



UNITED NATIONS DEVELOPMENT PROGRAMME

**Office of Audit and Investigations
Investigations Section**

INVESTIGATION GUIDELINES

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1. Purpose

The purpose of the Investigation Guidelines (Guidelines) is to:

- Guide investigators in the conduct of investigations to ensure that investigations are conducted thoroughly, objectively and effectively, in accordance with professional standards and good investigative practice.
- Inform UNDP staff members about the investigative process and their roles, rights and obligations as subjects or participants in an investigation.

The Guidelines have been issued to ensure that due process is applied and that appropriate rights are afforded to all parties involved in an investigation, including the Organization. However, failure to strictly adhere to these Guidelines may not constitute grounds for claiming a violation of due process, particularly where such failure is not prejudicial to the case or does not constitute a fatal procedural flaw.

2. Legal Basis

The legal basis for investigation activities conducted by the Office of Audit and Investigations (OAI) or on its behalf are:

- The Charter of the Office of Audit and Investigations;¹ and
- The UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (Legal Framework).²

The Guidelines reflect generally accepted investigation standards for international organizations as laid down in the Principles and Guidelines for Investigations, adopted by the 10th Conference of International Investigators.³ They are consistent with Article 101, paragraph 3 of the United Nations Charter, the Standards of Conduct for the International Civil Service,⁴ the Staff Regulations of the United Nations and Staff Rules (Staff Regulations and Staff Rules)⁵ and UNDP's administrative policies and issuances.

3. Nature of Investigations

OAI investigations are the "fact finding" component of the Organization's internal justice system and are administrative in nature. The internal justice system is comprehensively described in the Legal Framework.

As international civil servants, UNDP staff members are required to adhere to the highest standards of efficiency, competence and integrity. They are responsible for reporting any breach of UNDP's Regulations, Rules and policies to those whose responsibility it is to take action, and for cooperating with any investigation.

Investigations follow prescribed steps defined by UNDP's obligations towards staff members to ensure procedural fairness. The investigation process generally commences with a complaint or report of possible misconduct. The intake of matters for investigation requires a methodical and consistent approach for receiving, recording, screening and assigning matters to investigators. The intake procedure also serves as a foundation for and, to a certain extent, initiates the next step of investigation planning.

The investigation process continues with the steps of planning and preparation. These steps include both formal and informal actions designed to ensure effective disposition of the investigation, as

¹ Charter of the Office of Audit and Investigations (February 2008)

² UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (January 2010)

³ Principles and Guidelines for Investigations, adopted by the 10th Conference of International Investigators, June 2009

⁴ Standards of Conduct for the International Civil Service, 2001

⁵ ST/SGB/2009/7 Staff Regulations of the United Nations and Staff Rules

well as to support post-investigation management action. Planning and preparation is, therefore, critical to the effective execution of investigative responsibilities.

The primary objective of an investigation is to establish the facts relevant to an allegation so as to determine any necessary action, including disciplinary proceedings or other administrative action. As such, the investigation is part of the entire system of accountability and must be executed in a manner that supports that system as well as the interests of justice.

OAI shall maintain objectivity, impartiality, and fairness throughout the investigative process and conduct its activities competently and with the highest levels of integrity. In particular, OAI shall perform its duties independently from those responsible for or involved in operational activities and from staff members liable to be subject of investigations and shall also be free from improper influence and fear of retaliation.⁶

Investigative findings shall be based on facts and related analysis, which may include reasonable inferences. These findings should follow an objective assessment of all information – inculpatory and exculpatory – gathered in the course of the investigation.⁷

The conclusion of an investigation is not the final step in the process. Rather the conclusion is the point at which:

- the investigators prepare an investigation report because the facts confirm the allegation(s) and submit the investigation report to the Director, Legal Support Office/ Bureau of Management for appropriate action; or
- the investigators prepare a closure report because the matter can no longer be effectively pursued.

OAI makes the decision on how and when to close an investigation. OAI's decision must take into account the interests of the Organization, due process for all personnel, the interests of justice as well as the requirements of the system of accountability.

At the conclusion of an investigation, OAI will prepare a written investigation report or a closure report to record the process, results and conclusions. The reporting step is critical to communicating information to relevant managers and creating a record for future review and assessment, particularly during any internal justice process or when the investigator's exercise of discretionary authority is challenged.

Upon completion of the report, the process of investigation is concluded. However, OAI may still be required to support post-investigation activities that fall within the responsibility of the Organization as part of the system of accountability. These activities may include responding to inquiries from relevant staff, preparing management letters and assisting the Legal Support Office, Bureau of Management (LSO/BOM) in proceedings before the United Nations Tribunals. Investigation personnel may be called upon to explain the investigation process or information about the findings and conclusions of a specific case. This responsibility may extend to providing testimony before the United Nations Tribunals and even before national authorities should the matter result in a criminal prosecution.

4. Confidentiality

Confidentiality is required for effective investigation and other appropriate action in cases of alleged misconduct. Confidentiality is in the interest of both the Organization and implicated personnel. Information will only be disclosed as required by the legitimate needs of the investigation. The requirement

⁶ Principles and Guidelines for Investigations, adopted by the 10th Conference of International Investigators

⁷ *ibid*

for confidentiality extends equally to investigators, staff, management, investigation participants and investigation subjects.

Consequently, the investigation process has systematic controls that prevent unauthorized disclosure of information and ensure confidentiality. These controls commence with initial intake by, for example, ensuring that source details are protected to the extent possible within the legitimate needs of the investigation and continue through each step of the investigation process until a final report is issued to the appropriate authority.

5. Investigation Standards

The Principles and Guidelines for Investigations provide the fundamental standards for investigations and investigators in the United Nations and other international organizations. The basic principles include the following:

- Investigation is a profession requiring the highest personal integrity;
- Persons responsible for the conduct of an investigation should demonstrate the highest competence;
- Investigators should maintain objectivity, impartiality and fairness throughout the investigative process and disclose any conflicts of interest to supervisors in a timely manner;
- Investigators should endeavour to maintain both the confidentiality and the protection of witnesses;
- Investigative findings should be based on substantiated facts and related analysis, not suppositions or assumptions; and
- Conclusions should be supported by the investigative findings.

6. Role of the Office of Audit and Investigations (OAI)

6.1. Mission

OAI's mission is to provide UNDP with an effective system of independent and objective internal oversight that is designed to improve the effectiveness and efficiency of UNDP's operations in achieving its development goals and objectives through the provision of internal audit and related advisory services, and investigation services.

6.2. Mandate

OAI has sole responsibility for conducting investigations within UNDP. OAI conducts investigations into allegations of wrongdoing, such as fraud, embezzlement, theft, corruption, abuse of authority, assault, workplace harassment, sexual harassment, sexual exploitation, sexual abuse,⁸ retaliation, or any other failure to observe the standards of conduct expected of international civil servants. Such wrongdoing may involve UNDP staff, contractors and other applicable persons. In addition, OAI is expected to undertake proactive investigations in high-risk areas that are susceptible to fraud, corruption or other wrongdoing.

