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**Office of Internal
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UNHCR Audit Service

**Review of retrenchment
benefits for UNHCR
implementing partner
staff in Pakistan**

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**REVIEW OF RETRENCHMENT BENEFITS FOR UNHCR IMPLEMENTING PARTNER
STAFF IN PAKISTAN (AR2005/131/06)**

EXECUTIVE SUMMARY

In June 2005, at the request of UNHCR, OIOS conducted a review of retrenchment benefits claimed by UNHCR Implementing Partner (IP) staff in Pakistan. A draft Memorandum was shared with the Director, Bureau for CASWANAME and with the Representative in Pakistan. The comments of the Representative, which were received in August 2005, are reflected in this final Memorandum.

Policy

- UNHCR has so far not established a retrenchment benefit policy for its implementing partners. *The Representative stressed that UNHCR needs an overall policy on the payment of retrenchment benefits and that the criteria for payment, if the policy dictates that payment will be made, must be precise, clear and applicable to all countries. It was also stressed that it should be a firm commitment, paid under separate LOIs from funds that are specifically provided for that purpose.* OIOS will further look into the issue and prepare a separate report on the retrenchment benefit payments to UNHCR IPs' staff, in general, that will include suggestions regarding an overall policy. With regard to the funding and method of implementation, lessons can be learned from the previous payments in Pakistan.

Previous payments

- In the past UNHCR funded retrenchment benefits in Pakistan during two distinct periods, that of 1991 to 1996 and that of 2003 to 2005. The method of funding and implementation as well as the actual beneficiaries were substantially different in the periods concerned.

Funding and implementation

- For the period from 1991 to 1996, UNHCR funded the retrenchment benefits, totalling US\$3.2 million, through specific LOIs, and projects 92/AP/PAK/CM/209 and 95/AP/PAK/CM/209 were formulated to implement the payments. It was UNHCR Pakistan's intention to conclude UNHCR's obligations by stating in the 1995 LOI that "*This will bring to a conclusion UNHCR's obligations to pay retrenchment benefits to all project staff hired under its assistance projects*". The intention to stop the payment of retrenchment benefits was further made explicit by the subsequent change of salaries in Sub-project budgets to allowances/stipends in 1996, and the change in section 6.06 of the governing clauses, explicitly excluding termination benefits between 1997 and 2001. *The Representative was of the opinion that the payments already made created a precedent for the payment of retrenchment benefits.*
- Between January 2003 and January 2005, the funding of retrenchment benefits, totalling more than US\$200,000, came from 'project savings' in Care and Maintenance projects. These



payments created a 'precedent' for the payment of retrenchment benefits, in the sense that they allowed for ad hoc payments from funds 'saved' under Care and Maintenance projects. On the other hand, the payments were carried out after IPs individually negotiated with UNHCR Pakistan and only upon availability of such 'project savings'. UNHCR's financial obligation was thus limited to the total amount provided for in the related Sub-project budgets.

Beneficiaries

- Projects 92 and 95/AP/PAK/CM/209 intended to pay retrenchment benefits only to retrenched IP staff. However, this did not happen. Payments were also made to IP staff who continued to work under UNHCR Sub-projects. The actual number of staff who continued working under UNHCR Sub-projects is not known, but it is likely to be the larger part of those that were paid.
- From 2003, the IPs paid staff at retrenchment only.

Legal situation

- A firm legal liability to pay retrenchment benefits could not be established for UNHCR Pakistan or its IPs. The standard UNHCR governing clauses, that exclude such liabilities, were included in the Sub-agreements.
- OIOS could not establish 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 IPs, and neither BO Islamabad nor its IPs could provide documentary evidence or otherwise demonstrate UNHCR's liability or that of its IPs.
- None of the local IPs and only a few of the international IPs included a provision granting retrenchment benefits in the contracts with their staff. In most of the contracts reviewed by OIOS the payment of benefits in excess of the lump sum salary was specifically excluded.
- *The Representative argued that a decision not to pay retrenchment benefits, based on the lack of a legal obligation would not be realistic, and would put the progress made on solutions, staff and property of UNHCR at risk.*

Other factors that may effect UNHCR's position

- IPs expect UNHCR to provide for the funds to pay for retrenchment benefits in the future. In addition, UNHCR Pakistan has been under the impression that it is legally liable to do so following the advice of its local legal advisor. The payments made between 2003 and 2005 as a result of that impression, indicated the intention to pay for future retrenchment benefit claims, and thus created a certain precedent.
- Retrenchment benefits were, except for those paid in 1992 and 1995, not provided for in Sub-project budgets. Since most IPs implement projects that are funded exclusively by UNHCR, it would be unrealistic to expect them to provide for the funds to pay for retrenchment benefits.
- *In its reply, the Representative provided strong political arguments to pay retrenchment benefits. These included maintaining good relationships with the GOP and the IPs while comprehensive solutions are discussed at the highest level in a spirit of mutual trust and respect. In addition, the Representative pointed to the perception that IP staff were UNHCR staff, and the expectation that UNHCR would pay retrenchment benefits. Pressure on UNHCR Pakistan included numerous demonstrations, almost daily news articles and even a hunger strike.*



