' advice, DOSS had organized a separate meeting with the Sudanese Government Delegation that participated at the Standing Committee session in Geneva on 9 March 2006, during which the issue of the MOU and the "after service benefits formula" had been discussed and the Director of the Operations had presented UNHCR's arguments in favour of renegotiating the formula. UNHCR stated that the Sudanese delegation had shown its understanding of the UNHCR standpoint and agreed, in principle, to re-open the negotiation process at the Representation level. Pursuant to this decision negotiations are currently ongoing in Khartoum. UNHCR added that DOSS would provide additional information after the completion of the negotiation process. OIOS is pleased to note that positive action has already been taken, which may result in significant future costs savings for the Organization.*

Recommendation:

- The UNHCR Director of Operations for the Sudan Situation should continue to pursue the negotiations with the Commissioner of Refugees on the 'After Service Benefits' formula adopted in the September 2003 Memorandum of Understanding between COR and UNHCR with the aim to reduce UNHCR's liability estimated at US\$ 5 million (Rec. 01).

(c) **Bangladesh**

29. Prior to 2000, retrenchment benefits were paid to implementing partner project personnel in Bangladesh by the allocation of unused funds in other sectors. The payment of retrenchment benefits was on the basis of an agreement signed on 31 October 2000, between UNHCR and the Ministry of Disaster Management and Relief (MDMR). This agreement however was not shared with Headquarters prior to its signature, but it broadly reflects Bangladesh law on retrenchment. It provides for the payment of thirty days wages for every completed year of service or part thereof in excess of six months. The agreement stipulated that payment would be made only from the year 2000 onwards and that the amounts provided for the purpose would be deposited into a separate account from which retrenchment benefits would be paid as and when required. There is also a specific clause that states that 'UNHCR is not in a

position to pay retrospectively for those who have been terminated in the past'. It was also clear that UNHCR would monitor the funds kept in the separate bank account to ensure they are used for the intended purposes.

30. The Representation was unable to indicate the level of funds deposited in this separate account from 2000 until 2003 or how they had been disbursed. MDMR did not account for them and no record of how they were used could be presented. In May 2005, the Representation wrote to MDMR to re-emphasise that UNHCR would not be in a position to pay any pre-2000 benefits, and that the Government should account for the funds already remitted by UNHCR for retrenchment benefits.

31. Meanwhile, some MDMR employees who were retrenched in 2005 served the UNHCR Representation with a legal notice stating that no retrenchment benefits had been paid, and were concerned that only benefits accrued from 2000 to 2004 and none from the preceding periods would be paid. From the papers available to OIOS it was unclear why benefits had not been paid from the already available funds, and since a separate funding mechanism had been established, there should have been no claim on UNHCR. It was OIOS' view that the Representation seeks legal advice on the matter on the basis of the October 2000 agreement.

(d) Greece

32. UNHCR funded a retrenchment indemnity fund for an implementing partner, and when the partnership was discontinued in 2002, more than US\$ 50,000 was available in the fund. However, due to a financial crisis, the implementing partner disbursed the funds on other expenses. A former staff member of the implementing partner initiated legal proceedings against the partner and the court is expected to adjudicate in the matter. In July 2005, UNHCR formally requested the partner to return the retrenchment indemnity fund balance to UNHCR and action by the partner is awaited.

(e) Sierra Leone

33. OIOS' review showed that the UNHCR partners in the country resorted to various strategies in order to avoid paying retrenchment benefits to implementing partner personnel. Some partners gave three-month (extendable) contracts to their staff and others granted only consultancy type contracts to avoid legal issues relating to separation. Partners who awarded regular contracts to their staff faced problems regarding retrenchment benefit payments.

(g) Kenya

34. An international partner in Kenya accrued severance pay on a monthly basis (8.33 per cent of salary) and paid it to the employee as salary for the thirteenth month, even though the employee continued to be on the pay roll. Kenyan law requires that severance benefits be paid at the rate of 15 days salary for each year worked. OIOS observed that consistent policies were not followed regarding the provision of benefits.

35. The above examples show that even where a firm legal liability could not be established, UNHCR is sometimes obliged to make retrenchment benefits on moral

grounds or in the interest of maintaining good working relations with the government (Pakistan). This was particularly the case for implementing partner staff that had been working on UNHCR projects for long periods. In some countries (Pakistan, Sudan and Bangladesh) retrenchment benefit issues have surfaced primarily with Government partners. Since employees of most Government partners have at some point in time been civil servants, they have expectations of receiving retrenchment benefits at least based on Government rules and regulations.

E. Other Matters

(a) Partners lack understanding regarding retrenchment benefits

36. UNHCR partners that are international NGOs often have multiple donors and receive funding from various sources. These partners generally have well defined personnel policies setting out the salaries and entitlements of staff, which normally includes a provision for retrenchment/termination benefits. Where the partner's project personnel do not work exclusively on UNHCR funded projects, such common costs are generally allocated between donors in proportion to the funding received. OIOS' examination of international partners in Pakistan showed that there were marked differences in the manner retrenchment benefits were dealt with. Several partners had clearly defined 'severance policies', some accrued these liabilities, and others expensed the amounts only when the liability arose. OIOS also noted that one partner paid such benefits from its own funding and hence did not expect UNHCR to cover this cost.

