



## **INVESTIGATION GUIDELINES**

**October 2012**

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## 1. Purpose

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

- Inform investigation participants,<sup>1</sup> the subject(s) of an investigation and other stakeholders about the investigative process, and
- Guide the investigative process to ensure that investigation activities are conducted thoroughly, objectively and effectively, in accordance with professional standards and best international practice.

The Investigation Guidelines are a guide to best practice but are not mandatory in every situation. To ensure consistency in the investigation of OAI cases, investigations are to be conducted in accordance with these guidelines to the extent possible. However, the circumstances of a particular investigation – for example, the need to preserve evidence before notifying a subject – may necessarily affect the application of the guidelines to the specific circumstances of a case. Deviations from these guidelines may not necessarily constitute a due process violation.

### Legal Basis

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

- The UNDP Programme and Operations Policies and Procedures (POPP);<sup>2</sup>
- The Charter of the Office of Audit and Investigations;<sup>3</sup>
- The contracts between UNDP and contracting parties (for example, Service Contractors, Individual Contractors, implementing partners, and vendors);<sup>4</sup>
- The UNDP Anti-Fraud Policy;<sup>5</sup>
- The UNDP Vendor Sanctions Policy; and
- The UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (Legal Framework).<sup>6</sup>

The Guidelines reflect generally accepted investigation standards for international organizations as laid down in the “Uniform Principles and Guidelines for Investigations,” adopted by the 10<sup>th</sup> Conference of International Investigators.<sup>7</sup> They are consistent with Article 101, paragraph 3 of the United Nations Charter; the Standards of Conduct for the International Civil Service;<sup>8</sup> the United Nations Staff Regulations (Staff Regulations and Staff Rules);<sup>9</sup> the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission;<sup>10</sup> and UNDP’s administrative policies and issuances.

## 2. OAI’s Mission and the Nature of OAI Investigations

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 investigation services. OAI has sole responsibility for conducting investigations within UNDP.

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<sup>1</sup> For all definitions, such as “investigation participant,” please see Section 11 Annex – Definitions.

<sup>2</sup> UNDP Programme and Operations Policies and Procedures.

<sup>3</sup> Charter of the Office of Audit and Investigations (December 2010).

<sup>4</sup> See individual contracts and the Service Contract User Guide.

<sup>5</sup> UNDP Policy on Fraud and Other Corrupt Practices (March 2011).

<sup>6</sup> UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (January 2010).

<sup>7</sup> “Uniform Principles and Guidelines for Investigations” as endorsed by the 10th Conference of International Investigators (June 2009).

<sup>8</sup> Standards of Conduct for the International Civil Service (2001).

<sup>9</sup> ST/SGB/2009/7 Staff Regulations of the United Nations and Staff Rules.

<sup>10</sup> ST/SGB/2002/9 Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (June 2002).

OAI's Investigations Section has the mandate to investigate all reports of alleged wrongdoing involving UNDP staff members and allegations of fraud and corruption against UNDP, whether committed by UNDP staff members or other persons, parties or entities, deemed to be detrimental to UNDP. OAI is the sole office in UNDP mandated to conduct investigations.<sup>11</sup> The Investigations Section also has the mandate to conduct investigations involving all staff members and other non-staff personnel of other organizations for which OAI provides investigation services.<sup>12</sup>

OAI conducts investigations into allegations of:

- Procurement fraud
- Corruption and bribery
- Theft and embezzlement
- Entitlements fraud
- Misuse of UNDP resources
- Misrepresentation
- Failure to comply with financial disclosure requirements
- Improper recruitment
- Retaliation against whistleblowers<sup>13</sup>
- Sexual exploitation and sexual abuse
- Assault and threat
- Workplace harassment
- Abuse of authority
- Failure to comply with local laws/abuse of privileges and immunities
- Any other misconduct, such as willful, reckless or grossly negligent disregard of UNDP regulations, rules and administrative instructions.

OAI does not investigate allegations that do not constitute misconduct but indicate managerial issues or interpersonal issues.

#### Primary Objectives of the Investigative Process

With respect to staff members, the primary objective of the investigative process is to establish the facts relevant to an allegation in order to enable the Legal Support Office (LSO) to initiate necessary actions, including disciplinary proceedings.

With respect to contractors, the primary objective of the investigative process is to establish the facts relevant to an allegation in order to enable the Head of the contracting office to take necessary actions, including termination of the contract.<sup>14</sup>

With respect to both staff members and contractors, the investigative process also gathers evidence relevant to a decision on whether referral of cases to national law enforcement authorities for criminal investigation and prosecution is appropriate.