6.3. Reporting

OAI submits its investigation reports to LSO/BOM for further action, including initiation of disciplinary proceedings, if appropriate. OAI aims at submitting its investigation reports within four months after the completion of the investigation mission or the date on which the last substantive investigative task was completed. For retaliation cases, OAI aims at completing its investigation and submitting its report to the Director, Ethics Office within 120 days after receipt of a request from the Ethics Office to investigate.

When necessary, OAI also submits reports to the Administrator and senior management about weaknesses in controls, processes, deficiencies in policies and procedures that are identified in the course of

⁸ ST/SGB/2003/13 Special Measures for Protection from Sexual Exploitation and Sexual Abuse

investigations with recommendations for addressing these weaknesses and further strengthening the accountability framework in the Organization.

7. Rights and Obligations of Staff Members⁹

7.1. Rights

During an investigation, UNDP staff members and other personnel have a right to:

- A presumption of innocence throughout the investigation;
- A professional, impartial, thorough and timely investigation; and
- Confidentiality in the conduct of the investigation.

Requests for confidentiality by investigation participants will be honoured to the extent possible within the legitimate needs of the investigation. In certain cases (e.g. workplace harassment and abuse of authority), however, the identity of the complainant and/or other investigation participants may need to be shared with the investigation subject for purposes of due process. In addition, those identities may become known for reasons outside the control of the investigators.

The identity of the investigation subject should remain confidential to the extent possible within the legitimate needs of the investigation. However, the identity may become known for reasons outside the control of OAI.

Staff members who receive confidential information are expected to respect confidentiality and not disclose information to anyone unless authorised to do so by the Directors of OAI or LSO/BOM or their nominated representatives.

In addition, in order to ensure an effective internal justice process, staff members and other personnel may expect to:

- be informed in writing of the allegations;
- be given an explanation of the investigation process;;
- be given the opportunity to explain his or her conduct, to identify relevant witnesses and to present information on his or her behalf;
- have the interview/s scheduled at a reasonable place and time and to be provided with the details of the individual(s) conducting the investigation interview;
-
- have the assistance of an interpreter during an interview, if required;
- be given the opportunity to review the record of interview for correction before signing;
- be provided with a copy of the draft investigation report and to be given the opportunity to provide comments on the factual findings and conclusions of the report along with any countervailing evidence within a reasonable time; and
- have any comments and any countervailing evidence provided taken into consideration by the OAI prior to finalisation of the report and submission of the final report to LSO

7.2. Obligations

Per Staff Regulation 1.2(r) and Staff Rule 1.2(c), staff members, including investigation subjects and participants, must cooperate fully and in good faith¹⁰ with a duly authorized investigation. The same obligations apply to other categories of personnel, including United Nations Volunteers,¹¹ consultants,¹² service contractors,¹³ contractors¹⁴ and interns.¹⁵

⁹ ST/SGB/2009/7 Staff Regulations of the United Nations and Staff Rules

¹⁰ ST/SGB/2009/7 Staff Regulations of the United Nations and Staff Rules

¹¹ In accordance with the Conditions of Service for International United Nations Volunteers (2006)

Investigation subjects and participants shall not interfere with the investigation and shall abstain from withholding, destroying or tampering with evidence, and from influencing, coaching or intimidating the complainant and/or witnesses. Investigation subjects and participants shall respect the confidential nature of the investigation and the proceedings by exercising utmost discretion.

Investigation participants shall refrain from discussing or disclosing the investigation or their testimony to anyone except the investigators. In no case should an investigation participant discuss with the investigation subject and/or complainant and/or other investigation participant the nature of the evidence requested or provided, or testimony given to investigators.

A lack of cooperation and/or undue interference with the investigation may constitute misconduct, which may result in disciplinary or other appropriate action.

Investigators are not required to interact with legal counsel for subjects or participants or answer any questions regarding the specifics of the investigation, other than questions relating to the investigative process.

7.3. Administrative Leave

The subject of an investigation may only be placed on Administrative Leave by the Assistant Administrator and Director, BOM. Requests to place a staff member on administrative leave (i.e. special leave with full pay [SLWFP] or special leave without pay [SLWOP]) must be addressed to the Director, LSO/BOM. The Director, LSO/BOM, may recommend to the Assistant Administrator and Director, BOM, that administrative leave is justified on the basis of the evidence presented and the facts of the case.¹⁶

Chapter II, Section 1.3 of the Legal Framework explains the circumstances under which a staff member can be placed on administrative leave.

Resident Representatives, Heads of Office/Unit/ Section/Department/Bureau in Headquarters and other locations and the Executive Directors of any Organization to which the holder of a UNDP letter of appointment is assigned do not have the authority to place staff members on administrative leave, except as otherwise provided below.

Exceptionally, if the Resident Representative or the Head of Office/Unit/Section/ Department/Bureau considers that the circumstances require immediate action, he or she may decide to place the staff member on special leave with full pay (he or she cannot place the staff member on special leave without pay). In such a case, he or she must within 48 hours of his or her decision to place the staff member on administrative leave, inform the Director, LSO/BOM of his or her decision, and provide all the relevant evidence documenting why he or she deemed that placement of the staff member on administrative leave was urgently required and could not wait for the formal authorization of administrative leave to be granted. After review of the case, the Director, LSO/BOM shall determine whether administrative leave is justified.

Examples of situations where immediate administrative leave could be considered include:

- where there are allegations of misconduct or serious wrongdoing and there is a real risk that evidence may be compromised or concealed; or

¹² In accordance with ST/SGB/2002/9 Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission

¹³ In accordance with the Service Contract User Guide

¹⁴ In accordance with UNDP Supplier Code of Conduct

¹⁵ In accordance with the Statement of Understanding of the Conditions of the UNDP Internship, 9(a)

¹⁶ Administrative Leave was formerly known as "suspension."

- the conduct of the alleged wrongdoer suggests that there is a possible threat to the safety and/or security of other staff.

8. Complaints

OAI is responsible for maintaining and monitoring reporting facilities that function 24 hours a day/7 days a week to enable staff, management and others to report any instances of misconduct. OAI also maintains an effective case management system/database for the recording and management of all complaints.

8.1. Reporting Alleged Wrongdoing

Staff members may report allegations of wrongdoing to OAI, or to their immediate supervisor or other appropriate supervisor within the operating unit. The staff member's supervisor shall report the matter to OAI in accordance with the provisions of this paragraph. In the event that a staff member reports wrongdoing directly to OAI, he or she may do so anonymously by sending an e-mail to the following address: hotline@undp.org.

In the event that the staff member believes that there is a conflict of interest on the part of the person to whom the allegations of wrongdoing are to be reported, he or she may report the allegations to the next higher level of authority.

In the event that the staff member fears retribution or retaliation after reporting allegations of wrongdoing, or cooperating with an audit or investigation or other oversight function, he or she may report the matter to the Director, Ethics Office at the following email address: ethicsoffice@undp.org. The UNDP Policy for Protection against Retaliation applies in these cases.

In the event the allegations of wrongdoing relate to workplace harassment or abuse of authority, the staff member may report the allegations to OAI at the following email address: hotline@undp.org. The UNDP Policy on Prevention of Workplace Harassment and Abuse of Authority applies in these cases.