37. The OIOS audit in Pakistan also showed that most local implementing partners did not make a provision for retrenchment benefits in their employment contracts. Therefore, they were unaware, on the basis of Clause 15.6 of Appendix 1 of the UNHCR Sub-Project Agreement, that employment contracts should include a provision for retrenchment indemnities. On the other hand, most Government partners were aware of such a requirement and such staff expected retrenchment benefits on separation.

38. It appears therefore that local NGO partners do not adequately consider or provide for retrenchment benefits, even though it is their responsibility as outlined in the Sub-Project Agreement. UNHCR may need to clarify its policy on retrenchment benefits when initially entering into an agreement with them.

(b) Unusual practices adopted

39. From a review of the practices noted, OIOS would caution against payment of an annual 13th salary "in lieu of retrenchment benefits". This solution, while apparently convenient, tends to be more costly, since all implementing partner project staff benefit from such payments, even if never retrenched (e.g. staff may resign or retire before any possible retrenchment). Also, such payments defeat the purpose of a true retrenchment benefit, which provides some financial compensation due to the loss of employment. Therefore, this approach should be avoided, unless otherwise required by national law.

(c) Establishment of appropriate benchmarks and clearance procedures

40. The basic benchmark for implementing partner personnel retrenchment benefits should be what the national law mandates. OIOS' review showed that a widely prevalent yardstick was one month's salary for every year of service. Worldwide, the common approach for defining retrenchment payments is a formula based upon a multiple of years of service and salary.

41. Issues surrounding retrenchment benefits have obvious legal and financial implications. These are predominant both at the initial stage of problem definition and when options are considered. As seen above, some country offices have tended to resolve these matters locally, without seeking assistance from the available expertise at Headquarters, namely the Legal Affairs Section or approval by their respective Bureau. The seeking of guidance and approval are of particular significance where the benefits are paid on the basis of collective agreements outside the ambit of national law.

42. Therefore, it is important, that prior to any formula established or agreement entered into (for even with one project staff member, a precedent could be established) it should be channelled to Headquarters and then to the Division of Operational Support. These submissions should detail the legal and financial ramifications, in particular future financial liabilities, delineate the potential risks and clearly lay down the respective roles and responsibilities of the parties involved. OIOS would also emphasise that any deviation from the formula/policy established by national law be justified and properly documented in its submission to UNHCR Headquarters. In response to the draft report, *DOS stated that any instructions issued would highlight that, in principle, no special agreements or commitments apart from those already authorized by the UNHCR Manual, instructive memorandums or other forms of delegation, should be entertained by field operations without the prior approval of LAS, DFSM and DOS at Headquarters.*

F. Policy Development and Policy Clarification

43. In OIOS' opinion the variety of 'policies' and practices adopted by country operations for the provision and subsequent payment of retrenchment benefits emanates from the lack of clear and concise guidelines on the subject. OIOS appreciates that the Sub-Project Agreement provides a general guideline, but it does not suffice, as evidenced by the inconsistency of its application by field offices. In the absence of clear direction and consultation with Headquarters, UNHCR field operations have wrongly entered into agreements that are not acceptable financially, committing UNHCR to sizable future liabilities. A clear and common understanding needs to be established, as well as standard procedures developed for the payment of retrenchment benefits. This will ensure accountability, the adoption of basic principles and a consistent approach established globally.

44. *DOS highlighted in the response to the draft audit report that it should be made clear that UNHCR has no intention to assume liability for retrenchment benefits, and legally UNHCR has never been officially liable to effect such payments on behalf of implementing partners. They agreed however that in exceptional situations where UNHCR has a moral commitment to pay benefits for partners totally*

funded by UNHCR, a certain level of financial responsibility to cover ad hoc payments can be envisaged according to prevailing situations. OIOS agrees with DOS that ensuring compliance with national laws and/or employment laws for the payment of retrenchment benefits clearly lies with the implementing partner. Nonetheless, it needs to be appreciated that in reality whether directly or indirectly, such payments often fall upon UNHCR, particularly for partners substantially if not wholly financed by the UNHCR.

Recommendations:

- The UNHCR Division of Operational Support should formulate a policy regulating the payment of retrenchment benefits to project personnel of UNHCR implementing partners. The policy should emphasise that the benchmark for such benefits would be the minimum amount foreseen in the relevant national law applicable to the respective country operation (e.g. one month's salary for each year of service). Any amounts exceeding the legally mandated requirements would be the responsibility of the implementing partner (Rec. 02).
- The UNHCR Division of Operational Support should clarify that retrenchment benefits shall only be paid to implementing partner project personnel, as and when retrenched, unless otherwise required under national law (Rec. 03).
- The UNHCR Division of Operational Support should instruct all country operations not to commit to payment of retrenchment benefits without prior consultation with and clearance by the Legal Affairs Section, the Division of Operational Support and the Division of Financial and Supply Management, who should assess the risks involved and consider the financial, legal and other possible implications (Rec.04).

45. *DOS agrees with the recommendations and will address these issues in the context of clarification to the relevant clauses in the Sub-Project Agreement signed with implementing partners in order to further guide the managers through the steps of negotiations, planning and signing Sub-Project Agreements by paying special attention to clauses related to personnel and UNHCR/implementing partner legal liabilities.*

V. ACKNOWLEDGEMENT

46. I wish to express my appreciation for the assistance and cooperation extended to the auditors by the staff of the various Divisions and Bureaux at UNHCR Headquarters.

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