With respect to vendors, the primary objective of the investigative process is to establish the facts relevant to an allegation in order to enable the Vendor Review Committee to make decisions on debarment and other appropriate sanctions that may exist.

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<sup>11</sup> OAI Charter and Paragraphs 1 and 2, "Uniform Principles and Guidelines for Investigations" as endorsed by the 10th Conference of International Investigators (June 2009).

<sup>12</sup> At the time of preparing the Investigation Guidelines, this includes UN Women.

<sup>13</sup> For more specifics on retaliation, please refer to section 6.2.

<sup>14</sup> The term "contractor" includes, as required by the context, service contractors and individual contractors.

With respect to cases of others falling within the scope of OAI investigations (for example, UN Volunteers working for UNDP, certain external parties and interns), the primary objective of the investigative process is to form the factual and evidentiary basis for appropriate action.

As such, the investigative process 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. Matters that do not fall within the scope of OAI's mandate, such as allegations of poor work performance, are dealt with by other UNDP procedures and are not subject to OAI investigations.

Investigative findings shall be based on facts and related analysis, which may include reasonable inferences.<sup>15</sup> These findings should follow an objective assessment of all information, including inculpatory and exculpatory evidence, gathered in the course of the investigation.<sup>16</sup> Investigations follow prescribed steps to objectively investigate allegations and to establish the facts while ensuring procedural fairness. For a more detailed description of the investigative process, see section 8.

Following the completion of the investigative process, 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) or the UN Office of Legal Affairs 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.

### **3. Confidentiality**

Confidentiality is required for effective investigation and other appropriate action in cases of alleged wrongdoing. Confidentiality is in the interest of the Organization, investigation participants and the subject of the investigation. Information will only be disclosed as required by the legitimate needs of the investigation. The requirement for confidentiality extends equally to investigators, management, staff members and other personnel, investigation participants, and investigation subjects.

During the course of an investigation it will be necessary for OAI to provide details to people with a legitimate 'need to know.' This may include: (i) information provided to subjects to allow them to fully respond to allegations and to provide countervailing evidence; (ii) information contained in requests to witnesses or other people with whom investigators speak or communicate in order to verify facts; (iii) where appropriate (for example, to mitigate risk to the organisation), preliminary information is shared with the LSO/BOM and/or senior management during the course of an investigation to allow necessary action to be taken prior to the conclusion of an investigation. Any such information must not be further communicated without the written approval of OAI and must be treated in accordance with any instructions given by OAI.

In determining the level of information that is provided to subjects, witnesses and others in the course of an investigation, OAI will seek to strike a balance between the legitimate need for information and the risk that the OAI investigation (or any later investigation for example, by national authorities) will be compromised and/or that witnesses and whistleblowers will be subject to retaliation.

Requests for confidentiality by investigation participants will be honoured to the extent possible within the legitimate needs of the investigation. However, the identity of investigation participants or subjects and the details of the investigation may become known for reasons outside the control of the investigators.

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<sup>15</sup> Paragraph 8, "Uniform Principles and Guidelines for Investigations" as endorsed by the 10th Conference of International Investigators.

<sup>16</sup> Paragraphs 19, 22 and 42, "Uniform Principles and Guidelines for Investigations" as endorsed by the 10th Conference of International Investigators.

In certain cases (for example, workplace harassment and abuse of authority), the identity of the complainant and/or other investigation participants will need to be shared with the investigation subject during the preliminary assessment to allow a response and the submission of any countervailing evidence that may be relevant to the assessment. This disclosure may be delayed where there is risk to documentary evidence, witnesses and potential victims.

#### 4. Investigation Standards

The General Principles set out in the “Uniform Principles and Guidelines for Investigations,” as endorsed by the 10<sup>th</sup> Conference of International Investigators, apply to all investigations conducted by OAI. These principles include the following:

- The purpose of an investigation by the Investigative Office is to examine and determine the veracity of allegations of corrupt or fraudulent practices as defined by each institution<sup>17</sup> including with respect to, but not limited to, projects financed by the organization, and allegations of misconduct on the part of the organization’s staff members.
- The Investigation Office shall maintain objectivity, impartiality and fairness throughout the investigative process and conduct its activities competently and with the highest levels of integrity. In particular, the Investigative Office 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.
- The staff of the Investigative Office shall disclose to a supervisor in a timely fashion any actual or potential conflicts of interest.
- Appropriate procedures shall be put in place to investigate allegations of Misconduct on the part of any staff member of an Investigative Office.
- The Investigative Office shall take reasonable measures to protect as confidential any non-public information associated with an investigation.
- Investigative findings shall be based on facts and related analysis, which may include reasonable inferences.
- The Investigative Office shall make recommendations, as appropriate, to the Organization’s management that are derived from its investigative findings.
- All investigations conducted by the Investigative Office are administrative in nature.<sup>18</sup>

