

UNDP Social and Environmental Standards Office
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Via electronic mail

June 30, 2017

Dear UNDP Social and Environmental Standards Office,

Thank you for the opportunity to submit comments on UNDP's Draft Guidance Note on Stakeholder Engagement. We represent civil society organizations who work to ensure that development finance respects human rights and adheres to environmental and social safeguards so as to prevent or minimize harm to people and the environment. Further, we have expertise in independent accountability mechanisms and work to improve the fairness and effectiveness of these mechanisms, as well as supporting communities who use them.

Stakeholder engagement and access to remedy are fundamental to ensuring positive development outcomes, not only by minimizing adverse impacts on people and the environment, but also in ensuring that when development causes harm, people are not left behind. As such, it is essential to have a robust stakeholder engagement framework and grievance redress mechanisms.

People are central to development projects as they are often the intended beneficiaries and most impacted. To ensure that they truly benefit from projects and are not negatively impacted, people should be involved in the design and implementation of the proposed project, which can be facilitated by an effective stakeholder engagement policy acknowledging that engagement begins at project design, and continues throughout the project. Further, the draft guidance note must acknowledge that cultural understanding and awareness is central to meaningful stakeholder engagement. Stakeholder engagement is not a box-ticking exercise and cannot be done in a vacuum; instead, it must be done in a way that meaningfully considers the culture, language, and situation of those involved.

This draft guidance note on stakeholder engagement contains many positive elements building on UNDP's stakeholder engagement policy, and demonstrates that UNDP is committed to ensuring robust, inclusive stakeholder engagement. Public participation and freedom of expression are rights and as such must be respected and safeguarded in all UNDP-funded projects. To that end, we welcome that the stakeholder engagement policy and draft guidance note are grounded in international human rights law, as it provides an excellent foundation for engendering rights-respecting practices not only for the project at hand, but for maintaining a strong human-rights framework in all aspects of its work. By relying on existing international

law, UNDP provides the continued public engagement necessary to reaffirm the opinio juris of the various human rights conventions as customary international law.

Below are specific comments on the various aspects included in this draft guidance note.

Stakeholder Analysis

As UNDP acknowledges in this draft guidance note, stakeholder analysis must start broad, taking into consideration all aspects of the project and all the parties that the term “stakeholders” may include. Often times overlooked stakeholders can be those at the greatest risk of harm if the project goes awry. A wide scope can only benefit the stakeholder analysis by accounting for all perspectives, thus enabling the formation of a strong project foundation. The current bullet points on page 23 discussing the topic represent a good start, and potentially imply more than they say.

As the draft guidance note recognizes, the range of stakeholders is diverse. Nonetheless, it is important for the document to recognise the prominence that opinions and priorities of project affected communities should have in consultation processes. A true development process should start with the effective and meaningful participation of affected communities during the conception of plans and projects that will impact them, with due attention afforded to their own priorities and visions for development. In this regard, the document might also benefit from emphasizing the specificities of engaging with stakeholders who are Indigenous, Tribal, or part of other vulnerable or marginalized groups.

When engaging in stakeholder analysis, it is vital to consider interests and impacts that are both monetary and non-monetary. Many of the interests and impacts that are shared among stakeholders are incredibly diverse, and hard to compare. For example, important non-monetary considerations such as maintenance of cultural livelihood cannot be compared to monetary figures, or thought to be offset by certain gains elsewhere. Projects that come at the expense of massive community displacement, or the termination of cultural livelihoods cannot be considered a success. Human rights must be respected and protected, and should not be compromised for the sake of financial ease or project success.

Another item that needs to be addressed is the consideration of risk. Though the bullet points address how interests will be affected by the project, using the language of “risk” would better capture the magnitude of potential negative impacts. This plays out partly, if not entirely, because risk often disproportionately falls on those least able to bear it. Stakeholders with the most to risk necessarily live in and around the project site. Other stakeholders simply may have monetary interests at risk with the money often coming from development funds or third parties. The proportionate risk of these stakeholders then should be understood to be minimal, as

compared to the risks born by those living in and around the project site, a demographic often made up by Indigenous and Tribal Peoples or marginalized and vulnerable groups.