UNHCR's estimated liability

- The grand total financial liability of US\$3.6 million was an estimate made by the IPs, which had not been validated by UNHCR. The amount consisted of a 'backlog' payment of US\$650,000 - benefits not yet paid to former staff that had been retrenched since 1996 – and 'accumulated potential benefits' of US\$2.95 million – benefits calculated from 1996 for staff who were still working under sub-projects. Some 74 per cent of the total amount related to two partners only, namely BEFARe (US\$ 1.6 million) and CAR (US\$ 1.1 million).
- OIOS stressed that the 'accumulated potential benefits' represented a payment that was not due and/or payable, simply because the related staff were not retrenched yet. OIOS recommended paying retrenchment benefits only upon retrenchment and cautioned against payment of a 13th month salary in lieu of future retrenchment benefits. The payment of the benefit at retrenchment will spread the financial burden over a number of years, making the exercise more manageable and reducing the risk of abuse.
- *The Representative pointed out that retrenchment benefits should be paid through separate LOIs established for that purpose.*
- OIOS cautions against retroactive payments to IP staff who were retrenched prior to 2006, because it would be difficult to determine the eligibility of those staff. Ten years have passed since the last formal payments took place, and some IPs that have retrenched staff may not even be working for UNHCR Pakistan anymore. The payment of the benefits to some may create an unwanted 'precedent' and result in claims from former project staff of whom there are no records available to verify their eligibility.
- *BO Islamabad agreed that retroactive payments should not be made.*

■ October 2005



Table of Contents

Chapter	Paragraph
I. INTRODUCTION	1-7
A. General	1-3
B. Retrenchment benefits in Pakistan	4-7
II. FINDINGS AND RECOMMENDATIONS	8-60
C. Previous payments	8-16
D. UNHCR's legal situation	17-23
E. Legal situation of UNHCR's IPs	24-31
F. Other factors that may effect UNHCR's position	32-35
G. Estimated potential liabilities	36-37
H. Eligibility	38-42
I. Further considerations	43-60
III. ACKNOWLEDGMENT	61



I. INTRODUCTION

A. GENERAL

1. From 19 to 30 June 2005, OIOS conducted a review of the retrenchment benefits for UNHCR Implementing Partner (IP) staff in Pakistan.
2. UNHCR requested the review which was conducted in accordance with the following Terms of Reference:
 - For OIOS to assess the reasonableness of the assumptions on which UNHCR bases its financial liabilities to pay retrenchment benefits to staff of implementing partners and to determine whether
 - UNHCR complies with the applicable Regulations, Rules and (other) legally binding documents;
 - For OIOS to assess whether the modalities and methods used to calculate retrenchment benefits are reasonable, and
 - For OIOS to advise on the steps to be taken to ensure the accuracy and completeness of the calculation of future liabilities.
3. The findings contained in this Memorandum have been discussed with the officials responsible for the reviewed activities during the exit conference held on 1 July 2005. A draft of the Memorandum was then shared with the Director, Bureau for CASWANAME and with the Representative in Pakistan. The comments of the Representative, which were received in August 2005, are reflected in this final Memorandum.

B. RETRENCHMENT BENEFITS IN PAKISTAN

4. Pakistan hosted one of the largest refugee populations in the world (more than 3 million refugees) and UNHCR spent approximately US\$1.2 billion over the course of 25 years to assist refugees in the country. The three most important years in terms of mass repatriation to Afghanistan were 1988, 1992 and 2002.
5. From 1990 to 1992, a series of staffing review exercises took place in order to rationalize and consolidate the programme activities. In 1992, UNHCR Pakistan's rationalization strategy provided grounds for the consolidation of camps and sectoral activities. This resulted in a reduction and separation of staff in light of which UNHCR Pakistan provided retrenchment benefits for the Government of Pakistan (GOP) and IP staff. The payment process was carried out under special retrenchment benefit projects 92/AB/PAK/CM/209 and 95/AP/PAK/CM/209 and totalled US\$ 3.2 million.
6. Following the mass repatriation that started in 2002 (2.3 million refugees from 2002 to 2004), UNHCR Pakistan embarked again on a reduction of projects and consequently, the retrenchment of IP staff. Without a retrenchment benefit policy in place and taking into consideration funding constraints, IPs paid retrenchment benefits from 2003 to 2005, with the consent of UNHCR, under Care and Maintenance projects from 'project savings' ('Project



savings' are amounts set out in Sub-project budgets for specific purposes that have not been used for the intended purpose). The staff retrenched between 2002 and 2004 were limited in number, so that the related costs could be covered by these 'project savings'.