#### 5. Standard of Evidence

Disciplinary proceedings resulting from OAI investigations are not of a criminal nature, but rather are administrative proceedings regulated by the rules and policies of the Organization. At the time of the publication of these Guidelines, case law of the United Nations Dispute Tribunal obligates OAI only to present “adequate evidence,” i.e., sufficient facts to permit a reasonable inference that a violation has occurred. The exact standard of proof required of OAI will vary with the seriousness of the alleged offense and the severity of the potential sanction, but in all cases will be lower than proof beyond a reasonable doubt. In 2010, the UNDT ruled that,

“The standard of proof of evidence required to institute disciplinary proceedings appears to have been well set down in the UNAT judgment of *Araim*<sup>19</sup> where it was stated as follows: ‘The Tribunal has repeatedly stated that disciplinary proceedings are not of a criminal nature, but rather they are administrative proceedings, regulated by the internal law of the Organization. (See Judgment No. 850, Patel 1997). As stated correctly by the JDC in its report, the Administration is not required to prove its case beyond reasonable doubt. It has only to present adequate evidence in support of its conclusions and

<sup>17</sup> Refer to UNDP’s Anti-Fraud Policy and Vendor Sanctions Policy for definitions of fraudulent and corrupt conduct.

<sup>18</sup> However, the “Uniform Principles and Guidelines for Investigations” contain the following footnote on this point: “Where fraud is involved, the Investigative Office may assist the responsible national authorities by providing expert advice, support and resources during the course of criminal investigations where appropriate and where mutually agreed.”

<sup>19</sup> Administrative Tribunal Judgment No. 1022, Case No. 1124: Araim Against the Secretary-General of the United Nations, 21 November 2001, p.14, [http://untreaty.un.org/UNAT/UNAT\\_Judgements/Judgements\\_E/UNAT\\_01022\\_E.pdf](http://untreaty.un.org/UNAT/UNAT_Judgements/Judgements_E/UNAT_01022_E.pdf).

recommendations. Adequate means “reasonably sufficient for legal action” (the Random House College Dictionary, revised edition 1982), in other words sufficient facts to permit a reasonable inference that a violation has occurred.”<sup>20</sup>

Regarding the onus of proof in disciplinary cases, the UNDT ruled:

“UNAT held on many occasions that the Respondent is not required to prove beyond reasonable doubt that misconduct has occurred; on the other hand, the onus is on the Respondent to produce sufficient evidence to sustain his conclusions, in other words to establish sufficient facts to permit a reasonable deduction that the law has been broken. Once the Administration has assembled enough evidence to sustain the conclusion that misconduct has occurred, it is up to the staff member to furnish evidence to the contrary or offer a satisfactory explanation of the conduct at issue.”<sup>21</sup>

## 6. Rights and Obligations of Subjects and Other Investigation Participants<sup>22</sup>

### 6.1. Rights

During an investigation, all investigation participants have a right to:

- A presumption of innocence throughout the investigation;
- A professional, impartial and thorough investigation; and
- Due care in the handling and sharing of confidential information during the conduct of the investigation.

All persons interviewed by OAI will:

- Have the interview(s) scheduled at a reasonable place and time and be provided with the details of the individual(s) conducting the investigation interview;
- Be treated with fairness and given an explanation of the investigation process;
- Have the assistance of an interpreter during an interview, if required, within the working languages of UNDP, which are English, Spanish and French;
- Investigation subjects (or complainants in cases relating to allegations of sexual exploitation, sexual abuse 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 readily available and not involved in the investigation, as determined by OAI. The observer must agree to respect the confidentiality of the investigation and sign a confidentiality statement. The observer may not interrupt, prevent or delay the interview, and is not allowed to speak during the interview. If the investigator considers the presence of the observer to be disruptive, the observer may be asked to leave and the interview will proceed without the observer. Considering the cultural context, gender and other elements of the case, the investigator may also select an observer (e.g. field security officer, etc.) to attend the interview;<sup>23</sup>
- To the extent possible, interviews conducted by OAI will be conducted by two persons;
- Investigation subjects and participants have no right to the presence of counsel during interviews;<sup>24</sup> and
- OAI will not pay a witness or a subject for information.

An individual who has been made the subject of an investigation is entitled to:

<sup>20</sup> United Nations Dispute Tribunal Judgement No. UNDT/2010/056, Masri v. Secretary-General of the United Nations, Judgment on an Appeal Against Summary Dismissal, 7 April 2010, pp. 15-16, <http://www.un.org/en/oaj/undt/judgments/undt-2010-056.pdf>.