Project Managers Should Use a Wide Lens and Identify Stakeholders Broadly

When identifying stakeholders, project managers should start by looking as wide as possible to ensure they include not just those invested in the project, or those who stand to benefit. As the guidance document accurately points out, specific parties should then be identified with as much accuracy as possible. Often, project proponents take a narrow view and only consider people in the immediate project area as the relevant stakeholders who need to be consulted on the project. However, this fails to consider the broader impacts the project can have, and unnecessarily leaves out potentially affected people. Thus, it is important to keep in mind that stakeholders can be those affected by the ‘area of influence’ as mentioned on page 24. Often this area of influence extends outward from some projects to communities not necessarily within the typical scope. For example, downstream communities relying on a water source that is the focus of an upstream development project should necessarily qualify as stakeholders because of the risk they bear if something goes awry. In addition to actively looking at the wider area of influence when initially identifying stakeholders, the guidance document does, and should maintain its specific references to the inclusion of women as a specific group of stakeholders in order to ensure that stakeholder analysis and identification is gender responsive, as indicated in Box 6.

Special circumstances are necessary to consider related to gender, marginalized and vulnerable communities, and Indigenous and Tribal Peoples

A big part of stakeholder engagement involves determining the existence of Indigenous and Tribal Peoples, and then understanding and navigating their social and political hierarchies, as well as determining the existence of vulnerable and marginalized groups. Understanding the traditional and cultural dynamic of the various stakeholders is an immensely important task and should not be understated, as relationship building is critical to a project’s success. Box 6 correctly adds a gender dimension and reflects the fact that stakeholder identification should be gender responsive.

UNDP does well to address differences in men and women’s interests and project priorities, as well as identifying a distinction in how they may be impacted by the project. Women and girls are often disproportionately impacted by development projects, as such the inclusion of their input in the project design is vital to developing the project in a way that is gender-responsive and addresses the needs of women and girls. Further, addressing existing gender differences must also incorporate an understanding of the socio-political reality that created these gender differences. In some instances the circumstances that gave rise to gender roles traditional to a specific group may alter the value of the input of the group representative with respect to certain areas of project implementation. For example, information relating to a role held by women should not be solicited from, nor relied upon if conveyed only by males. However, determining

the proper ways to navigate these challenges must stem from an understanding of community specific dynamics. Cultural norms may exist that make gender differences more pronounced, or difficult to interpret, and identifying these allows for a more successful implementation of an inclusive stakeholder engagement plan. This includes recognition of traditional and societal beliefs that marginalize women. Knowing how women and girls are marginalized, and how to best work with the current hierarchy to ensure a healthy, cooperative relationship with all stakeholders is possible but must be approached with respect and care for all groups involved.

In addition to the above, the guidance document should seek to address the problem posed by using gender-binary language. The draft guidance note mentions only men and women, and while we welcome the explicit inclusion of women, gender binary conformity cannot be assumed. Those with fluid gender identities often make up marginalized parts of already marginalized groups. They provide yet another important perspective that can make a valuable contribution to project design and implementation, and as such space should be created to ensure their voices are heard.

Understanding group representatives, which UNDP rightly discusses in Box 7 on page 25, is critical to both understanding group politics, and then identifying potentially underrepresented minorities within Indigenous and Tribal Communities or marginalized or vulnerable groups. Verifying group representatives by talking directly to a sample of project affected people can assess the reliability of group representatives, and improve the necessary understanding of group politics. Further, while it is important that UNDP does not overstep cultural boundaries in verifying representation as acknowledged in Box 7, this cannot be used as an excuse to improperly limit consultation. Thus, UNDP will have to ensure that it carefully navigates these situations and takes due care to ensure that it is both respecting cultural boundaries and guaranteeing people's rights to participate in these processes.

