

9 January 2023

Via Electronic Mail

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RE: Civil Society Comments on Draft SECU Investigation Guidelines

Introduction

Thank you for the opportunity to provide feedback on the draft Investigation Guidelines governing the Social and Environmental Compliance Unit (SECU) of the United Nations Development Programme (UNDP). As civil society organizations that advise and work with communities seeking remedy for harm caused by international development projects, including those implemented by the UNDP, we approach these comments with the objective of making the SECU policy more effective for project-affected communities. Our case experience working alongside communities seeking redress for human rights and environmental harm through independent accountability mechanisms (IAMs) informed the December 2021 [Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms](#),¹ which compiles model provisions from existing IAM policies to assess trends and the landscape of good practice at IAMs.

We divide our comments into two sections: (1) Improvements to the 2017 Investigation Guidelines that stand to enhance SECU’s transparency, predictability, safety, proactivity, and ability to help deliver remedy for harm; and (2) Principle-based recommendations to better safeguard SECU’s independence, accessibility, equitability of process, and collaboration with other IAMs. Thank you sincerely for your consideration.

Section 1: Commendable Improvements

We commend the inclusion of good practices that will improve SECU’s effectiveness for communities who may seek its services. In particular, the Draft Investigation Guidelines enhance:

- 1. Transparency and predictability** by committing to publish (a) clear and detailed reasons for compliance investigation ineligibility determinations,² thus both ensuring a comprehensive online Register and consistency in applying eligibility criteria; (b) clear explanations by the UNDP Administrator in the event that SECU recommendations are not adopted,³ thus assuring that

¹ Available at <https://accountabilitycounsel.org/wp-content/uploads/2021/12/good-policy-paper-final.pdf>.

² 2022 Draft SECU Investigation Guidelines (“Draft”), at para. 29.

³ 2022 Draft, at para. 54.

compliance investigation reports are fully considered; and (c) advisory reviews,⁴ thus assuring that systematic lessons from SECU are being captured and relayed appropriately.

2. **Safety** by appending guidelines on monitoring for and responding to risks of reprisal, and contributing to initiatives to address actual and potential instances of intimidation or retaliation.⁵
3. **Remedy** by (a) expressly identifying SECU’s role in recommending ways to remedy situations that have led to complaints in order to help restore stakeholders to a pre-harm state, including through financial compensation when appropriate,⁶ and (b) setting the expectation that any reasons for not adopting certain remedy recommendations will be clarified and communicated to complainants.⁷
4. **Proactivity** by (a) providing greater detail on SECU’s prerogative to conduct self-initiated investigations, even in instances where otherwise ineligible complaints raise legitimate concerns worthy of investigation,⁸ and (b) allowing terms of reference to be amended to consider facts, issues, or statements from additional stakeholders as an investigation unfolds to ensure a full review of compliance issues and environmental and social impacts.⁹

Section 2: Principle-Based Recommendations

Nonetheless, we found several ways that the draft policy can improve to better align with good practice and to ensure effective processes and outcomes for communities. Our recommendations for edits to the draft policy are below.

PRINCIPLE 1: INDEPENDENCE

We agree with the finding by the Expert Panel of the 2021 formal review of SECU’s Investigation Guidelines¹⁰ that SECU’s positioning under the Office of Audit and Investigation (OAI) is problematic insofar as the structural arrangement does not afford SECU a direct line of contact with the UNDP Administrator. Other development institutions with differentiated governance instruments allow them to operate independently within their ambits of expertise without imposing a hierarchy among them. For example, the Green Climate Fund relies on three operationally independent units to assure effective oversight over issues of fraud and corruption, compliance with environmental and social policy, and development effectiveness.¹¹ Each of these governance units has a direct reporting line to the Board.

⁴ 2022 Draft, at para. 70.

⁵ 2022 Draft, Annex, “*Guideline to Managing and Responding to Risks of Intimidation and Reprisals in the Context of SECU Activity*,” at p. 27.

⁶ 2022 Draft, at paras. 1, 55.

⁷ 2022 Draft, at para. 54.

⁸ 2022 Draft, Annex, “*Proactive Investigations by the Social and Environmental Compliance Unit*,” at p. 25.