<sup>21</sup> United Nations Dispute Tribunal Judgement No. UNDT/2010/058, Molari v. Secretary-General of the United Nations, Judgment, 7 April 2010, p.17, <http://www.un.org/en/oaj/files/undt/judgments/undt-2010-058e.pdf>.

<sup>22</sup> ST/SGB/2009/7 Staff Regulations of the United Nations and Staff Rules.

<sup>23</sup> Paragraph 66, UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (January 2010).

<sup>24</sup> Ibid.

- Be advised in writing of the nature of the allegations and his or her role in the investigation no later than at the time of interview; and
- Be given the opportunity to explain his or her actions and to provide any documents or information that may be relevant to the factual determination of the matter, along with the names and details of any witnesses who may have relevant information.

In cases where OAI recommends the consideration of disciplinary action, staff members who are the subject of an investigation have the following rights:<sup>25</sup>

- The staff member will be interviewed in the course of the investigation. The interview will be audio or video recorded and a copy of the transcript will be made available to the subject who will be invited to sign it. The staff member cannot change their statement as recorded by OAI's recording devices;<sup>26</sup>
- Additionally, the staff member may choose to also provide a signed statement containing any clarification of their statements during the interview(s);<sup>27</sup> and
- The staff member will be provided with a copy of the draft investigation report, redacted as necessary to protect witnesses and whistleblowers. The staff member will 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 (normally between ten and thirty working days, depending on the seriousness and complexity of the matter).<sup>28</sup>

## 6.2. Notification of Subjects

An individual who has been made the subject of an investigation has the right to be informed in writing of his or her status and to know the nature of the allegation(s). This notification will take place at the earliest possible time.

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 individual must be notified in writing that he or she is the subject of an on-going investigation. The notification will take place no later than at the beginning of his or her interview as the subject of the investigation.

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. If an investigation participant provides information during an interview that makes him/her a subject, the interview will be stopped and a subject interview will proceed only after the person has been advised in accordance with the requirements of the first paragraph of 6.2 above.

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.

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<sup>25</sup> There is no 'disciplinary process' for non-staff personnel and therefore, these provisions apply specifically to staff members.

<sup>26</sup> Paragraph 65, UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (January 2010).

<sup>27</sup> Ibid.

<sup>28</sup> Paragraphs 67- 70, UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (January 2010).



### 6.3. Obligations

It is the obligation of all personnel to report alleged fraud, corruption or other wrongdoing.<sup>29</sup>

As required under Staff Regulation 1.2(r) and Staff Rule 1.2(c), staff members, including investigation subjects and participants, must cooperate fully and in good faith<sup>30</sup> with a duly authorized investigation. A lack of cooperation may result in disciplinary or other appropriate action. The same obligations apply to United Nations Volunteers,<sup>31</sup> Service Contractors,<sup>32</sup> Individual Contractors,<sup>33</sup> interns,<sup>34</sup> vendors,<sup>35</sup> and implementing partners<sup>36</sup> are required to cooperate in OAI investigations in accordance with the contract or agreement governing their contractual or programmatic relationship with UNDP. This includes providing OAI with full access to staff, facilities and documents to enable allegations to be investigated as appropriate.

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. Any such actions will be investigated by OAI and appropriate action will be taken, which may include a recommendation for consideration of disciplinary action or recommendation for referral to national authorities for criminal investigation.

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.

Investigators shall not interact with legal counsel for subjects or investigation participants or answer any questions from them regarding the specifics of the investigation.

### 6.4. Administrative Leave

The circumstances under which staff members who are the subject of an investigation may be placed on Administrative Leave by the Assistant Administrator and Director, BOM are outlined in the Legal Framework.<sup>37</sup>

## 7. Complaints

As part of UNDP's strategy to strengthen the accountability framework for the Organization and to provide opportunities for bringing to light any wrongdoing by any individual working for or doing business with UNDP, OAI has established a hotline and other measures to ensure that persons wishing to report wrongdoing may do so, free of charge, using a number of different options.

### 7.1. Reporting Alleged Wrongdoing to OAI

UNDP takes all reports of alleged wrongdoing seriously and all allegations are assessed to determine whether an investigation is appropriate. The Office of Audit and Investigations is the principal channel to receive allegations.

There are several channels for reporting a matter to OAI:

- By email (directly to OAI): [hotline@undp.org](mailto:hotline@undp.org)
- Through an online form accessible through the "anti-fraud hotline" link at [www.undp.org](http://www.undp.org)

<sup>29</sup> UNDP Anti-Fraud Policy.

