Responses by FAO

I. Questions:

1) **What types of disputes/issues (cf. paras. 6 and 7 above) have you encountered?**

   Disputes with private parties, including both individuals and legal persons. These arose from contractual disputes with service providers and other procurement-related disputes, and from labour disputes with staff members and with non-staff personnel.

   Disputes involving victims of harm attributable to the Organization who are in no contractual relationship with the Organization, such as motor vehicle accidents involving pedestrians, technical assistance activities impacting on land use rights, processing of data.

2) **What methods of dispute settlement (cf. para. 9 above) have been resorted to in cases of disputes with other international organizations, states or private parties? Please provide any relevant case law, or a representative sample thereof. If you cannot provide such information for confidentiality reasons, could you provide any such decisions or awards in redacted form, or a generic description/digest of such decisions?**

   For contractual disputes with service providers and other procurement-related disputes: negotiations, negotiated settlements and (rarely) conciliation and arbitration. As an example, below is an instance in which all these methods were used:

   - A service provider delivering goods to the Organization incurred additional costs (demurrages and storage charges) due to a border closure and various related events. The service provider claimed these additional costs (plus commercial interest) from the Organization.
   - The parties entered into negotiations and subsequently engaged in a conciliation procedure that was unsuccessful in resolving the dispute.
   - The service provider requested arbitration. In its final award, the arbitral panel dismissed the service provider's claim, concluded that the Organization had fully discharged its contractual obligations, and ordered the parties to split the arbitral costs. However, the arbitral panel declined to rule on the question of which party was responsible for the additional costs that were incurred.
   - The service provider requested a second arbitration. The Organization sought to settle the dispute amicably through a settlement offer, which the service provider rejected.

- In its final award, the second arbitral panel dismissed the service provider's claim on the grounds that it was time-barred and ordered the service provider to bear the arbitral costs. Both parties were also ordered to bear their own legal costs.

For labour disputes: the internal appeals procedure, the ILO Administrative Tribunal, negotiated settlements, and informal dispute resolution using Ombuds services.

- The internal appeals procedure for staff members and consultants is two-tier, involving an administrative review and subsequently an appeal to the FAO/WFP Appeals Committee, following which the Director-General takes a final decision. Complaints may be lodged with the ILO Administrative Tribunal – see the ILOAT case law database. In respect of non-observance of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF), the United Nations Appeals Tribunal (UNAT) has jurisdiction.

- For non-staff personnel, the dispute resolution clause in their contracts and in the applicable rules of the Organization provides for resolution by mutual agreement or through arbitration in accordance with the UNCITRAL rules.

In view of its status and the privileges and immunities it enjoys under public international law, the Organization does not resort to national processes as a method of dispute settlement. In cases where private parties raise claims against the Organization before national courts, FAO seeks, through the appropriate diplomatic and official channels, the assistance of the concerned Government in defending it and asserting its immunity from jurisdiction and every form of legal process.

3) In your dispute settlement practice, for each of the types of disputes/issues arising, please describe the relative importance of negotiation, conciliation or other informal consensual dispute settlement and/or third-party dispute resolution, such as arbitration or judicial settlement.

For contractual disputes with service providers and other procurement-related disputes, informal consensual dispute settlement is very important. Conciliation and arbitration require resources that are often not justified in view of the nature or amount of the dispute and, if the dispute arises in the context of activities funded by voluntary contributions, the Organization is legally obliged to limit its costs pursuant to its Financial Regulations.

For labour disputes, informal consensual dispute settlement is important. In particular, negotiated agreements to definitively resolve disputes are expedient and cost-effective, limiting potential reputational damage to the Organization. The internal appeals procedure and ILO Administrative Tribunal are similarly important because they also

allow for definitive resolution without preventing informal consensual dispute settlement being explored while the litigation is ongoing where appropriate.

For certain disputes involving victims of harm attributable to the Organization who are in no contractual relationship with the Organization, the Organization uses no-cost grievance mechanisms at the country-level in accordance with its Framework for Environmental and Social Management. The Office of the Inspector-General has the mandate to independently review complaints/grievances that cannot be resolved at the country-level. Requests for correction have been received pursuant to the FAO Data Protection Policy and have been resolved through a process of internal consultation and engagement with the data provider.