⁹ 2022 Draft, at para. 41.

¹⁰ Expert Panel’s Collective Comments on the *Draft SECU Guidelines (Expert Comments) (3 December 2021)*, p. 5, available at https://mcusercontent.com/7c1df132164522421091001e0/files/9f901d9a-354d-733b-dadb-0dfcd19aa3d5/SECU_IG_Panel_Submission.pdf.

¹¹ see Terms of Reference of the Independent Evaluation Unit, the Independent Integrity Unit, and the Independent Redress Mechanism, Green Climate Fund [13 February 2014], available at <https://www.greenclimate.fund/sites/default/files/document/gcf-b06-06.pdf>.

Similarly, the World Bank’s Inspection Panel does not report to its Integrity Vice Presidency; rather, it reports directly to the Board on issues related to compliance with environmental and social standards.

According to the 2012 Discussion Paper on the “Proposal for an Environmental and Social Compliance Review and Grievance Process,” SECU was envisioned to be a self-contained accountability office that reports to the UNDP Administrator.¹² At the time, retrofitting SECU under OAI was presented as the most efficient way to bring much-needed environmental and social compliance review in short order. We feel strongly that the time has come to consider whether relying on the present attenuated chain of command is still prudent.

The present structural arrangement requires SECU to confer and seek approval from OAI on matters that should be left strictly to SECU’s discretion, *e.g.*, eligibility determinations,¹³ terms of reference,¹⁴ compliance reports,¹⁵ case closure notes,¹⁶ advisory reviews,¹⁷ and recommendations to address imminent and irreversible harm before the completion of a compliance investigation.¹⁸ As a result, opaqueness is integrated into every decision point of the SECU process, which not only makes the process difficult for communities to follow, but also compromises the perception of SECU’s independence, as well as its ability to meet procedural deadlines and promptly relay urgent matters to the UNDP Administrator.

The bifurcated process for reviewing draft compliance reports¹⁹ further risks compromising the perception of SECU’s independence. Requesting comment on draft factual findings prior to a comment on the entire draft report unnecessarily protracts the review process and allows opportunity for UNDP business units to challenge SECU’s independently-verified findings with the benefit of institutional resources, connections, and leverage that complainants do not have. The process creates space for business units to commandeer the independent review process in a way that is neither transparent or fair. Considering that SECU already consults with all parties to confirm the accuracy of essential facts during the investigation stage, it seems better to provide one equally accessible opportunity for all parties to comment on draft reports in full to avoid giving UNDP business units an unfair opportunity to contest facts in a way that could create undue pressure on SECU well before the public release of a compliance report. We therefore recommend that paragraph 48 remain largely as written in the 2017 guidelines.

OAI’s involvement in SECU’s advisory role is particularly concerning, as it is SECU, and not OAI, that is best positioned to provide advice on ways to improve environmental and social due diligence and performance, as well as institutional response to noncompliance and harm. On this point, we wholeheartedly agree with the assessment of the Expert Panel that OAI’s advice on these matters should

¹² UNDP, Proposal for an Environmental and Social Compliance Review and Grievance Process (April 2012), p. 4, available at <https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/UNDP-Discussion-Paper-on-Compliance-and-Grievance-April-2012.EN-1.pdf>

¹³ 2022 Draft, at para. 39.

¹⁴ 2022 Draft, at para. 40.

¹⁵ 2022 Draft, at paras. 51-52.

¹⁶ 2022 Draft, at para. 63.

¹⁷ 2022 Draft, at para. 70.

¹⁸ 2022 Draft, at para. 71.

¹⁹ 2022 Draft, at paras. 48-49.

be invited and considered by SECU, but discretion should ultimately be afforded to SECU to convey advice directly to the UNDP Administrator.²⁰

According to the most recent announcement to recruit the next OAI Director, there seems to be an acknowledgement that the present structural arrangement is subject to change. The announcement qualified that OAI hosts and is principally responsible for SECU “[a]t present.”²¹ If indeed UNDP can separate the two offices, then we recommend avoiding hard requirements in the SECU Guidelines that SECU must filter all interaction with the UNDP Administrator through OAI. We therefore recommend the following edits to account for potential structural changes that would make SECU more independent:

