

Legal Annex to UNDAFs

Supplement to the
Guidance Notes “How to Prepare an UNDAF”

February 2015

Background

The Quadrennial Comprehensive Policy Review ([QCPR](#)) reinforces the need for simplified, inclusive, accountable and nationally owned programming processes including analysis, monitoring, reporting and evaluation. The United Nations Development Assistance Framework (UNDAF) remains the strategic, medium-term results framework that describes the collective vision and response of the UN system at country level to national development priorities.

The current [2010 UNDAF Guidance](#) is recognized by the QCPR (para 61) and will continue to serve as the overall strategic level programming guidance on normative and operational concerns for UNCT and the national stakeholders, including government, line ministries, social partners including workers and employers' organizations and Civil Society Organizations. This supplement provides an additional option to this Guidance that is now available for UNCTs wishing to adopt it.

The UNDAF guidance supplement will be circulated as an option along with the entire UNDAF package.

Options

In addition to Option 1a and Option 1b for the level of results in the UNDAF results matrix as outlined in the [Guidelines](#), UNCTs should also consider option 1c.

Option 1c would be to develop the UNDAF result matrix at the outcome level (similar to Option 1a), and then immediately develop annual/bi-annual results and activities in workplans, and thereby avoid the necessity of developing an UNDAF Action Plan.

For Option1c, the result chain would be:

Outcomes (UNDAF) ← Outputs & Activities (as outlined in result group's bi-annual or annual or agency-specific Work Plans).

This option would entail also including the relevant legal/standard text in the UNDAF itself (rather than the UNDAF Action Plan/CPAP as current practice). The legal text can found in "[Annex 1: How to Complete the UNDAF Action Plan Template](#)" and has been consolidated and is available on the UNDG website. The inclusion of this text in the UNDAF eliminates the need for an UNDAF Action Plan or Country Programme Action Plans (CPAPs) applicable only for the UN Funds and Programmes. Option 1c would result in an UNDAF with standard, legal text and a result matrix at outcome level. Outputs and activities would be outlined in the bi-annual or annual results group's/ agency-specific workplans /(depending on the national context).

A more in-depth review and revision of the UNDAF Guidance Package will be undertaken as soon as possible in light of the Post 2015 new development agenda.

Instructions

This document provides guidance on the content and format of the legal/standard text to be included in the UNDAF (taken almost verbatim from the UNDAF Action Plan Guidance Annex I) if option 1C is selected¹. Given the multiple purposes of the UNDAF, including its function as a mechanism to ensure accountability and as part of the legal framework establishing the relationship between each UN system agency and the concerned Government, some aspects of the UNDAF (taken verbatim from the UNDAF Action Plan Guidance Annex II) are highly recommended. The below sections a. – e. can be used as actual chapter titles in the UNDAF document. Alternatively, the text boxes can also be integrated where it fits into the logical flow of the UNDAF document. Specific text suggestions are indicated by text boxes below.

It is highly recommended that you use the text in these boxes when drafting the UNDAF (taken verbatim from the UNDAF Action Plan Guidance Annex I)

There are also some clauses relating to the Harmonized Approach to Cash Transfers (HACT) that are mandatory for UN system agencies applying HACT. The UNDAF should specify which UN system agencies are applying HACT and note in each instance, where text refers to HACT processes, that the HACT-specific mechanisms apply only to those UN system agencies following HACT procedures. **The clauses relating to HACT MUST BE INCLUDED VERBATIM.** This text is identified by text boxes as follows:

The text in these boxes is mandatory for those UN system agencies following HACT procedures and must be included in the UNDAF VERBATIM.

Text in [square brackets] is intended as advice to drafters of the UNDAF to tailor the text to the country context.

Suggested text for UNDAF chapters/ sections

1. Partnerships, Values and Principles

This section MUST include reference to the cooperation or assistance agreements or other agreements which are the legal basis for the relationship between the Government and each UN organization. Text for this is given in the box below with examples for a number of UN system agencies. UN system agencies not included in the examples should seek advice on specific text from their headquarters.

Mandatory text box to be included in this section:

Whereas the Government of _____ (hereinafter referred to as “the Government”) has entered into the following:

a) WHEREAS the Government and the United Nations Development Programme (hereinafter referred to as UNDP) have entered into a basic agreement to govern UNDP’s assistance to the country (Standard Basic Assistance

¹ This supplement will be a living document that will be updated based on the experiences in implementation of option 1C of the UNDAF, and UNDG internal reviews.