With regard to stakeholder prioritization, we understand that it may be necessary in some instances and appreciate that the draft guidance note recognizes that "prioritization is not tantamount to exclusion or discrimination." However, the key questions to address on page 25-26 prove problematic. First, the list of questions appears to be missing the question of "Who is most directly impacted by the project?" This question is necessarily related to the question "Who is it critical to engage with first, and why?," however, the latter question, which is included in the draft guidance note, could lead to the exclusion of those who are most impacted depending on how the project proponents determine who is critical to engage with early. Those who are most directly impacted are also likely those who bear the most risk and thus should be considered a priority group of stakeholders. Also, those most directly impacted should be included in the response to "who is it critical to engage with first, and why?", with more guidance given as to when this first engagement should occur within the conceptual phase of the project cycle.

Additionally, the final question mentioned in the draft guidance note on stakeholder prioritization asking “Whose opposition could be detrimental to the success of the project?” is problematic. While we understand the sentiment behind the question, in its current form, it could have the effect of chilling civil society participation through the silencing or targeting of these stakeholders or stakeholder groups, and of prioritizing the success of the project over the concerns and needs of those affected. Environment and human rights defenders are under attack worldwide and often are attacked due to their opposition to development projects.¹ Thus, identifying those whose “opposition could be detrimental” could in fact lead to the project proponents targeting these environment and human rights defenders. Instead of having positive benefits, this question could lead to the non-engagement with these “project opponents” and the further shrinking of civil society space. Additionally, in some instances it could exacerbate an already tense and conflict-prone situation. As such, and in order to not exacerbate conflict or contribute to the targeting of environment and human rights defenders, the question should be reworded, for example, “Does opposition from any of the stakeholders or stakeholder groups put the project at risk? Is there a way to engage with them to ensure that their concerns are being addressed?”

Stakeholder Engagement Plan

A strong stakeholder engagement plan must make the continuation of relationship building its focal point, especially when working with marginalized or vulnerable groups, or Indigenous and Tribal Peoples. Each individual policy objective must strive to establish a foundation of trust and transparency between stakeholders and project management.

Engagement Should Occur Early and Continue Throughout the Lifecycle of the Project

One of the best ways to do this is getting the stakeholders involved early and keeping them involved throughout the project. Early stakeholder involvement can provide project insight, address potential problems before they arise, and most importantly, foster trustworthy relationships. The draft guidance note seems to emphasise the importance of this sort of engagement, but could clarify that early engagement of stakeholders most affected by projects, (i.e. Indigenous and Tribal Peoples and other vulnerable or marginalized groups), should start at

¹ See, e.g., Global Witness, *On Dangerous Ground* (June 2016), available at <https://www.globalwitness.org/en/reports/dangerous-ground/> (noting that 2015 was the deadliest year for land and environmental defenders worldwide); Frontline Defenders, *Annual Report on Human Rights Defenders at Risk in 2016* (2016), available at <https://www.frontlinedefenders.org/en/resource-publication/annual-report-human-rights-defenders-risk-2016> (highlighting that in 2016, over 1,000 human rights defenders were killed, harassed, detained, or subjected to smear campaigns against them); Article 19, Center for International Environmental Law & Vermont Law School, *A Deadly Shade of Green: Threats to Environmental and Human Rights Defenders in Latin America* (2016) (noting that Latin America is the most dangerous region for environmental and human rights defenders due to a number of factors including lack of guarantees for human rights protection, weak rule of law, and shrinking civil society space).

the very inception of plans, highlighting and incorporating communities' development plans and priorities.

The relationships built via this exercise are instrumental to the short term success of projects, as well as long term developmental stability. Involving those who will be benefitting from and implementing the project allows for their unique input in project design, and begins the process for them to take over and manage the project once it is complete.

The guidance document does well to mention this, but the importance of this mechanism cannot be understated. The inclusion of various marginalized and vulnerable groups and Indigenous and Tribal Peoples must rise above the level of invitations to meetings, or other actions that exist to check off procedural steps, and to instead take steps to allow for active, valued participation on their part. This is especially true when free, prior and informed consent (FPIC) is required, as stakeholders should have every opportunity and a sufficient amount of time to make decisions that are actually free, and well-informed.² Proper consultation from the earliest stages of the project is a requirement that cannot be understated.