Section 4.3 – Determining Eligibility of a Complaint

39. *The Lead Compliance Officer will reach a conclusion about the eligibility of the complaint, and ~~seek approval from the Director, OAI~~ **to relay its decision to** either close the case or pursue a compliance process **to the Director, OAI, and UNDP Administrator as according to its current reporting structure.***

Section 5 – Developing Terms of Reference for the Compliance Review Investigation

40. *Within twenty days of determining that a complaint is eligible, SECU will develop a draft term of reference (ToR) and discuss the draft ToR with the Deputy Director and the Director, OAI, **as appropriate under its current reporting structure,** and thereafter publicly release the ToR.*

Section 6.4 – The Draft Compliance Review Report:

48. *After completing its Compliance Review Investigation, making findings and proposed recommendations, ~~but prior to finalizing the draft report, SECU will invite a review of the facts in the report by the Complainant(s) and the responsible UNDP business unit, both to ensure the accuracy of the fact-finding effort as well as to determine that no essential evidence has been left out. Only the sections of the Draft Compliance Review Report related to the underlying evidence and factual assertions will be shared at this time. Findings related to compliance with UNDP policies, and related recommendations, will not be included to encourage stakeholders to focus on the evidentiary elements of the case only at this stage. Any feedback submitted during this fact checking review shall be included alongside the draft~~*

²⁰ Expert Comments at p. 15.

²¹ UNjobnet, Director, Office of Audit and Investigations, United Nations Development Programme, Job Description (31 October 2022), available at <https://www.unjobnet.org/jobs/detail/48496370>.

~~report that is subsequently published for public commenting unless explicitly deemed confidential and exempt from disclosure under UNDP's Information Disclosure Policy. SECU will issue a draft report for his/her review to the Director, OAI, as according to its current reporting structure. The review by the Director will be completed within 10 days.~~²²

Section 6.6 – Submission of Final Report

51. *Within twenty-five days of receiving comments on the draft report, SECU will issue ~~to the Director, OAI,~~ a final compliance report signed by the Lead Compliance Officer, including findings and recommendations, and input from the responsible UNDP management unit, Complainant(s) and other stakeholders. **As according to SECU's current reporting structure, the ~~The~~ Director, OAI will review the report alongside ~~accordingly have the benefit of~~ all comments and input received, including SECU's responses, ~~when reviewing the report.~~ SECU will notify the public that ~~this has been done~~ its final compliance report has been submitted for review.***
52. ***Under the current reporting structure, the ~~The~~ Director, OAI, will review, clear, and submit the final compliance report to the UNDP Administrator within ten days, with a copy sent to the Complainant(s), key stakeholders, and relevant business units such as the Country Office, and release it to the public. This process may be delayed by exigent circumstances or reasons, and in situations with significant delay, SECU will make public the reasons for such delays with an updated timeline.***

Section 7 – Monitoring and Closure

63. *When closing a case, SECU will prepare a closure note describing the monitoring process carried out by SECU, key facts regarding the completion of the Administrator's decision, and the reasons for closing the case. The closure note will be signed by the Lead Compliance Officer, and submitted **for review** to the Director, OAI, ~~for their review per SECU's current reporting structure.~~ SECU will post the closure note to its online Case Registry and share it with key stakeholders.*

²² Our recommendation to strike existing language in paragraph 48 is not intended to suggest removing SECU's responsibility to consult with complainants throughout the investigation process (see paragraph 44); further, complainants still have the right to comment on all aspects of the publicly issued draft report, including factual assertions, per paragraph 49.

Section 8 – Advisory Reviews

70. ~~Once SECU has prepared a draft Advisory Review, SECU will issue to the Director, OAI, the draft Advisory Review for the Director's review and approval, and the Director, OAI will then share the Advisory Review with the Administrator for their consideration. As according to its current reporting structure, SECU will provide a draft Advisory Review to the Director, OAI, for comment prior to sharing a final Advisory Review with the Administrator for consideration.~~ The Advisory Review will also be publicly disclosed.