Staff members who become aware of information that concerns internet-based fraud related to the Organization, or misuse of the Organization database or technology resources, whether such information relates to sources within the Organization or externally, may report the matter to a special repository created for the receipt of such information at the following email address: scamalert@undp.org or to OAI.

Non-staff members (e.g., staff of other UN agencies, contractors, or vendors) may also report allegations of wrongdoing directly to OAI.

Managers, including Resident Representatives and the Heads of Office/Unit/Section/Department/Bureau in Headquarters or other locations, who receive sufficient information suggesting wrongdoing by a UNDP staff member or other personnel, have the obligation to provide this information without delay to the Deputy Director (Investigations).

8.2. Using the Investigations Hotline

There are several channels for reporting a matter to OAI:

- By email: hotline@undp.org
- Through the website: www.undp.org/hotline
- UNDP fraud hotline voicemail system: Worldwide: +1 212 906 5050
- By fax: +1 212 906 6767
- By mail: Deputy Director (Investigations)
Office of Audit and Investigations
DC1-426

One United Nations Plaza
New York, NY 10017 USA

8.3. Receipt of Complaints

OAI will acknowledge a complaint within one week after its receipt and will provide the reference number of the case to the complainant (except when an allegation is made anonymously and/or no contact information is provided).

8.4. Anonymous Complaints

OAI accepts anonymous complaints, excluding anonymous complaints of sexual or workplace harassment or abuse of authority. However, anonymous complaints are often not possible to investigate as OAI may not be able to obtain the information needed to conduct an investigation.

OAI will assess information received from anonymous sources to determine its sufficiency. Therefore, an anonymous complaint should contain enough detailed information to allow OAI to obtain independent corroboration of the facts. If there is no way to independently corroborate the information provided by the anonymous source, OAI will not be able to investigate the complaint and may be required to close the case.

OAI does not acknowledge anonymous complaints unless the anonymous source provides contact information.

Under the provisions of the UNDP Policy on Prevention of Workplace Harassment and Abuse of Authority, OAI cannot accept anonymous complaints of workplace harassment or abuse of authority.¹⁷

8.5. Malicious Complaints

The motives of a complainant are not relevant to the decision to investigate. While the motive of a complainant in reporting possible misconduct may later reflect upon the complainant's credibility as a witness, his or her malice towards implicated personnel does not otherwise affect the facts asserted.

Nevertheless, where a complainant provides information that he or she knew or should have known was false, the complaint may be considered to be a malicious complaint. In such event, OAI may initiate an investigation of the complainant that could result in charges of misconduct. However, honest mistakes or errors do not constitute misconduct.

8.6. Complainants

It is the obligation of all staff to report possible misconduct, but staff, including managers, who either report possible misconduct or are possible victims of misconduct, cannot demand that OAI conduct an investigation. As an independent function, investigations are conducted taking into account the interests of the Organization as well as the interests of justice, and not those of individuals. However, the interests of the Organization reflect both the needs of staff who may have reported possible misconduct, and staff who may have been victimized by misconduct.

Complainants are not entitled to demand information about the investigation, its status or its conclusions and, importantly, they do not "own" the reported information.

9. Investigative Process

An investigation is the process of examining the relevant facts following a determination by the investigator that there is a reasonable belief that misconduct has occurred. Misconduct is defined in Chapter I, Section 3 of the Legal Framework as:

¹⁷UNDP Policy on Workplace Harassment and Abuse of Authority, Section V, Paragraph 40, January 2010

...a failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other administrative issuances, or to observe the standards of conduct expected of an international civil servant. Such a failure could be deliberate (intentional or wilful act), or result from an extreme or aggravated failure to exercise the standard of care that a reasonable person would have exercised with respect to a reasonably foreseeable risk (gross negligence) or from a complete disregard of a risk which is likely to cause harm (recklessness).

Allegations that do not constitute misconduct, such as allegations of poor work performance or ordinary negligence, are dealt with by other UNDP procedures and may not be subject to investigation.

The investigative process is usually comprised of two phases: a preliminary assessment and a formal investigation. In all instances, OAI retains the prerogative to determine if and when circumstances warrant a preliminary assessment and/or formal investigation, and, in conformity with the present document, the appropriate investigative process to be followed.

A **preliminary assessment** is the process of collecting, preserving and securing basic evidence, and the evaluation of this evidence to determine whether an investigation into reported allegations of wrongdoing is warranted.

An **investigation** is the process of assembling a dossier of evidence to permit a decision at a later stage as to whether formal charges of misconduct should be made against a staff member or whether the case should be closed.

9.1. Preliminary Assessment

The purpose of a preliminary assessment is:

- To record and establish the basic facts including the following:
 - How the allegation(s) or suspicion, was reported;
 - By whom the allegation was reported, if possible;
 - When the allegation was reported (date and time);
 - Nature of the allegation(s) (description of alleged wrongdoings);
 - The identity of the alleged wrongdoer and his/her contractual status;
 - The applicable legal norms (regulations and rules that may have been violated, if the alleged facts can be substantiated);
 - Supporting documentation (emails, letters, documents, notes from [anonymous] calls);
 - The identity of investigation participants (individuals who have knowledge of or are involved in the allegation[s] or suspicion); and
 - Other materials that may be helpful in creating a clear, focused and efficient investigation, like press releases, other related issues, etc.
- To preserve or secure basic evidence whether written or electronic (such as cheques, invoices, written statements, or other relevant documents, records and/or data) that might otherwise be lost and that may be necessary for the determination as to whether an investigation is justified;
- To identify any inconsistencies or outstanding questions; and
- To analyse the evidence to determine whether an investigation into reported allegations of wrongdoing is warranted.

OAI has discretionary authority to decide which matters to investigate. If the preliminary assessment does not generate sufficient information to indicate that wrongdoing has occurred, OAI may close the complaint and will inform LSO/BOM and the complainant accordingly.

According to Chapter II, Section 4.1 of the Legal Framework, OAI may request a Resident Representative, or his or her delegated authority, to conduct a preliminary assessment on OAI's behalf.

A preliminary assessment does not necessarily involve the formal interviewing of witnesses, requesting subjects to respond to allegations of wrongdoing or conducting forensic examination of material, including examining electronically stored material. These are investigative steps that are completed during a formal investigation.

If the alleged wrongdoing does not fall within OAI's mandate, OAI will normally not pursue the matter, will refer the matter to the applicable office or organization, will close the case and will inform the complainant and other stakeholders accordingly. Exceptionally, in the case of a former staff member and if the alleged infraction is serious, OAI may nevertheless pursue the investigation, in order to protect UNDP and other UN organizations from the risk of rehiring the individual concerned.

If the alleged wrongdoer is a staff member of another UN organization, OAI will refer the complaint to the investigation service of the organization concerned. If the alleged facts would not constitute misconduct (e.g. contractual disputes, performance issues), OAI will not pursue the matter, but may refer the complaint to another office within UNDP.

9.1.1. Outcome of Preliminary Assessment

The outcome of the preliminary assessment is either a closure note or, if the assessment has shown that there is sufficient evidence to warrant a formal investigation, a work plan. The closure note and the work plan are internal confidential documents.