<sup>30</sup> ST/SGB/2009/7 Staff Regulations of the United Nations and Staff Rules.

<sup>31</sup> In accordance with the Conditions of Service for International United Nations Volunteers (2006).

<sup>32</sup> In accordance with the Service Contract Agreement.

<sup>33</sup> In accordance with the Individual Contract Agreement.

<sup>34</sup> In accordance with the Statement of Understanding of the Conditions of the UNDP Internship, 9(a).

<sup>35</sup> In accordance with the UNDP Supplier Code of Conduct.

<sup>36</sup> In accordance with the contracting agreement between UNDP and the Implementing Partner.

<sup>37</sup> UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (January 2010).

- Through UNDP's hotline telephone answering system (toll-free):
  - Worldwide: +1-770-776-5678
  - In the United States: 1-877-557-8685
- By fax: + 1-770-409-5008
- By mail addressed to: Deputy Director (Investigations), Office of Audit and Investigations, 220 East 42nd Street, New York, NY 10017, USA

Anyone with information regarding alleged fraud, corruption or other wrongdoing by UNDP personnel or affecting UNDP projects or programmes, is strongly encouraged to report this information through the hotline.

People reporting wrongdoing to the hotline have the option to leave relevant contact information or to remain anonymous. However, allegations of workplace harassment and abuse of authority reported anonymously cannot be investigated by OAI.<sup>38</sup>

When reporting to the hotline, people are encouraged to be as specific as possible, including the basic details of who, what, where, when and how any of these incidents occurred. Specific information will allow OAI to properly investigate the alleged wrongdoing.

Supervisors who receive reports of wrongdoing are to immediately report the matter to OAI. Under no circumstances should investigations be undertaken by any party other than OAI without the express approval of OAI and under the guidance of OAI as appropriate.

## 7.2. Reporting to Other Offices and Authorities

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

If the allegations concern workplace harassment or abuse of authority, the staff member may first wish to explore options offered through informal conflict resolution, including mediation. The [HR user guide](#) on workplace harassment and abuse of authority sets out these options.

Individuals 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](mailto:scamalert@undp.org).

## 7.3. Receipt of Complaints

OAI will acknowledge a complaint within one week after its receipt whenever possible. Due to the confidential nature of investigations, updates on investigations will not be given to the complainant or investigation participants. However, the complainant will be notified of the closure or finalisation of an investigation.

## 7.4. Anonymous Complaints

OAI accepts anonymous complaints. However, anonymous complaints of workplace harassment or abuse of authority cannot be investigated.<sup>39</sup> 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.

<sup>38</sup> UNDP HR User Guide on Workplace Harassment and Abuse of Authority.

<sup>39</sup> UNDP Policy on Workplace Harassment and Abuse of Authority.

### 7.5. Malicious Complaints

The motives of a complainant are not relevant to the decision to investigate, and any recommendations made by OAI are based on an objective investigation and not on the complaint itself. However, where an investigation finds that an allegation was knowingly false, OAI will recommend appropriate action, which may include a recommendation for consideration of disciplinary or other action.<sup>40</sup>

## 8. Investigative Process

Upon receiving a complaint, OAI initiates its investigative process. The investigative process is comprised of three parts:

1. Assessment,
2. Investigation, and
3. Reporting.

### 8.1. Assessment

An assessment<sup>41</sup> is the process of collecting, preserving and securing basic evidence, and the evaluation of available information and evidence to determine whether an investigation is warranted. In certain circumstances, OAI may request assistance from Country Offices or other Bureaux/offices in conducting assessments.

Decisions on which investigations should be pursued are made in accordance with the rules, policies and procedures of the Organization. The outcome of the assessment is either:

1. A case closure because of insufficient evidence, because the allegations do not fall within OAI's mandate or because, for other reasons, an investigation is not warranted. While this often occurs in circumstances where a staff member has separated from UNDP, in such cases where a staff member separates during an investigation, the matter will be dealt with in accordance with paragraph 72 of the Legal Framework. In cases where a staff member has separated prior to the commencement of an investigation, the assessor will determine whether an investigation will be pursued.
2. Assignment of the case to an investigator and the preparation of an investigation plan setting out the investigation required to objectively determine the factual basis, or otherwise, of the allegation(s). Investigations will commence as soon as possible following assignment, but owing to resource constraints, cases will be prioritized and pursued accordingly.

OAI has the exclusive authority for determining whether to close a case or proceed with an investigation on the basis of OAI's assessment.

