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**POLICY**

PROGRAMME IMPLEMENTATION

Implementation of decisions adopted by the Governing Council  
at previous sessions

Review of programme and project activities

Report of the Administrator

Addendum: Agency accountability

SUMMARY

This report responds to Governing Council decision 87/13 which, inter alia, reiterated the request made in decision 86/15 urging the Administrator to initiate appropriate measures to ensure accountability by the executing agencies and requested the Administrator to report to the Council at its thirty-fifth session on specific proposals designed to ensure agency accountability.

The report describes the management measures being undertaken by UNDP which would lead to improved project performance and accountability; reviews the legal position regarding the application of penalty schemes; and discusses future options to be explored to ensure effective implementation of projects.

No specific recommendations are made to the Council at this session.

## INTRODUCTION

1. In recent years the Governing Council has expressed some concern about the quality of the performance of the specialized agencies in executing UNDP-funded projects and, in this regard, has emphasized the need to ensure agency accountability. Indeed these concerns have been formalized in several decisions of the Governing Council, the most recent being 87/10 and 87/13 of 18 June 1987. In paragraph 8 of decision 87/13 the Council reiterated "the request made in decision 86/15 urging the Administrator to initiate appropriate administrative measures to ensure improved performance by the executing agencies so that they are fully accountable for the fulfilment of their obligations in the execution of projects supported by the United Nations Development Programme". Moreover, in paragraph 9 it welcomed "the resumption of annual agency review meetings" and requested "the Administrator to report thereon to the Council at its thirty-fifth session (1988), including specific proposals designed to ensure agency accountability".

### I. MANAGEMENT ISSUES

2. It is the considered opinion of the Administrator that the introduction of a number of interrelated measures and procedures would lead, first, to the sustained improvement of UNDP-funded projects and, second, to the possibility both of isolating specific activities and of identifying those accountable for their implementation.

3. Accordingly, the Administrator has taken the following steps:

(a) The project formulation process has been improved in order to ensure more rigorous project design and more "monitorable" project documents. The new project document format, with the attendant project formulation framework, includes specific performance criteria and milestones which will enable UNDP to monitor project implementation more effectively and to check on agency performance more adequately;

(b) The new project document format, in contrast to its predecessors, specifically requires that (i) the party responsible for each project activity be identified; (ii) for each activity the expected duration and sequence be spelt out; and (iii) the project document contain a detailed description of the project's management arrangements, indicating line authority and therefore ascribing responsibility;

(c) The budgets of projects would now be more detailed, and schedules for their expenditure more rationally devised. Here again the monitoring and accountability process would be greatly improved;

(d) There will be a closer review by UNDP itself of the qualifications and previous performance of experts, particularly for those projects which are either considered complex or are known to be in areas for which performance has in general been poor. This is already being done and, in some cases, experts identified and proposed by the executing agencies are brought to UNDP for interview;

(e) Concomitant with this review of the expertise offered by the agencies for the execution of UNDP projects, it has been decided to "weed out" and terminate the contracts of experts who merely move from phase to phase of a project and to conduct UNDP's own evaluations of their performance;

(f) Action is being taken to encourage Governments to monitor projects and to enhance their capacity to do so, in addition to ensuring closer monitoring by UNDP field offices;

(g) UNDP headquarters will ensure not only that tripartite review meetings are held in a timely manner, but also that their recommendations are followed up and implemented by all parties concerned;

(h) More systematic follow-up of those operational issues identified during project evaluation missions is being undertaken.

4. The establishment of project appraisal committees, both at headquarters and in the field offices, and of the Action Committee has also contributed in no small measure to improved project design and therefore monitorable performance and increased accountability.

5. As part and parcel of this more rigorous approach to agency accountability, the Administrator has, as the Governing Council has already been advised, reinstated agency review meetings. Indeed, a series of meetings was held in 1987 between UNDP and all the agencies that are located at Geneva, Rome, Paris and Vienna. At these meetings, problems related to pipeline build-up and delivery were discussed, as well as issues related to improving the quality of projects while at the same time implementing them expeditiously. Of prime importance at these meetings, which were led by the Associate Administrator, were the discussions on backstopping problems, both technical and administrative. The meetings were characterized by an excellent, constructive spirit all around. It is intended to hold these meetings regularly, alternating as far as possible between UNDP and agency headquarters. At future meetings, specific problems which arise in particular projects, or in particular types of projects, will be addressed.

6. As a direct result of the agency review meetings, UNDP has also begun a series of meetings with the agencies to consider specific policy issues and broad technical approaches to the solution of some of the development issues of recipient countries. The first of such meetings was held in 1987 with the International Labour Office (ILO), and it is proposed to hold similar consultations with the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations Industrial Development Organization (UNIDO), for example, in 1988.

