

UNDP Office of Audit and Investigations (OAI) response to the draft report of the independent Reviewer of the UNDP GEF Standards and Labels for Promoting Energy Efficiency in Russia (S&L) project

1. The UNDP Office of Audit and Investigations (OAI) welcomes the draft report of the independent Reviewer of the GEF Standards and Labels for Promoting Energy Efficiency in Russia (S&L) project and the opportunity to comment thereon.
2. At the outset it is important to emphasize how seriously UNDP and OAI take good governance and independent assessment and investigation of all credible allegations of misconduct in UNDP.
3. The Review reports observations regarding systemic deficiencies within UNDP's management of the S&L project, which generally align with the findings in the recent OAI audit of UNDP's GEF portfolio. The Review's observations in respect of these management issues are fully supported by OAI.
4. OAI also notes that the Review does not provide information which can be regarded as evidence of misconduct as required under UNDP's legal protocols.
5. The Review of OAI's investigation oversight of the S&L project would benefit from a more comprehensive review of the alleged misconduct with full consideration of the legal standards and policies guiding this work in UNDP. This is necessary as the review clearly expresses a view in respect of OAI's assessment and investigation of alleged fraud and corruption without any consideration of UNDP legal protocols which govern OAI's work. This should be done before concluding that more work needs to be performed.
6. The Review may also benefit from more clearly separating between mismanagement and misconduct. The latter is conduct subject to legal sanctions in UNDP's system of justice, the former is conduct that should be addressed by management as performance issues. Many issues in the review are clearly mismanagement, not misconduct.

UNDP's legal protocols

7. The definition of fraud in UNDP's Anti-Fraud policy states:

Fraud is any act or omission whereby an individual or entity knowingly misrepresents or conceals a fact a) in order to obtain an undue benefit or advantage or avoid an obligation for himself, herself, itself or a third party and/or b) in such a way as to cause an individual or entity to act, or fail to act, to his, her or its detriment. Likewise, the common definition of presumptive fraud for the United Nations system is "Allegations that have been deemed to warrant an investigation and, if substantiated, would establish the existence of fraud resulting in loss of resources to the Organization."

Corruption is the act of doing something with an intent to give an advantage inappropriate with official duties to obtain a benefit, to harm or to influence improperly the actions of another party.

Actions taken to instigate, aid, abet, attempt, conspire or cooperate in a fraudulent or corrupt act, also constitute fraud or corruption.

8. The standard of proof required in an OAI investigation to prove fraud against an individual is clear and convincing evidence. If that standard is not met there is no misconduct substantiated. OAI cannot rely on suspicion, conjecture and un-evidenced opinion to substantiate allegations of fraud.

The S&L case and OAI's investigation

9. In the period from 2014 until 2017, OAI received three complaints regarding the S&L project. OAI has invested significant resources in assessing and investigating these complaints, including two field missions to Russia and the review of over 1600 files including witness statements, project documents, email communications, minutes of steering committee meetings, IT forensic results and analytical products produced by OAI's team. OAI shared all of this material with the Reviewer. OAI has also been in constant communication with whistleblowers in connection with the S&L case and other related cases since 2014. All allegations made by whistleblowers have been addressed fully according to official OAI procedures, including full assessment and investigation.
10. The first complaint concerning the S&L project was received from Mr. Dimitry Ershov on 22 November 2014 who alleged improper recruitment and abuse of authority against the Head of the UNDP Project Support Office in Russia. No alleged fraud was reported at this time by the complainant. Based on the evidence, OAI closed the case after assessment.
11. The second complaint was received on 18 March 2015 from an anonymous source who alleged conflicts of interest in the assignment of contracts within the project, issues regarding the hiring of an independent contractor and possible fraud against a vendor. Following assessment, OAI launched an investigation and carried out a mission to UNDP Russia. OAI confirmed the existence of a conflict of interest involving a member of the steering committee who had already resigned. OAI found no evidence of collusion between UNDP personnel and the vendor involved, nor evidence of fraud as reported by the anonymous source. At the same time, an audit conducted by OAI identified red flags concerning the recruitment of individual contractors, which did not amount to misconduct under UNDP legal protocols and were duly corrected. Based on the evidence, OAI closed the case after investigation.
12. The third complaint was received on 10 May 2017 from the Terminal Evaluator in the S&L Project who alleged misappropriation in connection with his review of project technical reports. OAI launched a full investigation and carried out another mission to UNDP Russia. Following the review of all available evidence, OAI concluded that UNDP rules and procedures were not duly followed however it did not amount to misconduct in accordance with UNDP's legal protocols and standards of proof. The Director, OAI, in accordance with established procedures, issued a Management Letter with findings and recommendations which addressed conflicts of interest involving the project steering committee. In this case, Mr. Ershov, who was a Project Manager of the S&L project, clearly presented to OAI that the funds were expended in accordance with the

outputs and objectives of the project. He also defended the technical validity of the reports which were produced in line with the project's activities.

13. Although not directly linked to the S&L case, OAI has active investigations underway in other GEF funded projects where allegations of fraud have and will be substantiated because OAI has secured evidence to the requisite standard of proof and misconduct is established under UNDP legal protocols.

Review statements not supported by evidence

14. The Review is making several assertions that fraud and corruption was rife on the S&L project over a long period. None of these claims by the Reviewer are supported by evidence nor does the Review refer to any information in OAI's extensive file, all of which was made available to the Reviewer (see para. 9)
15. As a small sample of many examples, the Reviewer claims that as national authorities later took an interest in the National Project Director for alleged corruption, the implication is that he must have been involved in corrupt activities in the S&L project. The Reviewer provides no evidence to support this claim.
16. The Reviewer also claims that *"The rules were violated on many occasions on the S&L project"* without stating what rules were violated.
17. The Reviewer also claims that *"Some of these [issues] deal with individuals who may be now be working at the UNDP. This requires speedy follow-up investigations..." (sic)*. However the Reviewer provides no evidence to support these claims. Under UNDP's legal protocols, people are not made 'subjects of investigation' unless there is credible information to do so. If not, the process is malicious and discriminatory.
18. The Reviewer claims the investigation to be *"inadequate."* If this is his view, he should state the evidence supporting such a statement and clarify what would have made the investigation adequate. Without such additional information, it is not possible to seek any forward-looking guidance from the Review.
19. The Reviewer did not conduct interviews with the Director, OAI; the Investigations Manager, OAI; nor any in-depth interviews with the Deputy Director (Investigations) nor assigned Investigators who worked on the S&L investigation, as to how they conducted the investigation and what they found. The inclusion of such interviews may help the reviewer to address the issues listed in para 14-18 and will make the Review more credible and useful for UNDP, OAI and the donor community.