7. Since 2004 the situation has changed dramatically and reflects a strategy to explore and identify comprehensive solutions with gradual but consistent reduction of care and maintenance activities and associated IP staff. The numbers of staff (to be) retrenched are ever increasing and even if available, 'project savings' may not be sufficient to cover the costs. UNHCR's alleged retrenchment benefit liability was estimated at some US\$3.6 million.



II. FINDINGS AND RECOMMENDATIONS

C. PREVIOUS PAYMENTS

(a) Agreement/consensus to pay

8. There was no established retrenchment benefit policy in UNHCR operations. In the case of the Pakistan operation, the level at which an agreement or consensus was reached was substantially different for the two relevant periods in this review, the period from 1991 to 1996 and the period from 2003 to 2005. In the former period, the payments followed a ‘high level’ meeting between UNHCR, WFP, UNDP and the Government of Pakistan (GOP) and the subsequent approval by the Prime Minister of the proposed modalities and criteria for the payment of retrenchment benefits. In the latter period, UNHCR Pakistan agreed to the payment of retrenchment benefits following requests from at least seven IPs and the GOP.

9. *The Representative stressed that, in the future, UNHCR needs to establish an overall policy or policies on the payment of retrenchment benefits that will be applicable to all countries. The criteria for payment, if the policy dictates that payment will be made, must be precise and clear.*

(b) Funding and implementation

10. For the period between 1991 and 1996, funding was obtained through specific Letters of Instruction, and projects 92/AP/PAK/CM/209 and 95/AP/PAK/CM/209 were formulated to implement the payments. OIOS was of the opinion that these payments did not create a ‘precedent’ for the payment of retrenchment benefits in Pakistan. The 1995 Letter of Instruction made clear reference to UNHCR’s intention to conclude its obligations by stating “*This will bring to a conclusion UNHCR’s obligations to pay retrenchment benefits to all project staff hired under its assistance projects*”. The intention to discontinue the payment of retrenchment benefits was further made explicit by the subsequent changing of salaries in Sub-project budgets to allowances/stipends in 1996 (“*Any staff retained in 1996 will not be working under employment contracts per se, and remuneration will be in the form of allowances/stipends*”) and the change of section 6.06 of the governing clauses in 1997, as discussed later. These decisions would normally limit UNHCR’s obligations to those provided for in future Sub-project budgets.

11. *The Representative felt that the above-mentioned payments between 1991 and 1996 did create a precedent. The mere fact that UNHCR paid indicated that UNHCR was willing and able to pay. The act of payment set the precedent.*

12. Between January 2003 and January 2005, the funding of retrenchment benefits came from ‘project savings’ in Care and Maintenance projects and therefore, a substantially different methodology was used to implement the payment of retrenchment benefits. These payments did create a precedent for the payment of retrenchment benefits, in the sense that they were not limited by specific requirements set out in a specific LOI, but rather open to ad hoc use of available savings under Care and Maintenance projects. It should be noted, however, that the payments were carried out after IPs individually negotiated with UNHCR Pakistan and only in



cases where such ‘savings’ were available. UNHCR’s financial obligation was thereby limited to the total amount provided for in the Sub-project budgets.

(c) Beneficiaries

13. Projects 92/AP/PAK/CM/209 and 95/AP/PAK/CM/209 provided for the payment of retrenchment benefits to a limited amount of beneficiaries, all of whom would first and foremost have to be retrenched. However, the payments were made to staff who continued to work under UNHCR Sub-projects. Although the actual number of staff that continued working under UNHCR Sub-projects is not known, it is likely to be the larger part of those that received retrenchment benefits. A total of US\$3.2 million was paid to IPs under retrenchment benefit Sub-projects, a substantial portion of which was paid to staff who were not retrenched. In the future, the payment of retrenchment benefits to staff not actually retrenched should be avoided.

14. From 2003, the IPs adhered to the main criterion for payment of retrenchment benefits, and paid staff at retrenchment only.

(d) Justifications

15. The justifications for paying retrenchment benefits were documented for 1995 (in the email to HQ covering project 95/AP/PAK/CM/209), and included the following justifications that may well be applicable throughout the Pakistan operation: 1. Maintaining good relationships with IPs (including the GOP), 2. The fact that paying retrenchment benefits is an obligation to which UNHCR feels committed.

16. Apart from the above, there was little documentation regarding the justifications for paying retrenchment benefits, and an adequate justification for the payment of retrenchment benefits to staff who were not retrenched, was not found.