Consideration Related to Gender and Other Marginalized and Vulnerable Groups are Essential

The how and why of stakeholder engagement as addressed on page 32 must make gender a priority. Doing so requires a careful understanding of cultural hierarchies and norms prior to taking action. This is critical as cultural norms may dictate that women cannot speak when in the room with men or group leaders, which means that they will not be accustomed to offering their opinion. The "Tips for Conducting Gender and Age Responsive Stakeholder Consultations" contained in Box 4 on page 14 are extremely valuable and should be adhered to in all projects. They correctly identify many of the frequent barriers to women and girls being able to participate in consultations, including, but not limited to their daily routines, child care needs, safety, and other cultural norms that may exist. These barriers to participation must be addressed as engaging women and girls provides a crucial perspective to projects that cannot be ignored. Women and girls possess critical knowledge and can provide guidance on developing gender-just projects and solutions to potential problems that may arise in a project. The same is true for other marginalized or vulnerable groups. They must be sought out and approached in ways that allow them to be comfortable and willing to provide feedback on the project.

Part of doing this effectively involves approaching solicitation for feedback in various ways. The draft guidance note mentions the solicitation of stakeholders on page 36, however the concept is not so simple. Extensive knowledge of the project or project plan cannot be assumed, irrespective of information disclosure. More importantly, a general solicitation of feedback or input cannot be relied upon, nor accepted as the sole method of consultation. Information laden

² *United Nations Declaration on the Rights of Indigenous Peoples*, No. 61/295, United Nations (March 2008) at Art 32, para 2.

questions presenting various options, the reasons for those options, and consequences of those options represent a much better method for a variety of reasons. Primarily, it solicits information in a relationship building manner, and addresses potential power imbalances at play in face to face meetings. Further, it does not assume full and complete knowledge of the project plans and implementation procedures. Lastly, it solicits input on specific project instances instead of placing the impetus on the stakeholder to make seemingly high-level suggestions.

The draft guidance note does a good job formulating an inclusive stakeholder engagement plan, but it bears repeating that without the voices and perspectives of women and marginalized and vulnerable peoples, projects cannot expect to have the maximum chance at success.

Inclusion of Indigenous and Tribal Peoples is Essential

Much of the procedure related to establishing a robust gender (or marginalized and vulnerable communities) engagement plan holds true for working with Indigenous and Tribal Peoples. Again, establishing trust and transparency to make group members feel valued remains vital. Many of these peoples are in the unique position of having knowledge that can make development projects easier, or more difficult. As peoples who know the geography of the project area better than anyone else, it is both in their interest and the interest of the project to establish working relationships founded upon trust and transparency. Their participation in the project design and implementation is essential to ensuring positive development outcomes.

Protecting people from harassment as well as considering the need to protect environment and human rights defenders is central to effective stakeholder engagement

The existence of project monitors to both oversee the project and protect the rights and privileges of those living in and around the project area as contemplated on page 34 is a necessity. Moreover, throughout the duration of the project, life does not stop for those stakeholders living in the project area. Respecting the need for them to go about their lives with as little disruption as possible must be an objective. This could include but is not limited to the continued use of access roads, respect and maintenance of any agricultural needs that exist, and uninterrupted access to clean water.

Heightened due diligence measures, including third-party monitoring, should be required in higher risk projects. If possible, those who bear the risk should be included in the monitoring teams. Though not an objective third party, those being affected should have a chance to monitor and report on how they are being affected.

Further, avenues for submitting grievances or complaints to the Social and Environmental Compliance Review Unit and Stakeholder Response Mechanism (SECU/SRM) anonymously, or at least in a way that provides security for those submitting to the specific mechanisms, for example through representatives or with the guarantee that their identities will be kept

confidential, must exist. As previously noted, there are too many instances of environment and human rights defenders losing their lives or otherwise being harassed because they are exposed and not protected from criminal activity. Requiring them to identify themselves when submitting a grievance to UNDP's independent accountability mechanism would unnecessarily put a target on their back and UNDP must not exacerbate the risk, but should instead find ways to better protect environment and human rights defenders.