If the preliminary assessment does not indicate that wrongdoing has occurred, the lead investigator will prepare a closure note to propose closing the case. Based on the closure note, the Deputy Director (Investigations) may decide to close the case and will inform the complainant and LSO/BOM accordingly.

OAI does not provide closure notes to subjects, investigation participants or any individuals named therein.

If the preliminary assessment generates sufficient information to warrant a formal investigation, the lead investigator will inform the Deputy Director (Investigations). Based on the preliminary assessment, the Deputy Director (Investigations), in concurrence with the Director, OAI, may decide to open a formal investigation.

Based on the preliminary assessment, the Deputy Director (Investigations) may also consider the need for placing a staff member on administrative leave. In such event, the Deputy Director (Investigations) will refer the issue to the Director, LSO/BOM, for his or her determination and, if appropriate, recommendation to the Assistant Administrator and Director, BOM.¹⁸

9.2. Investigation

OAI is the sole entity responsible for conducting investigations in UNDP. Formal investigations are conducted by OAI investigators or by persons engaged or duly authorized by OAI.

¹⁸ See Section 7.4, above

The investigator's role is to obtain and evaluate all information related to alleged wrongdoing. It is limited to identifying facts that can substantiate or refute the allegations. The investigator also draws conclusions based on the identified facts.

Depending on the complexity of the matter under investigation and the priority of the case, OAI generally expects a formal investigation to be completed within six months from its commencement.

9.2.1. Investigation Work Plan

Once OAI decides to conduct an investigation, the lead investigator assigned to the case will prepare an investigation work plan. This plan will help ensure a systematic fact-finding process which results in an effective investigation and report.

The investigation work plan consists of a detailed outline of tasks and timelines for the investigation and includes the following elements:

- **Investigation Team:** A team, consisting of two members, shall be identified to conduct the investigation. Often the formal investigation will be entirely conducted by investigators from OAI. However, the Deputy Director (Investigations) may also request assistance from appropriate individuals who have not been involved with the allegation(s), such as Deputy Resident Representatives, Assistant Resident Representatives, Field Security Officers, Legal Officers, staff from other UN agencies or external consultants.
- **Applicable legal norms:** The plan shall identify the corresponding UN Regulations, Rules, policies and/or administrative instructions that may have been violated by the alleged wrongdoing.
- **Evidence to be gathered:** The plan shall identify the elements that are necessary to establish that the alleged event or transaction occurred and that the subject committed the alleged wrongdoing, including the likely sources of the evidence.
- **Witnesses to be interviewed:** The witnesses that are intended to be interviewed shall be identified in the plan together with the aspects of the allegations of wrongdoing about which they may have knowledge.
- **Investigation budget:** A budget of financial and staff human resources required and an estimate of the duration of the investigation shall be included. This includes the costs of travel and DSA, transcription and translation costs and may also include the costs of experts/consultants, such as external forensic and accounting experts.

No investigative activity shall be initiated until the Deputy Director (Investigations) has approved the investigation work plan.

9.2.2. Notification of Subject(s)

During the formal investigation, an individual has the right to be informed in writing that he or she is the subject of the investigation and to know the nature of the allegation(s). This notification will take place at the earliest possible time and no later than during his or her interview as the subject of the investigation.

Exceptionally, situations may prevent advance notification of the subject prior to his or her interview. Such situations include, but are not limited to the following:

- The evidence (documentary, electronic, physical or witness statements) related to the allegation(s) has not been secured (i.e. preserved, collected and recorded) and might be tampered with; or
- Other safety or security issues exist that would threaten the investigation (e.g. retaliation against the complainant, informant or witness, flight of the subject).

Once these issues are adequately addressed and evidence is seized and fully secured, the staff member must be notified in writing that he or she is the subject of an on-going formal investigation.

The notification to a staff member that he or she is the subject of an investigation should be formally issued in writing by the Deputy Director (Investigations). Where circumstances do not permit the notification to be in writing, as soon as practicable after receiving verbal notification, the subject will receive written confirmation of the notification.

If, during the course of the investigation, OAI discovers new facts giving rise to allegations of wrongdoing on the part of an investigation participant, OAI will notify the investigation participant, as soon as practicable, that he or she has become a subject of the investigation.

In the event that, in the course of the investigation, additional allegations are raised against the investigation subject, the investigators will inform the subject of these new allegations in the same manner as the earlier allegation(s). However, the investigation subject should be aware that LSO/BOM, after analysing the findings contained in the OAI investigation report, may decide that some facts as established by the investigation, though not initially raised as part of the original allegations of wrongdoing, may constitute misconduct. The fact that the investigation subject was not informed of this at the time of investigation cannot be considered a violation of due process provided the investigation subject is given the opportunity to comment on the charges levelled against him or her, and on the draft and final investigation report.

10. Evidence

Evidence is any type of proof which tends to establish or disprove a fact material to the case. It includes documents and records (documentary evidence; electronic evidence), verbal statements (testimonial evidence), and even tangible items (physical evidence) or the physical conditions of those items (forensic evidence).

10.1. Relevance of Evidence

Evidence should be relevant to the investigation. The evidence should make the existence of any fact that is of consequence to a matter under review more probable or less probable than it would be without the evidence.

The investigator should establish what evidence is likely to be relevant. When in doubt, it is better to collect too much evidence than too little. Irrelevant evidence can always be discarded and/or returned at a later stage.

10.2. Securing Evidence

One of the most difficult decisions to make during the investigation is when and how to secure evidence. The investigator should try to find a balance between the requirements of discretion and confidentiality and his/her duty to secure the necessary evidence before potential alteration, concealment, damage or destruction.

Consideration should be given to the following:

- Are the documents, records or other evidence at risk of being altered, concealed, damaged or destroyed?
- Are the documents, records or other evidence under the subject's control?
- Does the subject have access to key documents, records or other evidence?
If so, can the subject alter, conceal damage, delete or destroy these key documents, records or other evidence?
- Are the same documents, records or other evidence available at another location that is not accessible to the subject?

Securing evidence is a critical component of a formal investigation and affects the timing of the notification to the subject that an investigation is under way and that the individual is the subject of that investigation.

Physical evidence relevant to the investigation should be placed in a secure location. For example, official business records should be kept in a locked office, a locked cabinet or other location on UNDP or UN premises, wherever possible. The only individuals having access to the secured physical evidence should be the immediate investigation team. However, the investigator, for purposes of compiling his/her own documentation of his/her work and findings, should make copies of all relevant evidence, such as documents and records, and photograph evidence that might be difficult to secure, such as assets, properties and locations.

If the investigator has decided that the evidence for the case may be at risk, consideration must be given to the best way to secure the evidence, either by physically moving the evidence to a secure environment, or removing the subject from access to or control over the evidence.

10.3. Preventing the Subject from Access to the Evidence

If the investigator considers it necessary to prevent the subject from having access to or control over the evidence, the investigator shall inform the Director, OAI. Based on the facts presented, the Director, OAI may request the Resident Representative or Head of Office/Unit/Section/Department/Bureau to prevent the subject from access to or control over the evidence. The Resident Representative or Head of Office/Unit/Section/Department/Bureau will then ensure that such request is complied with until revoked in writing by the Director, OAI. Preventing the subject from having access to or control over the evidence is different from placing the subject on administrative leave.