D. UNHCR’S LEGAL SITUATION

17. The OIOS review confirmed that there was no established legal obligation for UNHCR Pakistan to provide funds for retrenchment benefits. The standard UNHCR governing clauses (with the exception of section 6.06 between 1997 and 2001), that clearly exclude such liabilities, were included in the Sub-agreements.

(a) Liabilities and budgetary provisions

18. The governing clauses included the standard UNHCR clauses with regard to liabilities and budgetary provisions. As is the case for UNHCR in general, the clauses place the onus on the IPs to comply with all laws of the country and they limit UNHCR’s financial responsibility to the amounts provided for, and the related purposes, to that reflected in the Sub-project budgets. The standard governing clauses in the Sub-agreements were no different than those normally used in UNHCR’s operations.



(b) *Clauses with regard to IP Personnel*

19. The standard governing clauses in respect of IP personnel included in the Sub-agreements, regarding the responsibilities of the Government or Agency to present a flat monthly rate in Sub-project budgets to cover staff costs, as well as their responsibility to cover any additional costs not provided for in the Sub-project budgets included the following:

- “The Government/Agency shall meet all the costs of staff seconded or reassigned at levels commensurate with established scales and in accordance with generally accepted standards and practices as defined in the applicable regulations.” (6.02);
- “The Government/Agency shall, for each post, fully or partly funded by the High Commissioner as part of this Sub-Agreement, present a flat monthly rate (“pro-forma costs”) which includes all salaries, benefits and costs payable at source, e.g. overtime costs, travel costs and per diem, taxes, social security contributions, housing costs and board, hardship and other allowances.” (6.03), and
- “The Government/Agency shall adhere to provisions concerning the number and costs of project staff in the (Sub-) Project Description and the budget attached to the UNHCR Standard Agreement or as described in the Short Agreement. (...). The costs of any unauthorized project staff or remuneration in excess of the amounts agreed with the High Commissioner, and not provided for in the budget attached to the agreement, shall be borne by the Government/Agency.” (6.07).

20. UNHCR Pakistan did, however, change the wording in section 6.06 of the standard governing clauses between 1997 and 2001, which normally reads:

“The Government or Agency shall:

- Establish contracts with staff recruited or seconded under the project governed by the UNHCR Agreement, in accordance with the applicable regulations, including, inter alia;
 - (a) A description of duties and functional responsibilities;
 - (b) Remuneration, including applicable benefits and employment termination indemnities; (...).”

21. This provision was amended by article 2.14 of the sub-project agreement in 1997 to read ‘excluding’ instead of ‘including’. BO Islamabad suggested that the standard section 6.06 of the governing clauses seems to imply that UNHCR - by requiring IPs to provide for employment termination indemnities in the contracts they establish with their staff - acknowledges budgetary responsibility in that regard.

22. As of 2001 and following GTZ’s query in this regard,¹ the relevant clause was amended to read ‘including’ and became the standard UNHCR clause used in Sub-agreements again. The additional clause included in annex D of the Sub-agreement since 1996,² stipulating that “any/all other benefits required to remunerate these and any other personnel (costs) shall be the full responsibility of the implementing partner” - as well as the related use of allowances/stipends

¹ Following GTZ’s objection to the implementation of this amendment in 2001 – after they had signed the amended agreement from 1997 to 2001 - article 2.14 was amended to read: “the matter of contract termination indemnities will be clarified at the soonest possible within the terms of the Labour Laws of the Islamic Republic of Pakistan.”

² As of 1996, following the change from contracts to allowances/stipends, an additional clause was included in annex D of the sub-project agreement, stipulating that “any/all other benefits required to remunerate these and any other personnel (costs) shall be the full responsibility of the implementing partner”.



instead of contracts - remained however, placing the responsibility to cover the costs as provided for in the agreements with their staff on the IPs.

23. It is important to add in this regard that OIOS reviewed and compared UNHCR's governing clauses with the governing clauses of other International Organisations such as ILO, UNICEF, UNDP and WFP, that have not paid retrenchment benefits at any point in time, to see if the latter better safeguarded their immunities. OIOS found that this was not the case. Though ILO's governing clauses included a specific paragraph (4) relating to personnel of the IPs which was indeed more clear and concise than similar provisions in UNHCR's governing clauses, the opposite could be stated with regard to the comparison between UNHCR and the other International Organisations, who were nevertheless never held liable to pay for retrenchment benefits.

E. LEGAL SITUATION OF UNHCR'S IPs

24. As the previous paragraph indicates, UNHCR did not maintain a contractual relationship with IP staff. If existing at all, a liability to pay retrenchment benefits to IP staff could only be considered as indirect with regard to UNHCR; direct liability would lie with the IPs.