7. In order to back-stop projects more effectively, the Associate Administrator, in a letter to the agencies and to resident representatives, has clarified UNDP's policies on the visits of agency staff to projects and has encouraged more visits to projects by agency headquarters staff.

## II. THE LEGAL POSITION AND PENALTIES

8. UNDP has made a thorough study of the possibility of ensuring agency responsibility through the application of penalties for the poor implementation of UNDP-funded projects, and is of the view that, to be effective, penalty schemes require legal instruments in which:

(a) The rights and responsibilities of each party concerned are clearly attributed and unambiguously defined;

(b) Realistic objectives are set and described, within a specific time-frame and budget;

(c) The inputs/outputs and end-products to be delivered are clearly specified (by type, quantity, quality standards, cost estimates, delivery schedules, etc.);

(d) Specific provisions are foreseen, outlining the measures to be taken in the event of failure by the host Government and/or the executing agency to carry out their respective contractual obligations as specified in the project document.

9. These legal instruments should be supported by (a) effective and systematic monitoring by UNDP field offices and regional bureaux in order to verify that performance clauses are being satisfactorily met; and (b) a reliable management information and reporting system that would identify projects where agency and/or government performance is unsatisfactory and where the penalty clause needs to be invoked.

10. It appears that the current legal instruments governing UNDP assistance do not appear to meet the criteria adumbrated in paragraph 8 above. According to General Assembly resolution 2688 (XXV) (the "consensus resolution"), UNDP is responsible and accountable to the Governing Council for the management and effective utilization of programme resources and for all aspects of programme implementation (resolution 2688 (XXV), paras. 30 and 37). While the consensus confers legislative authority on the UNDP Administrator to hold executing agencies accountable (para. 43), it fails to take into account the fact that the basic legislative texts governing the agencies to all intents and purposes do not permit them to enter into contractual arrangements the breach of which would lead to the agencies' incurring monetary penalties. Moreover, in the present circumstances it might be extremely difficult to establish an agency's responsibility for shortcomings or delays in project implementation because of the tripartite nature of the exercise and the inadequacy of the existing legal instruments. 1/

11. For example, the Standard Basic Agreement (SBA) with governments attributes overall responsibility to host Governments while at the same time attributing primary responsibility to the executing agency. On the other hand, SBAs with agencies define their status as independent contractors vis-à-vis UNDP and state that they are accountable to UNDP. Agreements containing such language have been signed or otherwise acceded to by 15 executing agencies. However, a number of other agencies have signed earlier forms of agreements, notably with the Special Fund, which do not contain the above language about their accountability to UNDP.

These included the United Nations, the ILO, the Food and Agriculture Organization of the United Nations (FAO), UNESCO, the World Health Organization (WHO), the World Meteorological Organization (WMO), the International Telecommunication Union (ITU), the International Atomic Energy Agency (IAEA), UNIDO, the Universal Postal Union (UPU) and the Arab Gulf Programme for United Nations Organizations (AGFUND). Further, from the language in this second group of agreements, it might be interpreted that the statement about agencies having the status of "independent contractors" has been inserted for purposes of insulating UNDP (or the Special Fund) from liability for the acts or omissions of the employees of executing agencies (and vice versa). In other words, that language has to do with the law governing the liability of principals for the acts of their agents, rather than with the issue of accountability of the agencies to UNDP per se.

12. The case can probably be made, if on no other ground than by analogy to the common law of principal/agency relations, that agencies have the duty to be accountable towards UNDP for funds entrusted to them. The real question is not whether agencies have a duty to account to UNDP, either based on signed agreements or common law principles, but rather what such accountability means in practice. The answer to this question, in turn, is one of practical, administrative reality. It is not a truly legal issue.

13. It also appears that it would be difficult to apply penalties in the traditional type of UNDP project. Penalty schemes are normally associated with large-scale construction and civil works. According to the World Bank guidelines for contract preparation:

"Penalties for late completion are only applicable where late completion can be quantified financially (possibly in design and bid evaluation assignments). The [penalty] clause is usually difficult to invoke due to difficulty in placing responsibility for delay.

"Performance guarantees are recommended only where end-product can be easily measured, as with fertilizer output, electricity consumed, etc.;

"Withholding of final payment is the recommended method of allowing a client to remedy a contractually-unacceptable end-product. The final payment may be withheld until deficiencies are corrected. It may be set at between 5-10 per cent of total contract cost. It could be that [although the consultant has performed according to the contract, the] recommendations may not be acceptable to the client. Nevertheless, if the consultant has performed in accordance with the contract, unacceptable recommendations should not mean withholding of final payment.