4) **Which methods of dispute settlement do you consider to be most useful? Please indicate the preferred methods of dispute settlement (cf. para. 9 above) for different types of disputes/issues (cf. paras. 6 and 7 above).**

In respect of disputes with private parties, such as contractual disputes with service providers and other procurement-related disputes, negotiation is most useful, in particular as many suppliers or service providers wish to maintain a continuing relationship with the Organization and are therefore motivated to resolve the dispute.

For labour disputes, the internal appeals procedure and ILOAT are most useful because there is an established structure with internationally recognized jurisprudence providing a level of stability and ability to anticipate outcomes that also allows for a negotiated settlement, as appropriate, at any stage of the procedure. Ombuds services are also useful because a neutral intermediary may be helpful in resolving disputes at an early stage and at minimal cost to the Organization.

5) **From a historical perspective, have there been any changes or trends in the types of disputes arising, the numbers of such disputes and the modes of settlement used?**

Over the last 10-15 years, there has been no marked change in the types of disputes arising. During this period, there has been no marked change in the number of contractual disputes with service providers and other procurement-related disputes, which remain low relative to the volume of procurement undertaken by the Organization. Labour-related claims raised by private parties against FAO before national courts tend to arise mainly in certain regions, in particular Latin America.
With regard to the modes of settlement, the FAO Office of the Ombudsman was established in 2015. Otherwise, there has been no marked change in the modes of settlement.

6) **Do you have suggestions for improving the methods of dispute settlement (that you have used in practice)?**

While we do not have any particular suggestions, we would observe that the contractual dispute resolution clause for non-staff personnel provides for arbitration according to the UNCITRAL rules. In our view, this may not be an effective dispute resolution method for labour disputes with individuals, as it is burdensome, both financially and procedurally. We understand that this is an area currently under review, in consultation with other UN System agencies.

7) **Are there types of disputes that remain outside the scope of available dispute settlement methods?**

There may be claims by beneficiaries with whom the Organization has no contractual relationship that could give rise to disputes that are outside the scope of available dispute mechanisms. For instance, the Organization enters into agreements with private parties for the implementation of voucher and cash transfer schemes providing aid to beneficiaries. Complaints by beneficiaries where their expectations are not met fall outside the scope of available dispute settlement methods. In such instances, the Organization resorts to indirect, practical, non-legal mechanisms that allow it to consider such complaints and, where appropriate, take action in accordance with its internal rules and UN System best practices.

8) **Does your organization have a duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character under the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, or an equivalent treaty? How in practice has your organization interpreted and applied the relevant provisions?**

The Organization has a duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of private character to which it is a party, pursuant to Article IX, Section 31 of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (the "Convention"). In this connection, the Organization ensures that agreements entered into contain dispute settlement clauses.

Where the Organization furnishes technical assistance to a Government at its request in the exercise of its constitutional mandate, it negotiates additional safeguards in the agreement it enters into with the Government. These safeguards include, in particular, the Government: (a) accepting responsibility for dealing with any claims that may be brought by third parties against the Organization, its officials, experts on mission or other persons performing services on its behalf; and (b) agreeing to hold the Organization harmless in respect of any such claims and liabilities, except where it is mutually agreed that such claims and liabilities arise from gross negligence or misconduct of the Organization, its officials, advisors or persons performing services on its behalf.

In respect of labour disputes, staff members and consultants may use the appeals procedure (see question 2 above). In the case of non-staff personnel, disputes may be resolved through mutual agreement and arbitration.

9) Are there standard/model clauses concerning dispute settlement in your treaty and/or contractual practice? Please provide representative examples.

The Appendix of Volume II, Part O of the Basics Texts of the Organization provides that:

> "[e]*ach convention and agreement* [concluded under Articles XIV and XV of the Constitution of FAO] *shall contain a suitable provision regarding its interpretation and settlement of disputes. Among alternative procedures for settlement of disputes are conciliation, arbitration, or reference to the International Court of Justice. The nature of the provision for settlement of disputes should be determined in the individual convention or agreement by the character and objective of the particular instrument involved*."