25. *BO Islamabad mentioned that, although it is legally true that there is no contractual relationship with IP staff, there is a perception that staff employed by the IPs are UNHCR staff, and that UNHCR agreed to pay retrenchment benefits in the past and has a moral and legal obligation to do so now and in the future.*

(a) Contractual arrangements between IPs and their staff

26. OIOS was not able to review all the contracts between the IPs and their staff as submitted during the mission. It became clear however, from the contracts we did review, that the type and the provisions in the various contracts differed substantially. Several IPs did not issue contracts to any of their staff at all.³

27. None of the local IPs and only a few of the international IPs included a provision granting retrenchment benefits in their contracts. To the contrary, it was specifically stipulated in most contracts (with reference to the UNHCR agreement) that all "other claims and demands of any kind and in any form shall not be admissible, nor applicable".

(b) Pakistan Labour Law

28. With regard to the IPs alleged liability to pay retrenchment benefits, reference has been made to 'the Pakistan Labour Law' and/or 'the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance 1968', and, more in particular, in 2000, reference was made by UNHCR Pakistan's local legal advisor to section 12 (6) of the latter, regarding 'termination of employment'.

³ It is important to note in this regard that the 'GOP-UNHCR rules of procedure for in-service-payment of retrenchment benefits to UNHCR-paid staff' (as submitted by letter dated 4 June 2005) read under paragraph I (eligibility) i) "UNHCR-paid staff *purely employed on contract basis* will be eligible to receive the retrenchment benefits."



29. UNHCR's local legal advisor was previously, and during our mission, of the opinion that the above-mentioned law applies to International NGO's and (other) non-profit organisations, and that UNHCR and its IPs were thus liable to pay retrenchment benefits. The legal advisor of 'Sharp' (UNHCR IP), whom OIOS consulted as well, shared this opinion. However, neither of them were able to establish a formal (documented) legal link between the aforementioned law and UNHCR's (and/or its IPs) liability thereunder, or could even verbally explain, in their opinion, why the law that applies to Industrial and Commercial establishments would apply to UNHCR, and/or on what (other) legal basis UNHCR could be considered liable to pay retrenchment benefits.

30. OIOS repeatedly requested both legal advisors and IPs, during various meetings, to submit Case law, Government instructions and/or any other documentation that they would see relevant or applicable in this regard, and that would provide us with information indicating UNHCR's (and/or its IPs) liability under Pakistan law to pay retrenchment benefits. In addition, we requested copies of other possibly relevant legal documents, such as the 'statutory rules of service, conduct, or discipline'. We have not received any such documentation.

31. OIOS concluded that a firm legal liability to pay retrenchment benefits could not be established for UNHCR or its IPs. It was understood that the payment of retrenchment benefits is normally a political decision. *In this regard, BO Islamabad felt strongly that UNHCR has a moral responsibility to its partners and its own staff to pay these benefits in Pakistan. In light of that responsibility UNHCR should establish a special project, which would guarantee the availability of funds to the extent possible and articulate an UNHCR policy on the payment of such benefits in the Pakistan operation and elsewhere.*

F. OTHER FACTORS THAT MAY EFFECT UNHCR'S POSITION

(a) Expectations of IPs and intentions of UNHCR Pakistan

32. From our meetings with IPs, it was evident that there is an expectation that UNHCR Pakistan will provide the funds to pay for retrenchment benefits. Although it had been the intention of UNHCR Pakistan to avoid the payment of retrenchment benefits after 1996, the intention changed in 2001 after UNHCR's local legal advisor advised that UNHCR and its IPs were liable to pay retrenchment benefits. Since then, UNHCR Pakistan's continued intention to provide funds for retrenchment benefits was evident from its consent to the payments under UNHCR Sub-agreements during the period from 2003 to 2005.

33. *BO Islamabad provided strong arguments to pay retrenchment benefits. These included maintaining good relationships with the GOP and the IPs while comprehensive solutions are discussed at the highest level in a spirit of mutual trust and respect. A decision not to pay might in light of that actually put the progress made on solutions at risk, compromising even the staff and property of UNHCR. BO Islamabad mentioned that there had been numerous demonstrations, almost daily news articles and even a hunger strike. Furthermore, as there may be 'donor fatigue' which dictates the level of support for continuing with 'business as usual' and the incentive for UNHCR and the GOP to identify and implement durable solutions; 'hospitality fatigue' of the GOP should be prevented by UNHCR and thus create an incentive to find comprehensive solutions.*



(b) Provisions for staff costs in Sub-project budgets

34. With regard to the funding of retrenchment benefits after 1996, the provisions in Sub-project budgets did not include a provision for retrenchment benefits, while most IPs operated under UNHCR Sub-agreements only. It would therefore be unrealistic to assume that IPs, in particular the local IPs, could pay retrenchment benefit costs without UNHCR funding.