"Retention of a percentage of payments to the consultant ... is not recommended, as it will tend to increase overall cost to client."

14. As can be seen from the World Bank's contract guidelines, it is no easy matter to apply penalties or to exact performance guarantees, even for large-scale capital investment projects where there are tangible end-products. Given the nature and scale of UNDP technical assistance, which is mostly in the "soft" areas of

institution-building and provision of advisory services, the difficulties involved would be compounded.

15. Penalties and disincentives might possibly be applied in certain types of UNDP-financed projects, e.g. resource surveys and feasibility studies; construction and initial operation of pilot plants; and procurement, installation and initial operation of high-technology equipment. It may be possible in this type of project to define quality-control and performance criteria and to provide for penalties in cases where the host Government could potentially suffer additional costs or loss of revenue as a result of delays or otherwise unsatisfactory performance by the agency. However, given the shared responsibilities of the host Government and executing agency for project implementation, it might be difficult, in spite of the new project document format, to prove conclusively that only the agency is responsible. Much time, effort and money would be spent in the process.

16. Because it appears that the legislation governing the specialized agencies would not permit them to make payments for what in law would presumably be breaches of contract, because of the tripartite nature of UNDP's technical co-operation, because of the difficulty of apportioning blame and because of the special relationship which the Programme enjoys with the agencies and organizations of the United Nations system, it would seem that monetary penalty schemes are not a practical option.

17. However, there are other measures which might be taken to ensure that UNDP-funded projects are effectively executed by the agencies: these would include the rigorous design of projects, close monitoring of their implementation and corrective action whenever this is deemed necessary. If after all this has been done there is sufficient evidence that an executing agency cannot effectively implement particular types of projects, UNDP, as a matter of policy, will make other arrangements for their execution.

### III. FUTURE APPROACHES

18. The Administrator considers this matter of agency accountability to be of the highest importance. He therefore intends to continue to explore the possibilities of improving the machinery and mechanisms that are designed to improve quality. In particular, he will further enhance UNDP's procedures and capacity to identify specific responsibilities and therefore enable UNDP to take appropriate measures to correct inadequacies.

19. In addition, as part of the review of the existing arrangements for project support costs which are due to expire in 1991, the Governing Council of UNDP has been invited by General Assembly resolution 42/196, paragraph 34, to make proposals that will ensure enhanced project quality and maximum cost-effectiveness. Accordingly, the Administrator is in the process of considering a range of options.

20. These options, which are not mutually exclusive, will be further examined for their legal, structural and administrative implications and discussed with the agencies in the course of this year. They include:

(a) Negotiating contractual arrangements with the agencies for specific tasks. These might cover the gamut of UNDP activities ranging from sectoral studies, through project identification and preparation, to project implementation. They might also embrace any studies and investigations which UNDP considers the agencies capable of undertaking in order to improve the effectiveness of UNDP-funded projects. Payment for these activities will be negotiated for each specific task. Payment will either be in phases on satisfactory completion of identified tranches or on the satisfactory completion of the whole exercise. In this option United Nations agencies will be required to compete with other agencies, private enterprises, non-governmental organizations, etc.;

(b) Contracting with the agencies for the performance of agreed types of tasks. These agreements will specify the nature of the tasks to be performed and the period of time for their completion. They would contain performance criteria and might include, for example, sectoral analyses and the technical backstopping of projects during implementation. Payment would be made periodically, as agreed upon between UNDP and the agency. UNDP would be solely responsible for identifying, preparing, monitoring and evaluating projects. The agencies' contribution, in this option, would be basically technical in nature;

(c) Placing even greater emphasis on government execution, with the agencies, when necessary and desirable, being subcontracted by Governments to perform specific tasks, for which they will be paid after satisfactory performance.

21. Other approaches which the Administrator is considering in reviewing the existing arrangements for project support costs include the establishment of a fund which would be used to correct and mitigate mistakes that have been caused by inadequate agency execution. Resources for this fund would be obtained by pooling a portion of the overhead payments of all agencies. Moreover, particular project(s) may be withdrawn from agencies if they fail to perform effectively.

22. This list of options is, of course, not exhaustive. They are presented here to illustrate the ramifications of this important subject. The technical and legal issues need to be further researched, and the applicability criteria and ancillary prerequisites further examined. In addition, the various issues will have to be thoroughly discussed with the agencies. The Administrator will report to the Governing Council at its thirty-sixth session in June 1989 on his findings and will make appropriate recommendations.

#### Notes

1/ As has been stated in paragraph 3, subparagraphs (a) to (c), the parties responsible for particular activities will be clearly identified in the new project document format. However, UNDP will need to build up experience before it is in a position to consider the application of monetary penalties for breaches of conditions contained therein.

