

# **Investigation Guidelines: Social and Environmental Compliance Unit**

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## **1. Purpose**

1. The Guidelines explain the process SECU will utilise in investigating alleged violations of UNDP's social and environmental commitments. The purpose of the Investigation Guidelines (Guidelines) for the Social and Environmental Compliance Unit (SECU) is to:
  - Inform UNDP's staff, UNDP-supported organisations, and those affected by UNDP-supported projects about the procedural process of SECU;
  - Provide guidance for SECU in order to ensure that investigations of alleged breaches of UNDP social and environmental policy are conducted thoroughly, objectively, and effectively.
2. Complaints related to UNDP-supported projects or programmes approved after 31 December 2014 and meeting eligibility criteria (described in para. 8) will be investigated through a Compliance Review Investigation process.
3. Complaints related to projects approved prior to 31 December 2014 will, similarly, be investigated through a Compliance Review Investigation process if UNDP has committed to providing a compliance review process for social and environmental commitments made by UNDP in the context of the specific funding programme or project, and these complaints meet eligibility criteria described in para. 8.
4. For other projects approved prior to 31 December 2014, two possibilities for remedies exist: (1) SECU can determine if the criteria for a Compliance Advice Note are met and, if so, inform requestors that this option is available and that the Note would provide advice that may assist UNDP Management in improving policy compliance in the project; and (2) the Stakeholder Response Mechanism (SRM) may assist the Complainant. If both options are available, the Complainant can choose which option(s) to pursue, or both.
5. In order to foster consistency, Compliance Review Investigation and Compliance Advice Note processes are conducted in accordance with these Guidelines to the extent possible; however, the circumstances of a particular compliance process may require a deviation from guidelines in the interest of a fair process to the complainants. In addition, best practices through practical experience may inform an evolution of specific procedures.
6. If the Compliance Review Investigation process outlined in the Guidelines results in findings of non-compliance, SECU will (1) make recommendations to bring the project into compliance and (2) make recommendations, where appropriate, to mitigate any harm that results from the breach of UNDP's social and environmental commitments. SECU will refer the claim to the Administrator for further action, pursuant to Section 10 of the Guidelines.
7. The SECU is not akin to a court of law nor does any finding or outcome change any underlying legal responsibility, immunity or liability of the UNDP. Nothing in the accountability process will be construed as a waiver, express or implied, of the privileges and immunities of UNDP. The UNDP's SBAA template, which forms the legal context and is integrated into every project document, provides for recognition of UNDP privileges and immunities by the Government and indemnification by the Government. The Government "bears all risks of operations arising under this Agreement".

### **1.1. Policy Basis**

8. The Compliance Review Investigation process for projects or programmes approved after 31 December 2014 is intended to investigate alleged or potential violations of UNDP's Social and Environmental Standards (SES), the Social and Environmental Screening Procedure (SESP), and

social and environmental commitments made by UNDP in the context of a specific funding programme or project.

9. The Compliance Review Investigation process for pre-2015 projects or programmes for which UNDP has committed to provide compliance review, will apply commitments reflected in the project or programme document, and, for FCPF-related projects, the Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners.
10. The Compliance Advice Note process for pre-2015 projects that meet criteria for such a note will apply commitments in existence when the project was approved.
11. The following complaints will be excluded from SECU's compliance processes:
  - 1) Any complaint that is filed fraudulently or for malicious purposes. Note that the SECU may continue on its own initiative to investigate a complaint that was filed with malicious intent but otherwise merits an investigation;
  - 2) Complaints that raise issues of fraud, corruption or procedural abnormalities in the procurement process will not be processed by the Unit, but will be forwarded to the appropriate units of the OAI;
  - 3) Complaints that neither implicitly nor explicitly raise issues of potential non-compliance with UNDP's social and environmental commitments in a specific project or programme;
  - 4) Complaints relating to projects or programmes that are not supported by UNDP or for which UNDP's support has ended and its role can no longer reasonably be considered a cause of the concerns raised in the claim. Note, however, that when UNDP's support has ended, but impacts can fairly and reasonably be traced to UNDP's involvement, the SECU will accept complaints that are likely to provide institutional learning, prevent future mistakes and abuses, or support resolution of concerns of communities;
  - 5) Complaints by a complainant who has already raised the same issue with respect to the same project or programme with SECU, unless significant new information is available or there has been a significant change in circumstances;
  - 6) Anonymous complaints.
12. The compliance processes are systematic, documented processes of objectively obtaining and evaluating evidence to determine whether UNDP-supported activities are in conformance with UNDP's social and environmental commitments. They must be consistent with the Charter of the Office of Audit and Investigations.<sup>1</sup>
13. SECU investigations are administrative fact-finding processes. In assessing facts relevant to social and environmental compliance issues, SECU uses the "preponderance of evidence" standard, which is an assessment of whether a fact is more likely to be true than not true, based on information available to and assessed by SECU.