35. On the other hand, the amounts provided for staff costs in Sub-project budgets varied substantially between partners, and were in most cases substantially higher than those of the related government salaries. Following OIOS' suggestion, UNHCR Pakistan embarked on a standardization process to benchmark the remuneration of IP staff to ensure equal treatment. During such an exercise, it is obvious that the higher remunerations cannot be lowered: the lower remunerations will have to be increased. Therefore, and subsequent to the standardization process, some IP staff will receive an increase in their remunerations, and these increased amounts will then become the denominator in the calculation of retrenchment benefits (i.e. one-month salary for each completed year of service). This created yet another argument to deal with the payment of retrenchment benefits in a conservative manner.

G. ESTIMATED POTENTIAL LIABILITIES

36. During the review, 22 IPs re-submitted their estimated potential retrenchment liabilities calculated as from 1996 to the end of 2005. CAR was not requested to, and thus did not submit their estimates and related staffing lists, because of the number of Cells and Project Director Health (PDH) Offices at numerous locations. The most recent unverified estimate of CAR was therefore included in the calculation.

37. The grand total as per our calculation was US\$3.6 million (including a US\$650,000 'backlog request' in respect of former staff who were retrenched between 1996 and the present), which was based on one-month salary per completed year of service since 1996. Of the aforementioned total, US\$1.06 million related to CAR staff and US\$1.6 million to BEFARe (previously GTZ-BEFARe) staff, representing 74 per cent of the total estimated amount.

H. ELIGIBILITY

(a) 'Accumulated potential retrenchment benefits' and 'backlog' payments

38. For a staff member to be eligible s/he must be retrenched (i.e. their post must have been abolished). This is the main criterion for retrenchment. Until 1996, and although actual retrenchment was a requirement as per the respective LOIs, this requirement was not complied with in practice. Instead the staff concerned continued to work with the IPs. They had thus received a benefit to which they were not entitled (yet). The exclusion of any period prior to 1996 in the calculation of individual benefits endeavours to 'make up' for these erroneous 'pre-payments' made until 1996.

39. However, BO Islamabad was considering paying retrenchment benefits to staff still working for the respective IPs as 'accumulated potential retrenchment benefits' - payments for the period from 1996 to present in addition to the 'backlog request' of US\$650,000 (for staff actually retrenched since 1996). It was envisaged that by paying off the 'backlog request' - and 'accumulated potential retrenchment benefits' - payments, UNHCR could close the issue and start 'afresh' by, for instance, paying 13th month salaries, to avoid future retrenchment benefit claims.



40. A similar reasoning followed from the ‘GOP-UNHCR rules of procedure for in-service-payment of retrenchment benefits to UNHCR-paid staff’ (dated 4 June 2005)⁴ that would have resulted, when implemented, in the payment of ‘accumulated potential benefits’ to staff that were actually not retrenched:

- “The retrenchment benefits shall be paid to all eligible employees for the preceding year(s) in the months from January to March of the succeeding year”.
- “Provided funds are available with UNHCR, both UNHCR & SAFRON agree to pay retrenchment benefits to all eligible UNHCR paid employees until December 31, 2004, subject to a joint exercise by the UNHCR Islamabad, SAFRON Division, UNHCR Sub-Office, and the concerned ARO/ARRC as soon as possible and submission of list of eligible staff as per attached pro-forma”.

41. OIOS wishes to stress that retrenchment is defined as making an employee redundant in order to reduce costs. Retrenchment benefits are a compensation for the loss of employment, but do not constitute a reward for years of service as such. OIOS therefore strongly cautions against any payment of such benefits without actual loss of employment. In the view of OIOS, ‘accumulated potential benefits’ represent a payment that is not due and/or payable, simply because the related staff have not been retrenched yet. Such a payment could not be seen as a retrenchment benefit payment, properly speaking, even if the calculation of the payment would be based on the formula normally used for the calculation of retrenchment benefit payments; UNHCR would pay for a benefit that the beneficiary was not yet entitled to (and may never become entitled to, in case of resignation or retirement).

42. More importantly, the ‘accumulated potential benefits’ payments would result in peak financial requirements in the year of implementation. From an accountability point of view, it would also be difficult to control such payments and to prevent abuse. Furthermore, staff could feel inclined to resign after they receive such a ‘pre-retrenchment-payment’, whereas those staff that actually resigned between 1996 and 2005 would not have received the same, resulting in unequal treatment.

I. FURTHER CONSIDERATIONS

Implementing partners; matters to take into consideration

(a) Commissioner for Afghan Refugees (CAR)

43. UNHCR Pakistan properly monitored the most recent payments to retrenched CAR employees in Quetta, to ensure that only eligible staff (i.e. those retrenched) were paid and that each individual payment was verified by UNHCR staff. The accountability of CAR, in particular that of the PDH, had been questioned for many years. Neither the Cells nor the PDH had the capacity in their finance sections to establish individual eligibility and/or to perform the required calculations.