Section 9 – Temporary and Pre-emptive Measures

71. Notwithstanding the procedures set forth above, if at any time after receiving a Complaint SECU identifies imminent, irreversible harm to the Complainant(s), other affected people or the environment, SECU may ~~propose to the Director, OAI that they recommend to the Administrator that UNDP take~~ interim measures pending completion of a Compliance Review Process. **SECU's recommendations should be conveyed expeditiously to the Administrator.** The Country Office may be contacted informally and directly regarding interim relief where time is of the essence. The Lead Compliance Officer may also recommend ~~to the Director, OAI~~ that outside experts be employed to secure evidence rapidly to inform such a step. Such interim measures could include suspending financial disbursements or taking other steps to bring UNDP into compliance with its social and environmental commitments, or to address the imminent harm. SECU will endeavor to consult potentially affected people on these measures, depending on time and related constraints.

At the very least, paragraph 74 on the “Responsibility for Updating the Guidelines” should be revised to consider how they can be updated in the event of a change in reporting lines. Moreover, the Guidelines should provide a clearer expectation of how often the Guidelines should be reviewed for continuous improvement. Peer IAMs typically impose a review every four or five years.²³ We therefore recommend the following edits under **Section 12 – Responsibility for Updating the Guidelines**:

74. **As according to SECU's current reporting structure, the ~~The~~ Director, OAI, has approved the Guidelines, and the Lead**

²³ Policies reviewed every four years include: (a) the African Development Bank Independent Redress Mechanism, and (b) the FMO/DEG/Proparco Independent Complaint Mechanism. Policies reviewed every five years include: (a) the Inter-American Development Bank's Independent Consultation and Investigation Mechanism, (b) the French Development Agency's Environmental and Social Complaints Mechanism, (c) the European Investment Bank's Complaint Mechanism, (d) the Green Climate Fund's Independent Redress Mechanism, (e) the International Finance Corporation's Compliance Advisor/Ombudsman, and (f) the Asian Infrastructure Investment Bank's Project-affected People's Mechanism.

*Compliance Officer is responsible for keeping the Guidelines up to date, ~~as approved by the Director, OAI.~~ **The Guidelines shall be updated through independent review and public consultation every five years.***

Further, the current reporting structure does not allow stakeholder input on the selection of SECU leadership; rather, it is the Director, OAI, who appoints all SECU personnel.²⁴ As a matter of good policy, including external stakeholders in the hiring process for IAM heads serves to legitimize hiring determinations and build trust in the independence and integrity of the individuals selected.²⁵ While we understand that this would be different from typical hiring processes within OAI given its otherwise internal-facing mandate, SECU's effectiveness is dependent on the perceived legitimacy and competence of its leadership by external stakeholders. Therefore, we recommend (a) inviting input from external stakeholders in the selection of the Director and Deputy Director, OAI, to ensure they are equipped with expertise on grievance redress for environmental and social impact, and/or (b) requiring external stakeholder input in the selection of SECU's Lead Compliance Officer. Acknowledging that the protocol for hiring the Director, OAI, cannot be changed in a policy governing SECU, we recommend the the following edits to **Section 1.4.4 – Independence**:

19. *SECU's independence is reinforced in a number of structural ways:*

- ***According to the current reporting structure, SECU operates as a branch of OAI, which reports to the Administrator and functions independently from UNDP-supported activities;***
- *The Director, OAI is limited to one five-year term with the possibility of extension for one more term, and is barred from re-entry into UNDP after the expiry of their term;*
- *SECU personnel are hired by OAI;*
- ***SECU's Lead Compliance Officer is appointed through a transparent process that invites external stakeholder feedback;***
- *The Lead Compliance Officer, even if appointed on an interim basis, may not have worked for the UNDP within three years of being appointed to this position and cannot work for the UNDP after their service is complete. ~~This restriction does not apply to anyone fulfilling these duties on an ad-interim basis.~~*
- *SECU will not appoint someone as a Compliance Officer if that person has worked for the UNDP within the previous three years, unless SECU determines that there is no actual, perceived, or potential conflict of interest given the nature of the work that the prospective Compliance Officer undertook, or is undertaking, for the UNDP. A Compliance Officer's failure to notify SECU*

²⁴ 2022 Draft, at para. 19.