## **2. SECU's Mission and the Nature of its Investigations**

14. SECU provides UNDP, and those affected by UNDP projects, with an effective system of independently and objectively investigating alleged violations of UNDP's social and environmental commitments. SECU seeks to protect locally-affected communities and, in particular, disadvantaged and vulnerable groups, and to ensure participation of local stakeholders.
15. SECU seeks to ensure, through ongoing dialogue, that external stakeholders are aware of and know how to access SECU. SECU seeks, also, to help increase awareness at UNDP of issues that have the

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<sup>1</sup> Charter of the Office of Audit and Investigations (December 2012).

potential to cause non-compliance with UNDP policies and procedures.

### **3. Responsibilities**

16. SECU will engage in the following activities in order to promote compliance with social and environmental commitments:

- Receive Complaints and determine eligibility of requests for compliance processes;
- Ensure that information is provided to Complainants about their choice to use SECU or the Stakeholder Response Mechanism (SRM), when both processes are available to the Complainant;
- When Complaints are eligible and the compliance process has been chosen, conduct thorough and objective reviews of policy compliance, including in-country inspections, interviews of people reportedly affected by UNDP-supported projects, and comprehensive information gathering to provide for a factual determination of the issues raised;
- Publicly issue draft reports with findings on policy compliance and accept public comment on its findings;
- Receive comments from those who have alleged non-compliance, UNDP staff, non-governmental organisations, private investors, and governments affiliated with UNDP-supported projects;
- For Compliance Review Investigations, prepare and submit reports to the UNDP Administrator with findings and recommendations to promote UNDP compliance with its social and environmental commitments;
- For Compliance Advice Notes, prepare reports with advice to promote UNDP compliance with its social and environmental commitments;
- For Compliance Review Investigations, monitor implementation of the UNDP Administrator's decisions on compliance, and make monitoring plans and reports available to the Complainant and the public;
- Report at least annually to the UNDP Administrator on the functions, operations and results of the compliance processes and make these reports available to the public and other stakeholders;
- Issue to the Administrator reports that provide systemic advice based on lessons learned from past cases; and
- Explain the SECU process to potentially affected persons, through various means and collaborations, including through project-level grievance mechanisms and in collaboration with the Stakeholder Response Mechanism.

17. These activities are described in greater detail in Paragraphs 7 through 11, below.

### **4. Transparency**

18. The principle of transparency requires public comment and participation in the operations of SECU. To this end, SECU publishes the Guidelines on its website and makes them readily available to those requesting them. In addition, SECU makes public its terms of reference, factual findings, draft reports, and final reports. SECU also publicises the social and environmental compliance mechanism to the general public, particularly in areas where UNDP projects are implemented.

19. Public disclosure of the facts of each investigation is integral to ensuring the transparency and effectiveness of SECU. As such, SECU will post on its website all conclusions and factual findings of a compliance process.

20. In furtherance of disclosure SECU administers a website that contains information about the following:

- Compliance process procedures;
- Links to the Stakeholder Response Mechanism;
- Instructions about how to file a Complaint and or a grievance with the Stakeholder Response Mechanism;
- A link to an external page to file a Complaint;
- A registry of Complaints, including information about the Complaint and its status;
- Terms of reference and investigation reports pertaining to each Complaint;
- Other information as reflected in the SECU Disclosure Policy;
- Annual reports describing SECU's activities.

## 5. Independence

21. SECU functions within the Office of Audit and Investigation (OAI), which is independent from all UNDP bureaux and directorates. Independence is further reinforced in a number of structural ways:

- OAI reports to the Administrator and functions independently from UNDP projects and programmes;
- The OAI Director is limited to one five-year term with the possibility of extension for one more term;
- SECU's staff and consultants are hired by OAI;
- The Lead Compliance Officer may not have worked for the UNDP within three years of being appointed to this position and cannot work for the UNDP after his or her service is complete.

## 6. Investigation Standards

22. The general principles set out in the *Uniform Principles and Guidelines for Investigations*, as endorsed by the 10<sup>th</sup> Conference of International Investigators, apply to all compliance investigations<sup>2</sup>. These principles include the following:

- The investigation office will maintain objectivity, impartiality and fairness throughout the investigative process and conduct its activities competently and with the highest levels of integrity;
- SECU will perform its duties independently from those responsible for, or involved in, operational activities and from staff members liable to be related to an investigation;
- SECU investigations will be free from improper influence and fear of retaliation;
- SECU staff and consultants will disclose to a supervisor in a timely fashion any actual or potential conflicts of interest;
- Appropriate procedures will be put in place to investigate allegations of misconduct on the part of any staff member of SECU;
- SECU will take reasonable measures to protect as confidential any non-public information associated with an investigation (see Public Disclosure SOP);
- Investigative findings will be based on facts and related analysis, which may include reasonable inferences;
- SECU expert consultants and investigators will make recommendations to the Lead Compliance Officer and Compliance Officer derived from their investigative findings;
- All investigations conducted by SECU are administrative in nature.

## 7. Complaints

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<sup>2</sup> Uniform Principles and Guidelines for Investigations, 10<sup>th</sup> Conference of International Investigators (2009).