### 8.2. Investigation

An investigation is the process of planning and conducting appropriate lines of inquiry to obtain the evidence required to objectively determine the factual basis of allegations. This will include: (i) interviewing people with relevant information and recording their testimony; (ii) obtaining documents and other evidence; (iii) conducting financial and IT analysis;<sup>42</sup> (iv) evaluating information and evidence; and (v) reporting and making recommendations. OAI will conduct investigations expeditiously within the constraints of available resources.

Based on the investigation plan, the Deputy Director (Investigations) will authorize the opening of an investigation where it appears that the following conditions are met:

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<sup>40</sup> Paragraph 43, "Uniform Principles and Guidelines for Investigations" as endorsed by the 10th Conference of International Investigators, and paragraph 24(o), UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (January 2010).

<sup>41</sup> Assessment is the step preceding the opening of an investigation. In previous versions of the Investigation Guidelines, this step was also referred to as a "preliminary assessment."

<sup>42</sup> Where it is considered necessary to access IT data in order to obtain evidence directly relevant to the investigation, then this will be conducted in accordance with the Standard on the Acceptable Usage of UNDP ICT Resources, in particular Sections 4.6 and 4.8.1.

1. The allegation is within the scope of OAI's mandate;
2. The allegation appears, on its face, to be credible; and
3. In all of the circumstances an investigation appears to be warranted (taking into account, for example, the age of the matter, the appropriateness of non-investigative actions, and whether the matter is trivial).<sup>43</sup>

In certain circumstances, OAI may also prepare a management letter. Each of these documents is described below.

### **8.3. Reporting**

#### Closure Report

Closure reports are internal, confidential documents prepared for investigations that do not result in a recommendation for consideration of disciplinary, administrative or other action. A closure report is normally used in the following circumstances:

1. Where the evidence obtained in the course of the completed investigation does not substantiate the allegations;
2. Where, due to the circumstances, further OAI investigation is not warranted the case will be closed.

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 that the case has been closed. The closure report remains internal to OAI unless disclosure is authorised, on a case by case basis, by the Deputy Director (Investigations) or the Director, OAI.

#### Investigation Report

If the investigation reveals adequate evidence to reasonably conclude that wrongdoing has occurred, the investigator will prepare an investigation report setting out the allegations, the investigation methodology and the facts established in the investigation. Where the complaint involves more than one allegation, the investigation report will provide details of the investigative steps undertaken to corroborate each allegation, the evidence gathered as relevant to each allegation, and the OAI finding relating to each allegation.

The potential consequences of an investigation report vary depending on the contract modality of the subject. Specifically:

- If the subject is a UNDP staff member, the report is submitted to LSO/BOM for consideration of disciplinary proceedings or administrative action;
- If the subject is a service contractor or an individual contractor, a report is submitted to the responsible manager (Head of Country Office or of Bureau or Office) for review and further action;
- If the subject is a vendor, the report is submitted to the Vendor Review Committee for consideration of vendor sanctions;
- If the subject is a United Nations Volunteer (UNV), the report is submitted to the UNV Advisory Panel on Disciplinary Measure (APDM) Secretariat for consideration of disciplinary or other action; and
- If the subject is an intern, the remedy would be to terminate the internship agreement.

In addition, if the established wrongdoing is a potential violation of national law or appears to offer an adequate justification for a request for recovery of UNDP resources, the report may form the basis of a referral to

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<sup>43</sup> In addition, as stated in Judgment No. UNDT/2012/039, Powell v Secretary General, 28 March 2012: *"The Tribunal wishes to remind the Respondent again that an investigation should not be used as a fishing expedition to find off the cuff evidence against a staff member nor should it be initiated on the basis of idle chitchat. An investigation into a case of alleged misconduct requires the existence of some cogent evidence of the unsatisfactory conduct."*

national authorities. In cases where the investigation reveals credible evidence of a crime that appears appropriate for referral to national authorities, OAI will prepare a summary of the evidence and a request to LSO for referral of the matter to national authorities.

If the investigation subject is a UNDP staff member and the investigation does not involve allegations of retaliation, OAI will provide the subject with a draft of the investigation report requesting any comments that the staff member may wish to make on the factual findings and conclusions of the investigation report along with any countervailing evidence.<sup>44</sup> In such cases, OAI shall provide the investigation subject a reasonable period of time to respond, 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. If the investigation subject fails to respond within the designated timeframe, the matter shall, nevertheless, proceed. Upon receiving the subject's comments, OAI shall reflect the comments and any countervailing evidence provided by the investigation subject in the final investigation report, as appropriate. Once a final report has been prepared and submitted to LSO/BOM, the Deputy Director (Investigations) shall notify the subject(s), complainant(s) and any other stakeholders of the submission. Non-staff personnel are not entitled to review draft investigation reports.