⁴ Paragraph II v) and IV ii) respectively; please note that these rules have not been signed by UNHCR.



(b) International IPs

44. There were various differences between the international IPs with regard to their potential liability to pay retrenchment benefits, such as past retrenchment benefit payments, the contractual status of their staff, the existence of a ‘Severance Pay Policy’, ‘split funding’ of staff costs, the existence of multiple donors and salary packages.

45. For example, DACAAR and HNI had a ‘Severance Pay Policy’ in place; DACAAR had been paying retrenchment benefits since 2000. SCF signed a Memorandum of Understanding with the Government and accrued termination benefits since 1998. In addition, 30 to 40 per cent of their 250 permanent staff were ‘split funded’ by different donors. ARC, CWS and IRC had other donors as well, and they also applied ‘split funding’ to some of their staff. IRC provided 13th month salaries and implemented a handshake programme for its regular staff, but not for its casual workers. AMDA paid retrenchment benefits from their own funds in 2004 when they retrenched staff. All liabilities were ‘cleared’ up to 31 December 2004, including those for staff that remained on the payroll. AMDA thus paid ‘accumulated potential retrenchment benefits’.

46. The differences between the international IPs were such that UNHCR Pakistan would have to consider the specific circumstances of each of the IPs before deciding on the payment of retrenchment benefits to project staff under UNHCR Sub-agreements. Also, with regard to the extent of UNHCR’s funding, factors such as multiple donors, ‘split funding’ of positions and the retrenchment policies of the respective partners should be taken into account. This could only be based upon clear and concise information obtained from the international partners and subsequent in depth negotiations.

47. *BO Islamabad correctly mentioned that double standards should be avoided if a decision is made to pay retrenchment benefits. For example, IPs that did not provide for retrenchment benefits in employment contracts will also claim retrenchment benefits and cannot be excluded.* This being understood, the circumstances of each international IP should be examined because a “single” policy will not provide equal treatment for all and will not be in the interest of UNHCR. Past retrenchment benefit payments from other sources, ‘split funding’ and the IPs’ retrenchment policies should be taken into consideration to ensure that the staff of IPs’ are treated equally.

RECOMMENDATION:

The UNHCR Representative in Pakistan should, if retrenchment benefits are to be paid, consider the specific circumstances of each of its international implementing partners. Also, with regard to the extent of UNHCR’s funding, factors such as multiple donors, ‘split funding’ of positions and the retrenchment policies of the respective partners should be taken into account (Rec. 01).

48. *The Representative agreed with this recommendation.*

(c) Local IPs

49. The situation was much less complicated in the case of local IPs. Most of them only worked under UNHCR Sub-agreements and the following criteria applied to all of them: they had letters of appointment that did not provide for retrenchment benefits; they had no retrenchment



policies, and they did not pay any benefits other than the salary provisions as agreed with UNHCR.

(d) Implementation

50. There were two sets of payments under discussion. The first was the ‘backlog’ payment of retrenchment benefits that comprised of retrenchment benefits to staff that were already retrenched. The related retrenchment period is from 1996 to the date of retrenchment, covering retrenchments within a period of almost ten years, which presented a number of difficulties that included locating the people (especially Afghans that returned to Afghanistan) and personnel files. Should UNHCR provide funding for these payments, it will have to do so through a specific Letter of Instruction, which should be implemented through Sub-projects specifically formulated for this purpose, and not under Care and Maintenance projects.

51. OIOS cautioned against these retroactive payments. Ten years have passed since the last formal payments, and some IPs that retrenched staff may not even be working for UNHCR Pakistan anymore. The payment of the benefits to some staff may create an unwanted ‘precedent’ and result in claims from former project staff for whom there are no records available to verify their eligibility. Apart from these practical difficulties, the estimate of US\$ 650,000 was most probably an under estimation, as the amount only included benefits for retrenched staff of IPs that were implementing projects for UNHCR Pakistan at the date of the audit.

52. *The Representative agreed that retroactive payments should not be made, but disagreed that the “cut off date” should be the date of a formal decision. They suggested that retroactive payments should not be made to IP staff who were retrenched within the period 1996 to 2003. Only IP staff retrenched since 2004 should therefore be paid. They based their argument on the assumption that the decision to pay or not to pay could take months. The payment of retrenchment benefits to IPs’ staff retrenched since 2004 will result in a much smaller ‘backlog’ payment than the estimated US\$ 650,000.*

RECOMMENDATION:

The UNHCR Representative in Pakistan should request funding through a separate Letter of Instruction and formulate separate retrenchment benefit projects if retrenchment benefits are to be paid to former implementing partner staff retrenched since 2004 (Rec. 02).