23. Any person, group, or representative of a person or group, who is or could be affected by a UNDP-supported project, is permitted to file a Complaint. Complaints are received by mail, email, telephone, and SECU's dedicated online submission form. Anonymous Complaints are not accepted. However, the Complainant's name will be kept confidential if he or she so requests. Note that after the initial Complaint is filed, Complainants may amend complaints, providing additional information or evidence or alleging new violations. If new policy violations are alleged after the process has started, the process may need to be restarted.
24. Investigations may also be triggered on SECU's own initiative by the Lead Compliance Officer, or at the request of the UNDP Administrator. When this occurs, disclosure of documents will occur in a manner similar to disclosure pursuant to complaint processes triggered by community complaints. UNDP takes all reports of alleged breaches of social and environmental commitments seriously, and all allegations are assessed to determine whether an investigation is appropriate.
25. The channels for reporting a matter to SECU are as follows:
  - By email (directly to SECU): [secuhotline@undp.org](mailto:secuhotline@undp.org)
  - Through an online form accessible on the SECU's website [www.undp.org/secu](http://www.undp.org/secu):
  - Through UNDP's hotline telephone answering system (toll-free):
    - Worldwide: 001 (646) 781-4299
    - In the United States: +1 (646) 781-4299
  - By mail addressed to: Social and Environmental Compliance Unit, 1 UN Plaza, 4<sup>th</sup> Floor, New York, NY 10017, USA
  - By text message through a variety of applications including SMS, WhatsApp, Viber, and WeChat to +1 (917) 207-4285
26. Complaints should be as specific as possible, describing current or potential adverse impacts that have a plausible causal link to a UNDP-supported activity and, if possible, the UNDP social and environmental standards/commitments that are believed to have been violated.

## **8. The Complaint Processes – Eligibility and Terms of Reference**

27. Complaints not automatically excluded (see Section 1.1 Policy basis, above) will be registered on the case registry by SECU within five days of receipt by SECU. If a complaint has been sent to the wrong office, it will be redirected, rather than registered. Concurrent with registration, SECU will acknowledge receipt of the Complaint to the Complainant. If SECU can immediately determine that the Complaint is ineligible, it will notify the Complainant in writing. The registration of the Complaint will be accessible to the public through SECU's web site. SECU will also inform the Stakeholder Response Mechanism and provide it with a copy of the Complaint. When a Complainant requests that his or her name be kept confidential, the name and identifying details shall be redacted from the documents uploaded onto SECU's website and from documents provided to the Stakeholder Response Mechanism.
28. If a complaint is registrable under either the SECU or SRM processes but it is unclear which path(s) the Complainant wishes to pursue, prior to registering the case, the SECU and SRM have an additional 5 business days to jointly communicate with the complainant(s) to clarify whether they wish to pursue a Compliance Review Investigation/Compliance Advice Process, a Stakeholder Response, or both.

### **8.1. Determining Eligibility of a Complaint**

29. Within twenty business days from registration of a Complaint, SECU shall reach a conclusion about eligibility of the Complaint, secure approval of the Director of OAI, and inform the Complainant of

the decision. The OAI will interpret eligibility broadly to ensure the mechanism is accessible to all stakeholders potentially affected by UNDP-supported projects while also ensuring that a plausible causal relationship exists between UNDP's involvement and the alleged harm. If the Complainant does not allege any specific non-compliance, SECU will evaluate the Complaint itself to determine if the Complaint raises issues of potential non-compliance with UNDP's social and environmental commitments. During the eligibility phase, SECU may consult the Complainant, UNDP staff, and project sponsors, as well as review any relevant documents. If a Complaint is determined to be ineligible, SECU will provide the Complainant and the public a clear and detailed explanation of the reasons for the determination. If the Complaint is found to be eligible, it will then move to the investigation stage (see Section 9).

## **8.2. Eligibility Assessment**

30. In order to be eligible a complaint must:

- (1) Relate to a project or programme supported by UNDP;
- (2) Raise actual or potential issues relating to compliance with UNDP's social and environmental commitments; and
- (3) Reflect that, as a result of UNDP's noncompliance with its social and environmental commitments, complainants may be or have been harmed.

31. Additionally, for a Compliance Advice Note, the Lead Compliance Officer must determine that such a note could strengthen the effectiveness of the project or otherwise enhance UNDP's effectiveness.

32. The Lead Compliance Officer will reach a conclusion about the eligibility of the Complaint, and seek approval from the Director of OAI to either close the case or pursue a compliance process. The Lead Compliance Officer will either:

- Close the case because eligibility criteria are not met or the Complaint is of a type listed on the Exclusions List; or
- Prepare a plan for a compliance process, including terms of reference and timeframe, setting forth the steps to assess the factual basis of the allegation(s).

## **8.3. Consultation with the Stakeholder Response Mechanism and the Complainants**

33. While determining the eligibility of the Complaint, SECU will consult with the Stakeholder Response Mechanism function based in UNDP Headquarters to obtain their assessments of the Complaint. If both processes are applicable, the Complainant will be informed that both are

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