As an example, the International Plant Protection Convention, which was concluded under Article XIV of the FAO Constitution and came into force on 3 April 1952, contains the following dispute settlement provision:

"*ARTICLE XIII*

Settlement of disputes

1. *If there is any dispute regarding the interpretation or application of this Convention, or if a contracting party considers that any action by another contracting party is in conflict with the obligations of the latter under Articles V and VII of this Convention, especially regarding the basis of prohibiting or restricting the imports of plants, plant products or other regulated articles coming from its territories, the contracting parties concerned shall consult among themselves as soon as possible with a view to resolving the dispute.*
2. *If the dispute cannot be resolved by the means referred to in paragraph 1, the contracting party or parties concerned may request the Director-General of FAO to appoint a committee of experts to consider the question in dispute, in accordance with rules and procedures that may be established by the Commission.*
3. *This Committee shall include representatives designated by each contracting party concerned. The Committee shall consider the question in dispute, taking into account all documents and other forms of evidence submitted by the contracting parties concerned. The Committee shall prepare a report on the technical aspects of the dispute for the purpose of seeking its resolution. The preparation of the report and its approval shall be according to rules and procedures established by the Commission, and it shall be transmitted by the Director-General to the contracting parties concerned. The report may also be submitted, upon its request, to the competent body of the international organization responsible for resolving trade disputes.*

4. *The contracting parties agree that the recommendations of such a committee, while not binding in character, will become the basis for renewed consideration by the contracting parties concerned of the matter out of which the disagreement arose.*
5. *The contracting parties concerned shall share the expenses of the experts.*
6. *The provisions of this Article shall be complementary to and not in derogation of the dispute settlement procedures provided for in other international agreements dealing with trade matters."*

Agreements between the Organization and international organizations/States contain the following standard dispute settlement clause:

> "*Any dispute between the Parties concerning the interpretation and execution of this* [name of agreement], *or any document or arrangement relating thereto, shall be settled by negotiation between the Parties. Any differences that may not be so settled shall be brought to the attention of the Executive Heads of the two institutions for final resolution.*"

Agreements between the Organization and private parties, including procurement contracts/instruments, contain the following the standard dispute settlement clause:

> *"1. Any dispute between the Parties concerning the interpretation and the execution of this [name of agreement], will be settled by negotiation or, if not settled by negotiation between the Parties or by another agreed mode of settlement shall, at the request of either Party, be submitted to one (1) conciliator. Should the Parties fail to reach agreement on the name of a sole conciliator, each Party shall appoint one (1) conciliator. The conciliation shall be carried out in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law ("UNCITRAL"), as at present in force. Article 16 of the UNCITRAL Conciliation Rules does not apply.*
>
> *2. Any dispute between the Parties concerning the interpretation and the execution of this [name of agreement], that is unresolved after conciliation shall, at the request of either Party be settled by arbitration in accordance with the UNCITRAL Arbitration Rules, as at present in force.*
>
> *3. The conciliation and the arbitration proceedings shall be conducted in English and the place of arbitration shall be Rome. The Parties may request conciliation while the [name of agreement], is in force or within a period not to exceed twelve (12) months after the expiry or the termination of the [name of agreement]. The Parties may request arbitration not later than ninety (90) days after the termination of the conciliation proceedings.*
>
> *4. Decisions of the arbitral tribunal shall be final and binding on the Parties and the arbitral tribunal shall have no authority to award punitive damages.*"

The contracts between the Organization and non-staff personnel contain the following standard clause:

"*Any dispute arising out of the interpretation or execution of this agreement shall be settled by mutual agreement between the parties. If the parties are unable to reach an agreement on any question in dispute or a mode of settlement other than arbitration, either party shall have the right to request arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as at present in force. The parties agree to be bound by any arbitration award rendered in accordance with this provision as the final adjudication of any dispute. Any request for arbitration must be lodged within 90 days from the date of expiration or termination of the agreement.*"

10) **Does "other disputes of a private law character" (see 8) above) encompass all disputes other than those arising from contracts? If not, which categories are not included? What has been the practice of your organization in determining this? What methods of settlement have been used for "other disputes of a private law character" and what has been regarded as the applicable law?**

Disputes relating to data protection issues are governed by the FAO Data Protection Policy, which establishes a redress mechanism through which data providers may make requests for access, correction and deletion, or object to the processing of their data by the Organization at any time. This mechanism is without prejudice to the Organization's status and the privileges and immunities it enjoys under public international law, including its immunity from every form of legal process.

11) **Have you developed a practice of agreeing ex post to third-party methods of dispute settlement (arbitration or adjudication) or waiving immunity in cases where disputes have already arisen and cannot be settled otherwise, e.g. because no treaty/contractual dispute settlement has been provided for?**

The Organization has not developed this practice.