²⁵ See, e.g., Policy of the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), para. 15 (“To maintain the independence of the CAO [Director General], a selection committee will be established to conduct an independent, transparent, and participatory selection process that involves stakeholders from diverse regional, sectoral, and cultural backgrounds, including civil society and business communities”).

that they have accepted other work from the UNDP may also lead to SECU terminating its relationship with the Compliance Officer. Compliance Officers cannot be engaged by other UNDP bureaux while engaged by SECU/OAI.

- *SECU personnel will uphold and promote the highest standards of ethical and professional conduct, and carry out their duties with integrity, independence and impartiality. To protect the integrity of its processes, SECU will avoid and manage any conflict of interest situations. A conflict of interest occurs when, by act or omission, personal interests interfere with the performance of official duties and responsibilities or with the integrity, independence and impartiality required of SECU personnel. SECU personnel will promptly disclose any potential conflicts of interest to their supervisor, who will evaluate the matter and make a decision with the Lead Compliance Officer as to whether a conflict of interest exists. If an actual conflict of interest exists, a decision will be made by the Director, OAI following the advice by the Lead Compliance Officer and the Deputy Director. as to what that means for the involvement of the SECU personnel in SECU activities. SECU personnel with a conflict of interest pertaining to a particular case will not be permitted to work on that case, and any work that has already been done by that person pertaining to that case will be reviewed retroactively by a senior member of the SECU team. If it is determined that an actual conflict of interest does not exist, but that there may be a perception of a conflict of interest, then a decision will be made by the Lead Compliance Officer, in discussion with the Director, OAI and the Deputy Director, OAI as to whether other action is necessary to mitigate this perception. All decisions made and action taken to address actual or perceived conflicts of interest will be documented and kept on record.*

SECU's independence must also extend to its ability to issue publications related to its work, and to engage with external media outlets. SECU's publications and media engagement should not be subject to constraint from UNDP's Bureau of External Relations and Advocacy, as this could undermine SECU's ability to independently report on its investigations. SECU is designed to hold UNDP to account— how, then, can it be asked to run its public-facing messages past the UNDP? We therefore recommend the following change to **Section 10 - SECU and the Media**:

72. *SECU investigations are public in nature, and therefore there will be circumstances when the media is interested in its investigations or findings. ~~As appropriate, SECU will seek guidance from the Bureau for External Relations and Advocacy (BERA), and/or other relevant~~*

~~units within UNDP in order to engage with the media in a manner consistent with UNDP policies, procedures and best practices. SECU endeavors to be as transparent as possible in its engagement with the media.~~

Finally, the Guidelines should allow SECU's Lead Compliance Officer to independently request meetings with the UNDP Administrator as needed. Currently, the draft Guidelines require SECU's Lead Compliance Officer to request that the Director, OAI call for meetings with the Administrator. This attenuated line of communication undermines SECU's ability to uphold its commitment to responding to and securing remedy for Complainants and preventing imminent harm.²⁶ For greater effectiveness, SECU should be empowered to communicate directly with the Administrator. We recommend modifying the following provisions:

Section 1.4.5 - Commitment from UNDP

21. In addition to any other scheduled meetings that may take place between SECU and the Administrator, the Lead Compliance Officer may request, at any time, ~~that the Director, OAI, call for~~ a meeting with the Administrator to discuss SECU activity, including specific cases.

Section 11 - Annual Report

73. SECU will report at least annually to the UNDP Administrator on the functions, operations and results of the Compliance Review Process. Such annual reports will also be made available to the public and to other stakeholders. Alongside the submission of its annual report, ~~the Director, OAI will invite~~ the Administrator ~~to will~~ meet periodically with the SECU team to discuss its caseload and activity.

PRINCIPLE 2: CONSULTATION

Centering complainants' agency through an accountability process is essential to delivering positive outcomes. While the draft Guidelines do well to integrate complainant input into various decision points of the Compliance Review Process, consultation must also be utilized in other crucial areas.