53. The second set of payments, the payment of benefits to staff at retrenchment would result in a spread over a number of years, namely as and when staff are retrenched, thus reducing the financial burden for UNHCR as well as the risk of abuse, and making the exercise more manageable. The numbers of staff that would be retrenched in each of the forthcoming years are not known. BO, Islamabad was requested to provide some scenarios and provided estimations of the total obligations on the assumption that all retrenchments would take place in a particular year. On the afore-mentioned assumption, BO, Islamabad estimated the total obligations at US\$ 700,000 in 2005; US\$ 1 million in 2006, and US\$ 1.3 million in 2007. OIOS, however, is of the opinion that the estimated increase from 2005 to 2006 (that is above 40 per cent) and the increase from 2006 to 2007 (30 per cent) is too much, because the increase should only reflect the additional period served, that is one month of retrenchment benefit for one of year of service. Taking into consideration that staff on board in 1996 (10 years ago) were paid, the maximum period of “accumulative benefits” could not exceed 12 years. Therefore, less than one year’s



salary would have accrued as retrenchment benefits to a staff member by 2005. For subsequent years, benefits would therefore also not accumulate at more than one month's salary per year that is less than 10 per cent (1/12).

54. Therefore and to illustrate the spread of the financial burden, OIOS considered BO, Islamabad's 2005 estimate of US\$ 700,000 as a basis and added one month of salary (1/12) for the following years, that is already an overestimate, as explained above. Assuming again that all staff are retrenched in a particular year; the total estimated obligations would be US\$ 760,000 in 2006, US\$ 820,000 in 2007, US\$ 900,000 in 2008, US\$ 980,000 in 2009 and US\$ 1 million in 2010. Also, we took the scenario that IP staff are retrenched proportionately over a period of time. For instance, that all staff are retrenched over a period of two to five years. One) half of the staff in 2006 and the remaining half in 2007; two) a third of the staff in each of the years 2006 to 2008; three) a quarter of the staff in each of the years 2006 to 2009 and four) a fifth of the staff in each of years 2006 to 2010.

(US\$)

Scenario	Description	2006	2007	2008	2009	2010	Total
1.	<u>Half</u> in each of 2006 and 2007	380,000	410,000	-	-	-	790,000
2.	A <u>third</u> in each of the years 2006 to 2008	250,000	270,000	300,000	-	-	820,000
3.	A <u>quarter</u> in each of the years 2006 to 2009	190,000	205,000	225,000	245,000	-	870,000
4.	A <u>fifth</u> in each of the years 2006 to 2010	150,000	160,000	180,000	200,000	200,000	890,000

This table is merely an indication of possible payment scenarios; it should **not** be read or used for planning or budgetary purposes.

55. OIOS was of the opinion that the payments could be implemented under Care and Maintenance projects. The retrenchment costs would be largely compensated by corresponding reductions in staff costs. Retrenchment costs would exceed the staff costs provided for in the Sub-project budget only for staff who have served more than twelve years. For staff who have served twelve years or less, the staff costs provided for in the previous Sub-project budget would be sufficient to cover the retrenchment costs. This would avoid expenditure peaks and would allow for a gradual reduction of the sub-project budgets over a number of years.

56. *The Representative stated that Care and Maintenance budgets were subject to regular and sometimes substantial reductions that may prevent the payment of retrenchment benefits. In the view of the Representative, should UNHCR decide to pay, there should be a firm commitment and payment should be made under separate LOIs, as had been the case in 1992 and 1995.*

57. OIOS is open as to the funding mechanism, as long as benefits are restricted to those implementing partner staff, who lose their employment as a result of retrenchment.

RECOMMENDATION:

The UNHCR Representative in Pakistan should in the future only provide for retrenchment benefits in Sub-project budgets and or Letters of Instruction if these benefits are to be paid at retrenchment. No funds should be provided for payments in lieu of potential future benefits (Rec. 03).



(e) *Calculation of retrenchment benefit liabilities and verification of payments*

58. The calculation of the actual retrenchment benefits payable to retrenched staff is a cumbersome exercise for which neither the IPs nor UNHCR Pakistan have the capacity. Even if the potential liability is only calculated for staff to be retrenched within a specified period of implementation (e.g. one year) it would take a lot of time and effort.

59. For this reason, OIOS suggested that BO, Islamabad engage a private audit firm in accordance with the relevant procurement procedures to assist in the calculation of the retrenchment benefit liability and in the verification of payments to the retrenched staff. *The Representative agreed to this suggestion.*

60. In light of this it is important to note that BO Islamabad has already engaged a private audit firm - one of the largest auditing firms in Pakistan - through a competitive bidding procedure to conduct the auditing of its IPs (excluding CAR), which have expressed its interest to assist in this matter.

III. ACKNOWLEDGEMENT

61. I wish to express my appreciation for the assistance and cooperation extended to the auditors by the staff of UNHCR and its implementing partners in Pakistan.

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