10.4. Gathering Evidence

Investigators are authorised to have full and complete access to all general files (whether physical or electronic), confidential office files and personnel records located in any UNDP office or unit, either in hard copy or in electronic form. In the event OAI requires access to medical records maintained by the United Nations, OAI will request permission from the staff member concerned or from the Director, Medical Services Division, United Nations.

Often it is necessary to perform searches of the offices, workspaces or other UNDP assets that are in the custody of the subjects or witnesses.

If evidence is located in the immediate vicinity of the individual, i.e. desk or computer, the presence of the individual is required while the search is conducted, whenever possible. Any search for evidence located in the immediate vicinity of the individual should be performed together with another investigator, witness and/or observer (e.g. a security officer), whenever possible.

If the evidence is located outside UNDP premises and contains personal information about an individual (e.g. private bank account records), then the investigator must obtain written permission from the individual to access this information. Alternatively, the investigator can request the individual to directly provide the information. Investigators may obtain public records (for example, property titles) without the consent of the individual.

10.5. Documentary and Physical Evidence

Documentary evidence includes correspondence, forms and all information that may be maintained on paper in official archives, as well as external materials such as personal letters, business records, etc. Documents and records may exist in physical and/or electronic form.

Physical evidence includes objects embodied in a tangible form.

10.5.1. Handling Evidence and Chain of Custody Records

When handling the original version of documentary or physical evidence obtained from external sources, a clear chain of custody record must be maintained. From the moment the investigator takes control of the evidence, a record of its receipt and subsequent handling must be kept, including the dates and the times when it was obtained. The investigator should record the following information to maintain the proper chain of custody:

- Name of the individual or entity providing the evidence (unless the individual or entity providing the evidence requests anonymity);
- The source and/or physical location from which the evidence was obtained (unless the individual or entity providing the evidence requests anonymity);
- Date and time the evidence was obtained;
- Name, identifying number, date of document, if applicable and brief description of the evidence; and
- Overall condition of the evidence (e.g. number of pages, missing parts, sections or pages).

10.5.2. Document Identification

Each document or other written evidence should be allocated a sequential number and identified using OAI's established naming convention protocol. Unless the lead investigator in a case determines otherwise, due to the volume of documentary evidence or other special factors, the original version of any documentary evidence should not be marked and should remain in its original condition throughout the investigation process. The original document should be placed in a secure plastic sleeve/envelope and the identification number placed on the sleeve/envelope, not the document itself. This will preserve the integrity and admissibility of the document in the case of an administrative process or legal action, or if forensic examination is required. Copies of original documents may be marked with the identification number, which should be placed in the upper right hand corner of the document whenever possible.

10.5.3. External Sources

If records are obtained from a non-UNDP source, the source should provide a signed receipt or email listing each document or file that has been given to OAI.

10.6. Electronic Evidence

Electronic evidence comprises information communication and technology (ICT) resources such as electronic mail, data on hard drives or other electronic storage devices (including but not limited to computer memory), cell phones, SIM cards, PDAs, removable media, photographs, videos, audio files, graphics, subscriber and equipment identifiers, short text, enhanced and multimedia messages, voice and data active locations, logs, system transactions, e-wallets, network identification, IMEI, ESN and ICC IDs, including automatic key card gate entry. Electronic evidence also may include video and/or audio recording.

Pursuant to section 7 and 8 of the UNDP Policy on Use of Information and Communication Technology (ICT) Resources (UNDP Policy on ICT Resources),¹⁹ any ICT resource as described therein, whether property of UNDP or not, connected to a UNDP server or other electronic infrastructure paid for by UNDP, or containing UNDP data, is considered UNDP property and therefore, its content falls into the definition of electronic evidence and/or ICT resources as described in this guideline.

Pursuant to section 10 of the UNDP Policy on ICT Resources, OAI has the authority to access all ICT resources and ICT data of UNDP personnel. All ICT data collected during an investigation shall be kept confidential and disclosed only to persons who have a right to access the data, within the legitimate needs of the investigation.

¹⁹UNDP Policy on Use of Information Communication and Technology Resources, 2009

10.6.1. Seizing Electronic Devices

The collection of evidence may include obtaining electronic data from such items as described in section 10.6, above, including but not limited to, computers, servers, laptop computers, storage media, PDAs, and cell phones.

If necessary, OAI may access all ICT resources and ICT data remotely without first informing the authorized user. If such access does occur, OAI shall, at the earliest possible time after the access has occurred and, to the extent possible within the legitimate needs of the investigation, inform the authorized user of the reasons for the access, the ICT data that has been accessed and the use that will be made of the ICT data.

In carrying out its investigations, OAI may request the Office of Information Systems and Technology (OIST)/BOM, the corresponding office away from Headquarters or a third party expert, as it deems necessary or appropriate, for assistance in obtaining access to ICT resources or ICT data. Different OIST officers may be designated by OIST to provide such assistance for different categories of ICT resources.

Due to the unique issues of having a third party (e.g. ICT Specialist) obtain electronic evidence; permission should first be sought from the Deputy Director (Investigations).

If requested to do so by OAI, OIST or the corresponding office away from Headquarters shall maintain a written record of its access to any ICT resource or ICT data, recording a brief description of such activities and the type of information retrieved. No additional records of such access shall be retained by any other office.

10.6.2. Handling ICT Resources and Chain of Custody Records

Physical access and/or seizure of ICT resources located in an authorized user's workspace, shall, if practicable, be conducted in the presence of the authorized user and/or the head of authorized user's office/division/section or unit and a chain of custody documented, as set forth below.

From the moment the investigator seizes the ICT resource, a record of its receipt and subsequent handling must be kept. The investigator shall record the following information to maintain the proper chain of custody over gathered evidence:

- Name of the individual assigned to the electronic device;
- The source or physical location from which the electronic device was seized;
- Date and time of the seizure;
- Type, identifying number, and brief description of the electronic device;
- Overall condition of the electronic device and peripheral parts;
- When feasible, pictures of the device in its original setting;
- List of each component of the device, such as hard drive, monitor, mouse, removable media, external electronic storage, etc.;
- Indicate whether the computer or other ICT resource is on/off at the time of seizure;
- If the computer is off, indicate the procedures performed to ensure no loss of data when booting up the system;
- If the computer is on, document the files that are open and the procedures for saving them; and
- Document the shut down procedures or any special procedures executed to prevent loss of data during the shutdown process.

The seized ICT resource should be moved to a secure environment where access is restricted to the investigative team.

The investigator can seize the ICT resource if there is reason to believe that key evidence may be stored on the device, or that there is a compelling need to safeguard the data. After seizing the ICT resource, the investigator can search the electronic device through physical or electronic means, including but not limited to data analysis and forensic software, without the authorized user being present. OAI may engage an outside expert to ensure data retrieval and analysis is performed professionally.

10.6.3. Searching Corporate Servers and Storage Media

OIST shall be consulted prior to conducting any search of a corporate server and/or storage media, given the nature and access to electronic information contained in such devices.