Communication should be conducted in local language(s) and in a culturally appropriate manner

Communicating with stakeholders in a manner that goes hand in hand with the socio-political structure remains paramount. Establishing relationships founded upon trust and transparency demonstrates an inclusive people-first approach to the project, and makes building working relationships easier. A willingness to communicate with the respective leaders of groups that groups choose themselves also displays a respect for the social structure of the group, and a cultural awareness necessary to the success of the project.

As previously stated, when disclosing information it is imperative to maintain awareness of the fact that different languages or dialects may be spoken, and that not everyone can read. The guidance document does a good job in noting that 'special measures' may be needed in communication with various marginalized and vulnerable groups and Indigenous and Tribal Peoples. It is worth reiterating however that these special measures can often be alternative forms of communications, such as brochures or radio broadcasts, and may require significant advance notice of meetings or events and transportation to and from those events. To this point, timing can be critical. Marginalized and vulnerable groups and Indigenous and Tribal Communities may have different holidays/days of significance, transportation limitations, schedules and availability tied to the weather, or other socio-cultural norms that prevent them from meeting on certain days, at certain times or at certain locations. These obstacles should not be written off or ignored, as respecting them plays a crucial role in building the trust and relationships necessary for project success.

In this regard, the draft guidance note should be revised to reflect the need to ensure documents and communications are made in the local languages. For example, in table 7 on page 31, one of the key questions in "How" should be "What is the local language(s) that the documents and other information should be communicated in?" Similarly, in the list of things to include in the "summary of any previous stakeholder engagement activities" on page 33, "Language(s) in which information was disclosed" should be added as a bullet point. Further, on page 34 in paragraph 5 on the "Stakeholder Engagement Program," the description of information disclosed should include not only how and where it was disclosed, but also in what language(s). To have inclusive and meaningful stakeholder engagement it is necessary to ensure that information is disseminated in local languages and in a culturally appropriate manner and this should be added

to the draft guidance document in the discussion of the stakeholder engagement plan in addition to all of the points already identified in this draft guidance document, for example on how information will be disseminated in a variety of creative ways, that go to making sure engagement is inclusive and meaningful.

Additionally, we appreciate the inclusion on page 32 of reference to the fact that the stakeholder engagement plan should include a budget for stakeholder engagement activities and that that budget should include potential support for groups so that they can participate. It is critical to facilitate engagement and to support people, especially marginalized and vulnerable groups, women and girls, and Indigenous and Tribal Peoples, to participate. Too often, stakeholder engagement is conducted in a location that is inconvenient, or difficult or impossible to get to and so it is important that project proponents do not exclude important stakeholders by choosing such a location, or if they do, facilitating participation of these people through monetary support. However, the draft guidance note should require that the project managers are transparent about support provided. Additionally, it should make clear that facilitating transportation of stakeholders to and from meetings is in no way contingent upon the stakeholders supporting the project. Stakeholders should understand that receiving financial support to facilitate their participation does not require them to support the project in whole or in part, nor does it require them to withhold criticism.

Information Disclosure

Information Disclosure Must Be Early in the Project Cycle

Ideally, the project documents discussed below should be constructed with active participation and input from those affected by projects; a process that should start with the participation of those affected in the phase where priorities and designs are established.

When projects lack the active and constructive participation of affected people from their inception phase, key project documents, including impact assessments, must at least be disclosed to affected communities before project appraisal. The policy and draft guidance note should set out clearly when and how key project documents are disclosed to affected communities. Disclosure of key documents in a timely manner and in a form and language that is accessible is a precondition to affected communities and other stakeholders having a voice in decision-making and crafting development agendas. This is in line with UNDP's Information Disclosure Policy as noted on page 35, and must remain in the final version of the guidance note. Transparent dissemination of information is especially important when FPIC is required, as stakeholders should have every opportunity, and sufficient amounts of time to make decisions that are actually free and well-informed.