First, SECU should seek the input of communities before referring complaints that relate to alleged individual crimes to OAI and relevant national authorities. In these instances, complainants need to have the opportunity to assess the confidentiality and safety implications of referral. In accordance with the draft Guidelines to Managing and Responding to Risks of Intimidation and Reprisals, the SECU policy must be sensitive to the fact that, in certain contexts, spurring a criminal investigation can result in

²⁶ 2020 Draft, at para. 15.

physical, social, and legal retaliation. We therefore recommend the following edits to **Section 4.3 – Determining Eligibility of a Complaint**:

38. *The following complaints will be excluded from SECU’s Compliance Review Processes:*

- 4) *Complaints relating to alleged individual crimes that are referred to the OAI Investigation Section for possible investigation, and to relevant national authorities for prosecution, as appropriate **and in consultation with complainants**. Note, however, that evidence of such allegations may impact the risk appraisal process of a project and the ability of UNDP to manage such activity risks, and thus be relevant evidence for a compliance investigation. **SECU will make every effort in accordance with its Guidelines on Managing and Responding to Risks of Intimidation and Reprisals to ensure that the confidentiality of complainants is kept when requested and that the safety of complainants is prioritized upon referral.** SECU does not make findings of individual criminal conduct in its reports;*

Second, the Guidelines should be explicit that Management Action Plans (MAPs) designed to address findings of non-compliance must be developed in consultation with SECU and those who were harmed as a result of the non-compliance. Incorporating the ideas and perspectives of the complainants and the mechanism in a MAP is essential to ensure that proposed measures will satisfactorily address the concerns raised and the harm suffered, as is the case with respect to the SECU complaint related to the UNDP “Ridge to Reef” conservation project in Myanmar’s Tanintharyi Region (Case No. SECU0010, December 2018).²⁷ Where the underlying concerns articulated by the complaints regard shortcomings in consultation and respecting Indigenous Peoples’ right to Free, Prior, and Informed Consent, the complainants – Karen Indigenous Groups – have persistently called for halting a top-down approach to conservation that threatens their traditional way of life. The complainants proactively offered an alternative Indigenous-led conservation plan called *Landscape of Life* to both protect the rich biodiversity of the Tanintharyi Region, and respect traditional peoples’ knowledge. If UNDP Management were to proceed in proposing a different solution without input from the complainants, that would merely repeat or exacerbate the underlying concerns raised by the complaint. The SECU Guidelines must therefore make clear the expectation for good faith consultation on MAPs to ensure responsive remedial solutions.

Third, the Guidelines should be explicit that SECU will consult with complainants to develop monitoring reports in order to verify information provided by Management. As we have seen in cases we advise on, for example in Mongolia with respect to a complaint submitted to the IFC’s CAO,²⁸ and Haiti with respect to a complaint submitted to the Independent Consultation and Investigation Mechanism of the

²⁷ Myanmar case study available at <https://www.accountabilitycounsel.org/client-case/myanmar-ridge-to-reef-conservation-project/>.

²⁸ Mongolia case study available at <https://www.accountabilitycounsel.org/client-case/mongolia-south-gobi-mining/>.

Inter-American Development Bank,²⁹ implementation of agreements is not guaranteed, and informing monitoring with consultation is necessary to ensure that commitments to provide redress are fully delivered. We therefore recommend the following edits under **Section 7 – Monitoring and Closure**:

59. *In most cases, Management will develop an Action Plan reflecting the decisions of the Administrator, which SECU will consider in the drafting of its monitoring plan. **Management Action Plans will be formulated in consultation with complainants, which SECU and/or SRM may attend as observers to ensure that consultations are undertaken in good faith.** If the proposed Management Action Plan faces difficulties in achieving compliance, SECU may seek clarification of the Plan or the Administrator’s decision. SECU’s monitoring may involve desk review, correspondence with the affected communities, progress reports from the Country Office or relevant business unit, and onsite inspections, as appropriate.*
60. *SECU will consult with the Complainant(s) in the development of its monitoring plan ~~as necessary~~. SECU will also conduct individualized outreach to **verify the effective implementation of Management Action Plans and to** provide intended beneficiaries of any recommendation with relevant updates from its monitoring. Any progress or monitoring reports which SECU produces or which are submitted to SECU by the relevant Country Office or business unit will be publicly disclosed on SECU’s Case Registry. Where recommendations are not implemented, SECU will seek written explanations from the relevant Country Office or business unit, and will publicly disclose those explanations on its Case Registry.*