In the case of an investigation into allegations of retaliation, in accordance with the UNDP Policy for Protection against Retaliation, OAI shall forward the investigation report directly to the Director, Ethics Office.

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 and/or the welfare and safety of its staff or third parties and may also violate the Organization's legal obligations.<sup>45</sup> As such, investigation reports are considered strictly confidential. OAI does not share final investigation reports with investigation subjects, complainants or other investigation participants, but LSO will send a copy of the final investigation report to the subject when a decision is made to charge him or her with misconduct. The distribution of investigation reports will be restricted to those with a legitimate 'need to know,' balancing the need for confidentiality with the need for effective remedial action. Any further dissemination of investigation reports should only be in accordance with instructions from OAI, and the Deputy Director (Investigations) should be consulted on any questions as to whether the report can be shared with other parties.

All investigation-related reports (apart from Management Letters, which are discussed below) are confidential, internal OAI documents.

#### Management Letter

In some instances, OAI issues a management letter following an investigation. A management letter is prepared to convey to the responsible manager(s) (Head of Country Office or of Bureau or Office) 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.

### **9. Referral to National Authorities**

In accordance with General Assembly resolution A/RES/62/63 of 8 January 2008, UNDP is requested to bring credible allegations that reveal a crime may have been committed by UNDP staff members or experts on

<sup>44</sup> The complainant is not entitled to receive a copy of the investigation report concerning allegations of wrongdoing against the investigation subject.

<sup>45</sup> ST/SGB/2007/6 Information Sensitivity, Classification and Handling (12 February 2007).

mission to the attention of the Government concerned.<sup>46</sup> Where an investigation reveals credible evidence of a crime, OAI will, as appropriate, recommend to LSO referral of the case to the competent national law enforcement authorities for criminal investigation and prosecution and will prepare a summary of evidence for transmittal to the national authorities concerned. In order for national law enforcement authorities to act on a referral originating from an OAI investigation, privileges and immunities may need to be lifted.<sup>47</sup>

### **10. 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 may request confidential access to 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.

### **11. Annual Report**

UNDP produces an annual report that publicizes the results of administrative and disciplinary measures taken with regards to cases of violation of the UN standards of conduct by staff members and other personnel. The report also summarizes cases in which action has been taken to ensure recovery of moneys owed to the Organization associated with disciplinary cases involving sanctions and other measures and cases of possible criminal behaviour that UNDP transmitted to the United Nations Office of Legal Affairs (OLA) for consideration of referral to national law enforcement authorities. The report is available on the UNDP website, with due regard for the protection of the privacy of the concerned individuals or entities.

### **12. 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.

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<sup>46</sup> A/RES/62/63 Criminal accountability of United Nations officials and experts on mission (8 January 2008).

<sup>47</sup> Convention on the Privileges and Immunities of the United Nations, Article V, section 20.

### 13. Annex – Definitions

For the purpose of the present document:

**Allegation** – an assertion of wrongdoing.

**Assessment** – the evaluation of an allegation by OAI to determine its credibility, materiality and verifiability. All allegations are assessed to determine whether there is a legitimate basis to warrant an investigation.<sup>48</sup>

**BOM** – Bureau of Management.

**Complainant** – the person making an allegation.

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

**Duty of cooperation** – the obligation placed on staff and other personnel to assist in an investigation when requested to do so.

**Evidence** – 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; electronic, audio, and video records; and photographs.

**Investigation** – a detailed inquiry and examination of evidence to objectively determine the facts following the receipt of an allegation. At the conclusion of an investigation, a dossier of evidence is assembled to form the basis of further action (such as a decision on whether formal charges of misconduct should be made against a staff member or termination of the contract of a Service Contractor).

**Investigation participant** – a person who is not the investigation subject but who cooperates with an investigation (for example, a witness who provides information to investigators).

**Investigation subject** – the person or one of the persons who is the focus of the investigation, either by virtue of an allegation made or evidence gathered during the course of an investigation.

**Investigator** – a person employed or engaged by the Office of Audit and Investigations (OAI) as an investigator.

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

**Manager** – a staff member or other personnel with a supervisory role.

**Misconduct:**

- (i) In the case of staff, the failure to comply with 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

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<sup>48</sup> Paragraph 30, “Uniform Principles and Guidelines for Investigations” as endorsed by the 10th Conference of International Investigators (June 2009).