There should be timely disclosure of a comprehensive assessment of the environmental, social, and human rights impacts (both positive and negative) of the project in an accessible form that enables people to make informed decisions. Disclosed documents should include: sectoral or regional environmental and social impact assessments, strategic environmental and social assessments, strategic conflict assessments, the Environmental and Social Management Plan, and the Environmental and Social Management Framework. Disclosure of these documents would also be consistent with best practices in line with the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the “Aarhus Convention”), the aim of which is to ensure that project-affected communities have access to information, such as environmental, social, and human rights impact assessments, early in the decision-making procedure and in an adequate, appropriate, and timely manner so as to ensure their effective and meaningful participation.

Information Must Be Accessible

Again, when disclosing information it is imperative to be conscious that simply disseminating information does not mean it is merely accessible to the target audience. Those communicating must maintain awareness of the fact that different languages or dialects may be spoken, and not everyone can read. For example, in Table 9 on page 37, all of the documents mentioned, the Draft Social and Environmental Screening Procedures and Final Social and Environmental Screening Procedure should be translated into the local language(s). In that table, translating into a local language is only mentioned in the “how to disclose” column in regards to the draft social and environmental assessments, but it should not be so limited. To meaningfully engage with stakeholders on the draft SESP, it must be in a language(s) that the stakeholders understand.

Further, website updates may work in some areas but not in others as not everyone has computer or internet access. SMS messages, radio broadcasts, brochures, and posted signs among other options can be effective if used in a way that takes other accessibility concerns into consideration. Additionally, project management must consider how different people consume information to ensure that it is provided in a manner that is appropriate for women and girls, the disabled, Indigenous and Tribal Peoples, and other vulnerable and marginalized groups. Moreover, this must be done in a culturally appropriate manner, taking into account that vulnerable and marginalized groups and Indigenous and Tribal Communities may have different holidays/days of significance, transportation limitations, or other socio-cultural norms or political structures to which project management must respond.

Grievance Redress Mechanisms (GRMs)

While the intent of development projects is not to harm people or the environment, harms often occur and it is therefore necessary to have an avenue for affected people to seek remedy. Grievance redress mechanisms are essential to this. In this regard, the Social and Environmental

Compliance Review Unit and Stakeholder Response Mechanism (SECU/SRM) are important entities as they help ensure that when UNDP funded projects harm people or the environment, there is an avenue for remedy. Additionally, we recognize that project-level grievance mechanisms (PLGMs), as GRMs are often referred to, can play an important role in addressing people's complaints directly and quickly. It is good that the draft guidance note indicates that in designing GRMs or PLGMs, project proponents should be guided by the UN Guiding Principles on Business and Human Rights and that the GRM should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, based on engagement and dialogue, and a continuous learning provider. These principles are critical to the design of effective and responsive PLGMs. However, while PLGMs can play a positive role, there are often problems associated with them that UNDP should be aware of and consider these issues when designing this guidance note.

PLGMs are systems designed and operated by project management within a company or government agency (e.g., in the case of borrowing or project host countries) to address concerns of individuals, communities, and/or workers who are negatively affected by foreign direct investment and development projects. Therefore, the actors who manage the mechanism and determine outcomes are the same as those who potentially perpetrated the harm. Nevertheless, an increasing number of international financial institutions, companies, and government agencies are relying on PLGMs. Many of these mechanisms suffer from the following fundamental flaws:

- Inappropriate for human rights abuses: These mechanisms have neither the expertise nor the authority to adequately deal with cases of human rights abuses, violations of international human rights and humanitarian law, or serious crimes such as torture, rape, and extrajudicial killings.
- Lack of independence and trust: In-house mechanisms allow perpetrators with a conflict-of-interest to internally investigate claims, determine culpability, exonerate, waive victims' rights, determine outcomes, and keep those outcomes confidential to avoid public and shareholder scrutiny. As a result, project-affected people have little reason to trust the process or have confidence that their grievances will be resolved fairly or transparently.
- No oversight or accountability: These mechanisms are void of third-party oversight to monitor the grievance process and ensure that outcomes are enforced. PLGMs provide a means to control any negative repercussions from in-house investigations of rights violations in order to maintain secrecy, thereby avoiding legal and financial consequences and thwarting the possibility of learning lessons at higher levels of management and throughout the organization.
- Barriers to other forms of judicial and non-judicial remedy: PLGMs are seen or touted as a required first step and thus can impede access to other fora that may be more appropriate or capable of providing remedy.