10.7. Other Physical Evidence

Other physical evidence includes equipment, goods and facilities. It also includes records of physical state, including photographs. Such evidence can become an important part of the case. This is especially true in cases involving theft of assets.

If the investigator plans to search for other physical evidence (e.g. searching a briefcase, official vehicle, UN guesthouse), the investigator should first determine whether he or she has the right to conduct the search and confiscate the evidence. In emergency cases, judgment must be exercised by weighing the urgent need to search against the immediate threat to the personal security or the security of personnel. In cases when there is no immediate security threat, non-OAI staff assigned to conduct inquiries should consult with OAI before conducting a search for physical evidence. Prior to any search for physical evidence, the individual having possession of the physical evidence must be informed of the intention to search the area and secure evidence, whenever possible.

Once the evidence is located, a memo should be written that includes the date, time and the physical location of the evidence. If possible, a photograph should be taken of the evidence in its physical location and a description of the physical evidence and its location should be included in the memo. If the investigator seizes the evidence, a chain of custody record should be prepared for each item.²⁰

Each piece of evidence should be assigned a name and a unique sequential number and, if possible, a tag bearing the number should be affixed to each item.²¹ The evidence should be stored in a secure manner.²²

10.8. Forensic Evidence

Forensic evidence encompasses evidence obtained by scientific methods, such as fingerprint analysis, DNA tests, graphology, electronic forensics, etc. This type of evidence may require special handling and explanation by technical experts.

11. Interviews

Interviews are aimed at obtaining testimonial evidence, i.e. the recollection of individuals who actually saw an event or have direct or indirect knowledge of anything relevant to the investigation.

11.1. Interviewers

Interviews of investigation subjects should be conducted by two investigators.

With respect to interviews of investigation participants, the number of interviewers depends on the nature and the circumstances of the case.

²⁰See section 10.5.1, above

²¹See section 10.5.2, above

²²See section 10.2, above

11.2. Observers

Investigation subjects (and complainants in cases relating to allegations of sexual exploitation or sexual harassment) may request to be accompanied to their interview by an observer who is either a UNDP staff member or an immediate family member; provided that the observer is not involved with the investigation and is readily available, as determined by OAI.

The presence of any observer may not interrupt, prevent or delay the interview. The observer shall agree to respect the confidentiality of the investigation and sign a confidentiality agreement. If the observer refuses to sign a confidentiality agreement, the observer will not be permitted to observe the interview. The observer is not allowed to speak during the interview. If the investigators consider the presence of the observer disruptive, the observer may be asked to leave, and the interviewee will be obligated to continue with the interview in accordance with the requirement to provide information under the Staff Regulations and Staff Rules.

Considering the cultural context, gender and other elements of the case, the investigators may also select an observer (e.g. field security officer, etc.) to attend the interview.

Investigation subjects and participants have no right to the presence of counsel during interviews.

Whenever an interviewee is accompanied by an observer, the interview must be conducted by two investigators.

11.3. Category of Witnesses

Witnesses can be:

- Individuals making the allegation;
- Victims of the alleged act;
- Individuals with direct or indirect knowledge of anything relevant to the investigation;
- Individuals with good knowledge of business processes related to the alleged act; or
- Experts.

11.4. Fairness Requirements during Interviews

Before conducting an interview of UNDP personnel, the investigator must inform the interviewee of:

- the identity and function of the individual(s) conducting the interview;
- the investigative process and possible consequences of an investigation;
- the authority of OAI to conduct investigations and the duty of all staff to cooperate; and
- the requirement of confidentiality of both OAI and the interviewee.

UNDP has an obligation to ensure that the interview is conducted in an appropriate environment, at a reasonable time, and for reasonable duration with breaks as needed.

A subject or participant may require the services of an interpreter during the interview. The interpreter shall respect the confidentiality of the investigation and sign a confidentiality agreement to that effect. If the interpreter refuses to sign a confidentiality agreement, the interpreter will not be admitted to the interview.

At the end of any interview, the interviewee should be given the opportunity to provide a final statement, comment or position for the record, and review any record of the interview before signing the record to indicate agreement with its contents.

11.5. Interviewing Subjects

When interviewing subjects, the following special considerations should be kept in mind:

- Two investigators must be present to conduct the interview.
- If the subject has not already been informed that he/she is under investigation, the investigator must do so at the time of the interview.
- The subject should be allowed to review copies of the evidence referred to in the interview that has been collected during the course of the preliminary and formal investigation and given the opportunity to provide an explanation.
- Wherever possible, interviews of subjects must be electronically recorded. The subject will be told at the commencement of the interview that a copy of the transcript will be provided to him/her as soon as is practicable. The subject will also be informed that he/she will be requested to sign a copy of the transcript endorsing that it is a true reflection of what was said in the interview.
- If it is not possible to electronically record the interview, the investigators shall prepare a written record of the subject's account of events attempting as much as possible to use the actual words spoken by the subject. The written record shall contain an explanation of why it was not possible to electronically record the interview. The subject will be invited to sign each page of the statement.
- In circumstances, when a subject refuses to sign the written record of the interview, the investigator should fully document the reasons for the refusal and have another person who witnessed the refusal endorse that fact and sign to that effect.

11.6. Witness Interview Record

A record should be made of every interview, each page of which should be signed by all persons present

Witnesses will be permitted to amend, correct their statements in a separate piece of paper that is signed by them. In circumstances, when a witness refuses to sign the record of the interview, the investigator should fully document the reasons for the refusal and have another person who witnessed the refusal endorse that fact and sign to that effect.

11.7. Information Needed in the Interview Record

In the course of the interview, the investigator should obtain the following:

- Name, position, responsibilities, length of time in position, duration of employment with UNDP or other companies/organisations.
- Business address, telephone number and other logistical information that will allow the investigator to locate the interviewee at a later time.
- If the witness knows the subject, it should be indicated how they met and what their relationship is.
- How the witness became aware of the information he or she is providing to the investigator, and whether the information is firsthand knowledge or hearsay.
- The subject's explanation for the alleged wrongdoing and any corroborating evidence.

11.8. Use of Video- or Audio Recording

When interviewing a subject, the entire process will normally be either video or audio recorded. When using video or audio recording devices, the subject must be advised that the interview is being recorded and must confirm that he/she understands that the transcription of the recording will be part of the official record of the interview. In all cases of recording a subject, a written transcript must be produced and provided to the subject. The subject will be invited to sign the transcript. In addition, the subject will be given the opportunity to provide a signed statement containing any clarification of his/her statements

during the interview; however, he/she cannot change his/her statements as recorded by OAI's recording device.

A video-conferencing facility may be used to conduct the interview.

If the subject refuses to be interviewed on audio or video tape, the tape will be turned on and an introduction made of all persons present with the subject being asked to comment on the fact that he/she does not wish to be recorded during the interview. The investigator shall point out that this refusal amounts to non-cooperation and may constitute misconduct. The investigator will decide whether to proceed with the interview by taking contemporaneous notes or discontinue the interview and report the matter so that appropriate action, including disciplinary action, may be taken against the subject for refusing to cooperate.

Interviewees may not make their own contemporaneous recordings of interviews.