- foreseeable risk (gross negligence) or from a complete disregard of a risk which is likely to cause harm (recklessness) (see Chapter I, Section 3 of the Legal Framework).
- (ii) In the case of Service Contractors and Individual Contractors
    - a. Service Contractors are obliged to comply with Annex I of their Service Contract in which the contractor agrees to abide by the Standards of Conduct defined in Section 14. Failure to abide by these standards will constitute misconduct.
    - b. Individual Contractors are obliged to comply with their Contract for the services of an Individual Contractor in which the contractor agrees to abide by the standards of conduct set forth in ST/SGB/2003/13 and ST/SGB/2002/9. Failure to abide by these standards will constitute misconduct.
  - (iii) In the case of UNVs, failure to abide by the code of conduct for UN Volunteers defined by the Conditions of Service for international UN Volunteers constitutes misconduct.<sup>49</sup>

**Need to Know** – This term is broadly used in an investigations context. For a definition see Wiki.<sup>50</sup> For an example of its use in the UN context: Need to Know “...Requires that only those individuals who must have access to be able to carry out their jobs or have other strong justification for seeing the information should be provided access...”<sup>51</sup> Holding a certain security clearance alone does not constitute “Need to Know” and does not mean an individual is entitled to see a document.

**Non-Staff Personnel** – For the purpose of this policy, non-staff personnel are individuals who do not have a UNDP letter of appointment, including persons working with UNDP under Individual Contracts (IC), persons engaged by UNDP under Service Contracts (SC), persons engaged by UNDP on a Reimbursable Loan Agreement or on a Non-reimbursable Loan Agreement, United Nations Volunteers (UNVs), and interns.<sup>52</sup>

**OAI** – the Office of Audit and Investigations.

**OHR/BOM** – the Office of Human Resources in the Bureau of Management.

**Personnel** – UNDP staff members, service contract holders (SCs), individual contractors (ICs), interns, and United Nations volunteers (UNVs).<sup>53</sup>

**Staff Members** – any person who holds a UNDP Letter of Appointment according to the United Nations Staff Regulations and Rules.<sup>54</sup>

**Staff Regulations and Staff Rules** – the United Nations Staff Regulations and Staff Rules.

**Whistleblower** – individuals who report wrongdoing.<sup>55</sup>

**Wrongdoing** – Includes misconduct by personnel but also includes fraud, corruption and like behaviour by implementing partners and vendors.

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<sup>49</sup> Conditions of Service for international UN Volunteers (September 2008)

[http://www.unv.org/fileadmin/docs/conditions\\_of\\_service/COS\\_INTL\\_SPEC\\_20080901\\_.pdf](http://www.unv.org/fileadmin/docs/conditions_of_service/COS_INTL_SPEC_20080901_.pdf).

<sup>50</sup> “Need to Know,” Wikipedia, [http://en.wikipedia.org/wiki/Need\\_to\\_know](http://en.wikipedia.org/wiki/Need_to_know).

<sup>51</sup> Archives and Records Management Section, DM & Peacekeeping Information Management Unit, DPKO, *Information Security Toolkit Version 1*, 24 February 2010, Section 9 b. “Need to Know” p. 16.

<sup>52</sup> Definition of “Non-Staff Personnel” from the HR User Guide section on workplace harassment and abuse of authority.

<sup>53</sup> Definition of “personnel” from the UNDP Anti-Fraud Policy.

<sup>54</sup> Definition of “Staff Members” from the HR User Guide section on workplace harassment and abuse of authority.

<sup>55</sup> POPP, UNDP Ethics Office, “Policy and Procedures,”

<https://intranet.undp.org/unit/office/ethics/protection/SitePages/How%20it%20works.aspx>.



#### 14. Annex – Legal References

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

General Assembly Resolution 62/63 – Criminal Accountability of United Nations officials and experts on mission

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

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

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

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

ST/SGB/2002/13 - Status, basic rights and duties of United Nations staff members

Charter of the Office of Audit and Investigations (December 2010)

UNDP Policy on fraud and other corrupt practices (“UNDP Anti-fraud policy”) (2011)

UNDP Vendor Sanctions Procedures (issued in the POPP, effective date 1 November 2011)

Standard on Acceptable Usage of UNDP ICT Resources (2011)

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

UNDP Policy for Protection against Retaliation (January 2010)

UNDP HR User Guide on Workplace Harassment and Abuse of Authority.

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

UNDP Service Contract User Guide (January 2008)

UNDP Supplier Code of Conduct (July 2007)

UNDP Programme and Operations Policies and Procedures

UNDP General Conditions of Contract

UNDP General Conditions of Contract for Civil Works

UNDP General Conditions of Contract for the Services of Individual Contractors

Statement of Understanding of the Conditions of the UNDP Internship, Application for UNDP Internship Programme

Conditions of Service for International United Nations Volunteers (2008)

Standards of Conduct for the International Civil Service

Uniform Principles and Guidelines for Investigations, adopted by the 10<sup>th</sup> Conference of International Investigators (June 2009)