PRINCIPLE 3: RIGHT TO REPRESENTATION

We commend provisions that respect a complainant’s prerogative to seek representation to help them navigate language, resource, technological, and information barriers that make it difficult to pursue a complaint independently. While IAMs are within bounds to seek evidence of a complainant’s authorization for representation, they should not obstruct access to remedy by limiting a complainant’s choice of representatives. The draft Guidelines overstep the bounds by suggesting that SECU may reject a complainant’s choice in representation if it determines that the representative is not acting in the complainant’s “best interest” or within a “scope” of representation, neither of which have concrete standards for assessment. While SECU certainly should raise such an issue with the complainant(s) if there is cause for concern, the decision to retain representation must ultimately belong to the complainant(s) in deference to their agency and judgment. We therefore recommend the following edits under **Section 2 – Submission of Complaints**:

²⁹ Haiti case study available at <https://www.accountabilitycounsel.org/client-case/haiti-caracol-industrial-park/>.

22. *Any person or group who is or could be affected by a UNDP-supported activity, is permitted to file a complaint. A representative may also file a complaint on behalf of any person or group. If SECU has any questions about the representatives' role, SECU may request information to confirm that the representative has indeed been chosen by the Complainant(s) ~~and is acting in the scope of the representation and in the Complainant(s)' best interest.~~*

PRINCIPLE 4: TRANSPARENCY

We commend the draft Guidelines for clarifying that SECU welcomes comments on draft TORs from all interested parties, as this was an issue we previously raised in connection to the “Ridge to Reef” compliance investigation in Myanmar. However, we urge SECU to go further and commit to publishing all comments received along with the final TOR. Giving all interested stakeholders complete information about the feedback that was considered, and whether or not it was ultimately incorporated in the TOR, would better fulfill SECU’s commitment to transparency. We recommend the following edit to **Section 5 - Developing Terms of Reference for the Compliance Review Investigation**:

41. *Staff, Complainant(s), and other interested parties may provide comments on the ToR at any time. SECU will consider them as the ToR can be amended at any time prior to issuance of the draft report. **Parties may request to have their respective comments published on the case registry.** UNDP staff, Complainant(s), and the public will be informed of any substantive changes made to the ToR during the investigation.*

PRINCIPLE 5: COOPERATION

As a member of the IAM Network (IAMnet),³⁰ SECU has committed to the “Principles for Cooperation among Independent Accountability Mechanisms,” which requires not only that it contribute to a regular exchange of ideas and best practices to advance the field, but also that it “seek to cooperate to the extent feasible and practicable” with other IAMs to ensure that the concerns within complaints related to co-financed or commonly-supported projects are addressed fully and efficiently.³¹ We urge including the principle of “Cooperation” under **Section 1.4 – Principles** – using the following language:

Cooperation

As a member of the Independent Accountability Mechanism Network (IAMnet), SECU will inform and collaborate with peer IAMs when a complaint relates to a project co-financed or commonly supported by institutions under their respective jurisdictions. Moreover, SECU will work closely with the UNDP’s Stakeholder Redress Mechanism (SRM) to ensure that complainants have seamless access to compliance review and

³⁰ IAMnet member list available at <https://lnadbg5.adb.org/ocrp002p.nsf>.

³¹ “Principles for Cooperation Among Independent Accountability Mechanisms” available at <https://accountabilitycounsel.org/wp-content/uploads/iamnet-2017-criteria-and-principles-for-cooperation.pdf>.

dispute resolution services in order to address the underlying concerns of a complaint fully and efficiently.

PRINCIPLE 6: REMEDY

As recognized by the February 2022 report on Remedy in Development Finance by the Office of the United Nations High Commissioner for Human Rights, empowering IAMs to operate independently, effectively, and early is crucially important for environmental and social performance and remediating project-related harms.³² While the Draft Guidelines recognize SECU's role in helping to deliver remedy for adverse development impact, there is room for improvement. The specific barriers to achieving remedy through an IAM process include (a) failures in consulting with complainants on remedy, and (b) attempts to limit an accountability mechanism's independence with respect to investigations, reports, and recommendations.³³ We therefore recommend ensuring that options for remedy will be informed by complainant input and conditioned on the Free, Prior, and Informed Consent of Indigenous People as necessary, and that deference is given to SECU's factual assessments and recommendations to remedy social and environmental harm equally. We recommend the following edits:

Section 6.4 – The Draft Compliance Review Report

49. ~~*Following this fact checking review, upon the recommendation of the Lead Compliance Officer, the Director, OAI, will authorize the public release of the draft report. The Lead Compliance Officer, in consultation with complainants, will decide whether to release draft reports either publicly or privately to the parties of a complaint. As according to SECU's current reporting structure, the Director, OAI will officialize a report's public release. Comments may be provided on the draft report by any interested person for twenty days. The report will include:*~~

- *A discussion of the procedural steps taken to address the complaint;*
- *Any relevant factual findings, including any findings of non-compliance;*
- *Recommendations to bring UNDP into compliance with social and environmental commitments and/or to prevent, mitigate, and remedy harm to the Complainant(s). **Recommendations for remedial actions will be conditioned on consultation with complainants and the Free, Prior, and Informed Consent of Indigenous Peoples as necessary;** and*
- *A framework for monitoring implementation of any recommended actions that the UNDP Administrator decides to take in response to the Complaint.*

³² UN OHCHR, *Remedy in Development Finance: Guidance and Practice* (Feb. 2022), available at <https://www.ohchr.org/sites/default/files/2022-02/Remedy-in-Development.pdf>.

³³ *Id.* at pp. 59-65.

Section 6.8 – Responding to Non-Compliance

55. *There are numerous options to encourage compliance with UNDP's social and environmental commitments. Such options include:*

- *Case-specific and UNDP-wide recommendations for improving implementation;*
- *Revisions to the UNDP-supported activity and project or screening documents;*
- *Action by the Administrator, where harm to affected people is imminent, to stop UNDP's financial disbursements or other support to an activity pending the outcome of SECU's Compliance Review Process;*
- *Permanent suspension of any financial disbursements by the UNDP Administrator, assuming that the activity is not otherwise able to comply with the UNDP's social and environmental commitments;*
- *Decision by the UNDP Administrator to prevent, mitigate or remedy any harm caused by a UNDP-supported activity, and to restore Complainant(s), other affected stakeholders, or the environment to a pre-harm state, in collaboration with the implementing partner. In crafting and responding to recommendations, SECU and the Administrator should consider the range of measures that may be necessary to restore stakeholders to a pre-harm state, including through financial compensation (where the circumstances and financial resources allow for it) **and/or through ecological restoration;***
- *restoration of rights, including rehabilitation through medical, psychological, legal, and/or social services; and acknowledgments of non-compliance (such as apologies);*
- *Decision by the UNDP Administrator to afford activity benefits to Complainant(s) or other stakeholders in situations where they have been wrongfully excluded from the benefits of the activity (i.e., in situations where they would have benefited had the UNDP complied with its social and environmental commitments) or where such benefits would address harms SECU has found to be caused by prior UNDP-supported activity;*
- *Include in underlying legal documents provisions indicating that breach of social and environmental policies are material breaches of the activity agreements.*

A Note on the Stakeholder Response Mechanism

Noting that the SRM was designed to compliment SECU's compliance review function with a dispute resolution tool to help facilitate remedy, we recommend commissioning a review of the SRM to consider how it too may be updated to improve UNDP's environmental and social performance. A review of the SRM should encompass whether it is adequately resourced and sufficiently independent to be effective for communities who seek facilitated dialogue led by impartial mediators as an option for resolving concerns.

Conclusion

While we commend certain improvements to the SECU Guidelines, we urge the adoption of the above proposed edits and amendments so that the new guidelines meet good policy and practice in line with the accountability offices of peer institutions. We appreciate the efforts taken thus far to conduct an independent review and consultation process, consistent with good practice for IAMs, and we presume that the Guidelines will likewise be approved through the independent office of OAI. We request to be kept informed of the process for finalizing the procedures.

Thank you for your consideration. If you would like to discuss any of the recommendations further, please contact Margaux Day at margaux@accountabilitycounsel.org or Gregory Berry at gregory@accountabilitycounsel.org to coordinate.

Submitted by

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