As the Commentary to the Guiding Principles duly recognizes, “[p]oorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.”³ As such, we urge UNDP to take proper precautions when guiding the development of GRMs/PLGMs. Despite the troubling aspects of PLGMs, we recognize that UNDP may rely on them, along with SECU/SRM, to resolve disputes. As acknowledged in the draft guidance notes, these GRMs/PLGMs should be built on the “effectiveness criteria” set forth in the Guiding Principles, and based on engagement and dialogue. All grievance mechanisms should embody these principles and serve as a means for ensuring accountability and redress.

GRMs Must Be Effective

An effective GRM must maintain awareness that those filing complaints are stakeholders, and should act more as a center for problem solving and less as a call center. As such, the language regarding complaint eligibility, though not inappropriate in practice, does send the message that not all problems are valid, and runs the risk of alienating stakeholders. The default assumption should be that a complaint is eligible. The draft guidance note does a good job in this capacity for the most part. For example on page 42, it says that “it is often better to ensure a relatively low barrier to entry.” However, the fact that a grievance can be ‘closed out’ without being referred is problematic. Though the GRM should not be responsible for handling every quasi-tangential grievance, particularly when there are other offices equipped to handle specific ones, it should at the very least refer the problem to the correct authorities, and provide the necessary assistance to ensure a smooth transition. Further, in the rare case that the complaint does not allege a compensable harm, it should establish a face-to-face meeting with the party complaining to explain why they believe the complained of harm does not warrant a solution and inform the complainant of the other avenues for redress, including but not limited to SECU/SRM. Responding this way and communicating with the complainant can also help demonstrate empathy, which could help lead to creating a better relationship between the project and members of the community, which is beneficial for ongoing stakeholder engagement and helps mitigate the potential for continued or new conflict.

GRMs must be accessible, equitable, transparent, and rights-based, among other principles

The GRM should strive for maximum accessibility for all stakeholders, including the capacity to receive grievances in the natural languages of the stakeholders. Information regarding the existence of the GRM should be disseminated according to the specifications discussed above. Equity and transparency can be bolstered through the serious consideration of grievances via face-to-face interactions with those submitting grievances to the mechanism, as appropriate and taking into consideration the wishes of the complainants and their comfort level with doing this. A proper understanding of the project, through joint-fact finding if needed, can often reveal a

³ *Guiding Principles on Business and Human Rights*, Doc No. HR/Pub/11/04, (Geneva, 2011) at para. 31 (commentary).

simpler and more pointed solution to the problem at hand. Moreover, in the event of a grievance outside the jurisdiction of the GRM, or one that does not allege a compensable harm, the effort expended on the joint-fact finding can often operate as a solution in of itself, emphasizing the necessity and value of strong relationships throughout the project. However, while joint-fact finding has a role to play, it should not be seen as the only option and it should be acknowledged that different problems require different solutions. Joint fact-finding primarily can help facilitate a mutual understanding of the issues between the complaints and the project managers. However, it is not a replacement for or equivalent to a compliance investigation, nor is it the same as a facilitated dialogue or mediation, all of which should be considered when determining the appropriate way to achieve remedy.

Additionally, meaningful opportunities for affected communities and beneficiaries to inform the design of the project-level grievance mechanism should be provided as part of a robust participatory consultation process so as to ensure that the mechanism is culturally appropriate, culturally sensitive, and accessible to diverse members of the community. This consultation should consider, and preferably include, those who may face additional barriers to access.

GRMs should inform stakeholders about SECU/SRM and should not preclude access to SECU/SRM

Information related to the existence, role of, and access to SECU/SRM, including brochures and other resources, should be publicly available in the local language(s). Proper dissemination of information includes being distributed by the project managers and PLGM. This information should specify that submitting a complaint to the PLGM or that even getting a response or “solution” from the PLGM does not preclude filing a complaint to the SECU or SRM, or vice versa.