Conversations with witnesses and subjects will not be recorded covertly.

12. Use of Outside Experts

In assessing the resources that will be necessary to complete the investigation, OAI may determine that there is a need for assistance from outside experts. When engaging the services of an outside expert, the following must be ensured:

- Prior approval must be obtained for use of outside experts through the investigation work plan.
- If legal expertise is needed, LSO/BOM should be contacted.
- If audit, accounting, or other financial expertise is needed, the Deputy Director (Audit) should be consulted.
- If IT expertise is needed, OIST and/or the OAI IT Audit Specialist should be contacted.
- UNDP procurement protocols, including the use of standard contract formats, must be followed for engaging an expert's services.
- Prior to using the services of an outside expert, a confidentiality agreement must be signed by the expert who must agree not to disclose information concerning the investigation prior to, during or after their engagement.
- The contract must specify that evidence collected by the expert is the property of UNDP.
- The contract must specify that UNDP has ownership rights to the expert's work product, including working papers.
- Any report produced by the consultant must be timely submitted to the lead investigator or to the Deputy Director (Investigations).

13. Reporting on the Investigation

13.1. Closure Report

Closure reports address reported alleged misconduct involving implicated UNDP personnel. Closure reports are prepared to ensure accountability of the process, including the decision to close the investigation if the allegations are not substantiated.

A closure report outlines the facts established through the investigation process that show there is no basis on which to pursue an investigation, that the available evidence does not substantiate the reported misconduct or that, due to extenuating circumstances, an investigation is no longer possible or warranted. The closure report contains a description of the alleged misconduct, the investigative methodology and the established facts that justify a conclusion that the case can be closed.

The closure report is signed by the Deputy Director (Investigations) and the Director, OAI, thereby approving closure of the case.

OAI will notify the complainant and the subject by letter that the investigation has been closed. OAI will also inform the Director, LSO/BOM and other stakeholders by memo that the case has been closed.

13.2. Management Letter

In some instances, a management letter may be warranted. A management letter is prepared by OAI to convey to management (either at Headquarters or at the office concerned) issues arising from the investigation that require immediate corrective action in order to strengthen internal controls and prevent similar incidents from happening. The management letter can also include observations outside the parameters of the investigation that require management attention. OAI will follow up on recommendations contained in the management letter until fully implemented or no longer actionable. OAI will notify the complainant by letter and LSO/BOM by email that the case has been closed, but that OAI identified one or more managerial issues that have been referred to management for further action.

13.3. Investigation Report

Investigation reports are used to present facts established through the investigation process that substantiate misconduct committed by UNDP personnel in contravention of the Staff Regulations and Staff Rules, the Legal Framework and/or UNDP's administrative policies and issuances. If the investigation produces adequate evidence to reasonably conclude that wrongdoing has occurred, the investigator will prepare an investigation report, setting forth the outcome of the investigation. If the investigation subject is a UNDP staff member, OAI will provide a draft of the investigation report to the staff member for comments (see below). After finalization and approval, the Deputy Director (Investigations) submits the investigation report to LSO/BOM for appropriate action. OAI does not share final investigation reports with investigation subjects, complainants, other investigation participants or Heads of Offices.

13.4. Investigation Report Structure

An investigation report should be an objective account of the facts examined. The report should be brief and cover major categories listed below:

- Introduction
- Allegations
- Background
- Applicable legal norms
- Investigation details
- Investigation results

13.4.1. Introduction

This section gives a brief introduction of what the case is about, who is conducting the investigation, when and how the allegations came to the attention of OAI, timeframe for the investigation and the location(s) where it was carried out.

This section of the report also discusses the methods used to undertake the investigation, such as interviews conducted with witnesses and subject(s), documents and electronic evidence collected, etc.

13.4.2. Allegations

This section of the report specifies the allegations made by the complainant against the investigation subject.

13.4.3. Background

The background of the report provides the reader with a background to the transactions and/or the activity investigated and places the activity in the context of the UNDP programme and operations.

13.4.4. Applicable Legal Norms

This section of the report discusses very briefly which provisions of the Staff Regulations and Staff Rules, Legal Framework, UNDP policies and/or other administrative issuances apply and may have been violated.

13.4.5. Investigation Details

The investigation findings give a detailed account of the facts of the case. The findings outline the work undertaken, how evidence was obtained, what the evidence shows and how it brings us to a conclusion about the events and their implication.

13.4.6. Investigation Results

This section of the report summarizes the conclusions based on the facts of the case as presented above. In this section, conclusions are made about what took place and whether the case should be referred to LSO/BOM for further action. If the facts established satisfy the requirements of the legal norms quoted this shall be shown in the section. OAI makes conclusions of facts, but does not make conclusions about the ultimate outcome of the case.

When the investigation also indicates that important changes or improvements to management practices, controls and procedures are needed to prevent similar actions from reoccurring, then a separate management letter should be written. The management letter is addressed to the concerned offices that need to take appropriate actions.

13.5. Submission of Draft Investigation Report to Investigation Subject

If the investigation subject is a UNDP staff member, in accordance with the Legal Framework, the Deputy Director (Investigations) transmits a copy of the draft investigation report to the investigation subject, requesting the investigation subject to provide comments on the factual findings and conclusions of the investigation report and produce countervailing evidence, if any.²³

OAI shall provide the investigation subject a reasonable period of time to respond, normally between ten (10) and thirty (30) working days, depending on the seriousness and complexity of the matter. The Deputy Director (Investigations) may, exceptionally, grant the investigation subject an extension of time in which to respond; provided the investigation subject sends a written request to the Deputy Director (Investigations) setting forth convincing reasons why he or she is unable to comply with the deadline.

OAI shall normally grant only one extension. OAI is not obligated to obtain comments from the investigation subject more than once. If the investigation subject fails to respond within the designated timeframe, the matter shall nevertheless proceed and the Deputy Director (Investigations) may sign and issue the report.

In the case of an investigation into allegations of retaliation in accordance with the UNDP Policy for Protection against Retaliation, OAI shall forward the report to the Director, Ethics Office without obtaining prior comment on the report from the subject of the investigation.

²³The complainant is not entitled to receive a copy of the investigation report concerning allegations of wrongdoing against the investigation subject.

13.6. Final Report

OAI shall reflect the comments and any countervailing evidence provided by the investigation subject in the final investigation report, as appropriate.

After a final internal quality review and approval by the Director, OAI, the Deputy Director (Investigations) signs and issues the report (together with the comments and any countervailing evidence provided by the investigation subject, as set forth above) to the Director, LSO/BOM.

13.7. Submission of the Report

OAI submits the investigation report, the accompanying exhibits (and, as applicable, the comments of the investigation subject on the draft investigation report as well as any evidence he or she may have provided) to the Director, LSO/BOM or, in retaliation cases, to the Ethics Office, as provided above.

Copies of all evidence cited or referred to in the investigation report must be appropriately identified and indexed and submitted as exhibits to the report.

In accordance with Chapter III, paragraph 74 of the Legal Framework, LSO/BOM may seek clarification or verification from OAI and/or the subject of the investigation prior to making a recommendation on the next course of action.