Additionally, Annex 4 of this draft guidance note should be modified to explicitly mention SECU/SRM as one of the potential options for submitting a grievance, for example in the definition section on page 39, as well as other places.

Specific comments on the GRM Design

The draft guidance document provides valuable and comprehensive information on the design of a GRM/PLGM. However, in addition to the concerns already mentioned above, we have further concerns on specific aspects.

On page 42, the draft guidance note rightly says that the GRM should have centralized logging and tracking of complaints and encourages GRMs to log all complaints including ones “resolved ‘on the spot’.” However, it should further specify that this log should be publicly available and include information about the complaint, how it was resolved, and the proposed resolution, as

well as any monitoring follow-up. This publicly available log, though, should respect requests for confidentiality from complainants.

In regards to section 2 and the questions for determining eligibility, the footnote on question (c) on page 43 indicates that whether complaints can be submitted by representatives remains an open question. As is indicated in question (c), which states “ ... or that those filing the complaint are representing the impacted or potentially impacted stakeholders at their request?,” representatives should be able to file complaints on behalf of affected person(s). As noted above, environment and human rights defenders are more and more frequently under attack and as such people may not want to file a complaint because they fear retaliation. Thus, it is important that they not be precluded from filing and instead are able to have representatives file on their behalf and participate in the complaints process upon the complainant’s request.

In section 3 on developing a proposed response (page 43), the draft guidance note rightly recognizes that different complaints will require different responses and ways of being addressed. However, it appears to say that simple actions do not necessarily require involvement of other stakeholders, including the complainant. Even simple actions should involve the complainant and that should be acknowledged in the draft guidance note.

In section 4 on communicating the proposed response to the complainant and seeking agreement (page 44), as noted above in regards to other stakeholder engagement, the draft guidance note should be modified to say that the GRM should communicate the proposed response to the complainant in a way that is culturally appropriate, including orally if need be, and in an appropriate language. Moreover, nothing in the process of communicating the response should be coercive.

Further, the draft guidance note correctly acknowledges that the complainant needs to accept the response and if they do not then a new response should be developed. However, the draft guidance note should be amended to indicate that PLGMs/GRMs must make it clear to the complainant(s) that accepting or rejecting the proposed response does not preclude later grievances or the ability to pursue remedy for the same or a similar grievance through another avenue. Additionally, it should specify that complainant(s) should not be coerced into accepting a solution they do not accept or consider a remedy to their problem. Further, if the initial response is rejected, the PLGM and GRM should consult with the complainant to develop a new response.

Lastly, in regards to section 7 and closing out or referring the grievance (page 45), the draft guidance note indicates that the decision to close the grievance should be made by the GRM staff. However, prior to closing or referring a grievance elsewhere, the GRM should consult with the complainant. The complainant must be involved in determining if the response has been

successful and the grievance addressed. As such the draft guidance note should be amended to reflect this role for the complainant. For example, “If following consultation with the complainant(s), the response has been deemed successful, the GRM staff should document the satisfactory resolution.”

In attachment 1 “GRM Evaluation Tool” (page 49), one of the questions in the design stage is “Why did you include a Grievance Redress Mechanism (GRM) in your project?” However, an acceptable answer to that cannot be “it was required.” Project managers need to understand the value of GRMs and accept them as an important component of a project. As such, this draft guidance note should indicate that.

It is good that the draft guidance note provides a “Sample Terms of Reference: Project-level Grievance Redress” in attachment 3. In section VI(iii) of it, it should also state “however, not including all of the information referenced here as what should be included in a grievance will not mean that a grievance is deemed ineligible.” Grievances should be relatively simple to submit and if information is missing that would be good to have, then the GRM should follow-up with the complainant. Additionally, section XII should include that communicating the proposed response to the complainant for acceptance should be done in a way that is free of coercion.

Thank you for the opportunity to comment on the Draft Guidance Note on Stakeholder Engagement. We appreciate that UNDP is committed to positive and inclusive stakeholder engagement including the development of effective and responsive grievance redress mechanisms. We look forward to continuing our engagement with UNDP on this matter. If you have any questions, please do not hesitate to contact us.

Sincerely,

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