The Deputy Director (Investigations) shall inform the subject(s) and individual complainant(s), by letter and any other stakeholders by email, that the case has been submitted to LSO/BOM.

13.8. Resignation or Separation of Investigation Subject

If the investigation subject is a UNDP staff member and resigns or otherwise separates prior to the completion of the investigation report, such investigation report may be finalised at OAI's discretion notwithstanding the investigation subject's resignation or separation.

The following procedure applies to investigation subjects who were former staff members:

- Should the investigation report be finalised, OAI shall send the draft investigation report to the former staff member and request the former staff member to provide comments. These comments shall be reviewed in accordance with the present Legal Framework, and the Director, LSO/BOM shall place a letter in the former staff member's official status file indicating whether, if he or she had remained employed: (1) a recommendation would have been made for charges of misconduct to be initiated against him or her, or (2) whether or not he or she would have been exonerated from the allegations of misconduct, or (3) whether the matter would have been dealt with from a work performance standpoint, and if so how (e.g. via a letter of reprimand). The letter shall also indicate whether the former staff member resigned while under investigation, or whether his or her contract expired while under investigation.
- Should OAI elect not to finalize the investigation report, the Director, LSO/BOM shall place a letter in the former staff member's official status file, indicating that he or she: (1) resigned or, (2) his or her contract expired while under investigation.
- In both instances, the former staff member shall be given an opportunity to present comments, and the letter and his or her comments shall be placed in his or her official status file.

13.9. Confidentiality of Investigation Reports

Investigation reports contain confidential and sensitive information about individuals and UNDP operations and activities. Disclosure of such information may be detrimental to the Organization's functioning, the welfare and safety of its staff or third parties and may also violate the Organization's legal obligations.²⁴ As such, investigation reports are considered strictly confidential internal documents.

²⁴ST/SGB/2007/6 (12 February 2007) on Information Sensitivity, Classification and Handling

Investigation reports will be given prominent confidentiality markings and their distribution will be restricted to specific instances provided for under OAI's mandate.

Where appropriate, reports may be redacted in accordance with set procedures designed to protect the identity of UNDP personnel and others, ensure fairness and due process for all parties concerned and to protect against reprisals.

14. National Authorities

National authority requests for UNDP investigation reports and supporting documents or for collaboration with UNDP to pursue possible criminal or civil action must be directed to LSO/BOM. The Director, LSO/BOM, will then liaise with the UN Office of Legal Affairs.²⁵ Waivers of UN privileges and immunities, either full or limited, can only be granted by the Secretary-General of the United Nations. No information, documents and/or evidence can be released to, and no UNDP staff member related to the investigation are allowed to be interviewed by local authorities or third parties prior to receiving a waiver of UN privileges and immunities.

15. External Oversight Bodies

The United Nations Board of Auditors and the UNDP Audit Advisory Committee have oversight functions of OAI's activities. In exercising these functions, they are entitled to copies of investigation and closure reports produced by OAI. Requests for OAI's reports must be directed to the Director, OAI, who has discretion as to whether redaction of reports is required to protect the confidentiality and due process rights of implicated individuals.

16. Responsibility for Updating the Guidelines

These Guidelines have been approved by the Director of OAI. The Deputy Director (Investigations) is responsible for keeping the Guidelines up to date, taking into account changes in the Legal Framework, applicable policies and procedures, and generally accepted standards for international investigations.

²⁵Convention on the Privileges and Immunities of the United Nations

17. Glossary

Allegation of wrongdoing is the reasonable belief based on factual information that misconduct has occurred.

BOM is the Bureau of Management.

Chain of custody is the process when the investigator takes control of the evidence and a record of its receipt and its subsequent handling is kept together with the names and times of those persons handling it.

Complainant is an individual making a good faith communication that discloses or demonstrates an intention to disclose information that misconduct may have occurred.

Disciplinary action is the procedure initiated against a staff member pursuant to Staff Regulation 10.1 and 10.2, Chapter X of the Staff Rules, and Chapter IV of the Legal Framework.

Duty of cooperation is the obligation imposed on staff members under Staff Regulation 1.2 (r) and Staff Rule 1.2 (c) to assist in an investigation, when requested to do so, by providing information in any form, including testimony, as relevant.

Evidence is any type of proof which tends to establish or disprove a fact material to the case. It includes, but is not limited to, oral testimony of witnesses, including experts on technical matters, documents, electronics, audio, video records and photographs.

Formal investigation is the process of assembling a dossier of evidence to permit a decision at a later stage as to whether formal charges of misconduct should be made against a staff member or whether the case should be closed.

Immediate family member is a mother, father, sister, brother or adult child.

Investigation participant is a person, who is not the investigation subject but who, under Staff Regulation 1.2 (r) and Staff Rule 1.2 (c), cooperates with an investigation, for instance, by being interviewed or by providing information.

Investigator is a member of OAI or a person designated by OAI to conduct an investigation related to cases of allegations of wrongdoings.

LSO/BOM is the Legal Support Office in the Bureau of Management.

Misconduct is the failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and the Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant. Such a failure could be deliberate (intentional, or wilful act), or result from an extreme or aggravated failure to exercise the standard of care that a reasonable person would have exercised with respect to a reasonably foreseeable risk (gross negligence) or from a complete disregard of a risk which is likely to cause harm (recklessness).

OAI is the Office of Audit and Investigations.

Personnel – in the context of this document, “personnel” refers to all individuals under contract with UNDP. This includes staff members, service contract holders, UNVs and consultants on Special Service Agreements and interns.

Preliminary assessment is the process of collecting, preserving and securing basic evidence, and the evaluation of this evidence to determine whether an investigation into reported allegations of wrongdoing is warranted.

Retaliation is any direct or indirect detrimental action recommended, threatened or taken because an individual made a protected disclosure, cooperated with a duly authorized audit or investigation or other oversight activities.

Staff Regulations and Staff Rules is the Staff Regulations of the United Nations and Staff Rules.

Subject is a person who is the focus of the investigation either by virtue of an allegation made or evidence gathered during the course of an investigation.

Witness is a person who is not the investigation subject but who cooperates with an investigation, either by being interviewed or by providing information or both. A witness can be any of the following: an individual making the allegation of wrongdoing or misconduct, a victim of the alleged act, an individual with direct or indirect information about the alleged act or subject, an individual with good knowledge of a business process related to the alleged act or an expert.

Annex - Legal Instruments

Charter of the Office of Audit and Investigations (February 2008)

UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (January 2010)

ST/SGB/2002/13 - Standards of Conduct for the International Civil Service

ST/SGB/ 2009/7 - Staff Regulations of the United Nations and Staff Rules

ST/SGB/2003/13 – Special Measures for Protection from Sexual Exploitation and Sexual Abuse

Principles and Guidelines for Investigations, adopted by the 10th Conference of International Investigators (June 2009)

UNDP Policy on Workplace Harassment and Abuse of Authority (January 2010)

UNDP Policy for Protection against Retaliation (January 2010)

Convention on the Privileges and Immunities of the United Nations (February 1946)

Policy on Use of Information Technology Communication and Technology Resources (2008)

ST/SGB/2007/6 - Information Sensitivity, Classification and Handling

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