Agreement (SBAA) [or other agreement depending on country], which was signed by both parties on _____ (date). Based on Article I, paragraph 2 of the SBAA, UNDP's assistance to the Government shall be made available to the Government and shall be furnished and received in accordance with the relevant and applicable resolutions and decisions of the competent UNDP organs, and subject to the availability of the necessary funds to the UNDP. In particular, decision 2005/1 of 28 January 2005 of UNDP's Executive Board approved the new Financial Regulations and Rules and along with them the new definitions of 'execution' and 'implementation' enabling UNDP to fully implement the new Common Country Programming Procedures resulting from the undg simplification and harmonization initiative. In light of this decision this UNDAF together with a work plan (which shall form part of this UNDAF, and is incorporated herein by reference) concluded hereunder constitute together a project document as referred to in the SBAA [or other appropriate governing agreement²].

b) With the United Nations Children's Fund (UNICEF) a Basic Cooperation Agreement (BCA) concluded between the Government and UNICEF on ___ and revised on___.

c) With the Office of the United Nations High Commissioner for Refugees (UNHCR) a Country Co-operation Agreement concluded between the Government and UNHCR on ___ and revised on___.

d) With the World Food Programme a Basic Agreement concerning assistance from the World Food Programme, which Agreement was signed by the Government and WFP on ___.

e) With regard to the United Nations Population Fund (UNFPA), the text to be used in this section of the UNDAF depends on the specific legal circumstances prevailing. A menu of options for the appropriate text is available on the UNFPA Policies and Procedures Manual (PPM), Programme, at the following link:

<http://www.unfpa.org/sites/default/files/admin-resource/Legal%20basis%20of%20cooperation%20UNDAF.pdf>

Country Offices are requested to select the appropriate text from this menu of options. Alternatively, they may contact UNFPA's Legal Unit, OED, for the correct text to be used.

f) With UNIDO the Agreement between the Government of [NAME] and [MOFCOM] for the establishment of the UNIDO Office as established in [YEAR]. If an SBCA has been concluded with the Government concerned, a reference to it should be included instead of or in addition to the Country Office Agreement.

g) With the Food and Agriculture Organization of the United Nations the Agreement for the opening of the FAO Representation in [COUNTRY] on [DATE]. [In case FAO has a sub-regional or a regional office in the country, a relevant specific mention shall be made].

e) For all agencies: Assistance to the Government shall be made available and shall be furnished and received in accordance with the relevant and applicable resolutions and decisions of the competent UN system agency's governing structures[Add in references to other UN system agencies as appropriate,].

The UNDAF will, in respect of each of the United Nations system agencies signing, be read, interpreted, and implemented in accordance with and in a manner that is consistent with the basic agreement between such United Nations system agency and the Host Government.

² In the countries where SBAA [or other agreement depending on country] have not been signed, the Standard annex to project documents for use in countries which are not parties to the Standard Basic Assistance Agreement (SBAA) should be attached to the UNDAF,. These documents together with the work plan constitute the "project document".

2. Programme Management and Accountability Arrangements

Mandatory text box to be included in this section:

The programme will be nationally executed under the overall co-ordination of _____ (Government Co-ordinating Authority). Government coordinating authorities for specific UN system agency programmes are noted in Annex X. Government Ministries, NGOs, INGOs and UN system agencies will implement programme activities. The UNDAF will be made operational through the development of joint work plan(s) (JWPs)³ and/or agency-specific work plans and project documents as necessary which describe the specific results to be achieved and will form an agreement between the UN system agencies and each implementing partner as necessary on the use of resources. To the extent possible the UN system agencies and partners will use the minimum documents necessary, namely the signed UNDAF and signed joint or agency-specific work plans and project documents to implement programmatic initiatives. However, as necessary and appropriate, project documents can be prepared using, inter alia, the relevant text from the UNDAF and joint or agency-specific work plans and / or project documents⁴.

All cash transfers to an Implementing Partner are based on the Work Plans (WPs⁵) agreed between the Implementing Partner and the UN system agencies.

Cash transfers for activities detailed in work plans (WPs) can be made by the UN system agencies using the following modalities:

1. Cash transferred directly to the Implementing Partner:
 - a. Prior to the start of activities (direct cash transfer), or
 - b. After activities have been completed (reimbursement);
2. Direct payment to vendors or third parties for obligations incurred by the Implementing Partners on the basis of requests signed by the designated official of the Implementing Partner;
3. Direct payments to vendors or third parties for obligations incurred by UN system agencies in support of activities agreed with Implementing Partners.

[In countries where it has been agreed that cash will be transferred to institutions other than the Implementing Partner (e.g., the Treasury) please replace with the following text:]

Cash transfers for activities detailed in work plans (WPs) can be made by the UN system agencies using the following modalities:

1. Cash transferred to the [national institution] for forwarding to the Implementing Partner:

³ As per the UNDG Standard Operating Procedures (SOPs) for countries adopting the "Delivering as One" approach

⁴ In the case of UNDP, the Government Coordinating Authority will nominate the Government Co-operating Agency directly responsible for the Government's participation in each UNDP-assisted work plan. The reference to "Implementing Partner(s)" shall mean "Executing Agency(s)" as used in the SBAA. Where there are multiple implementing partners identified in an work plan, a Principal Implementing Partner will be identified as who will have responsibility for convening, co-ordinating and overall monitoring (programme and financial) of all the Implementing Partners identified in the work plan to ensure that inputs are provided and activities undertaken in a coherent manner to produce the results of the work Plan.

⁵ Refers to results Groups' or agency specific annual, bi-annual or multiyear work plans

- a. Prior to the start of activities (direct cash transfer), or
 - b. After activities have been completed (reimbursement).
2. Direct payment to vendors or third parties for obligations incurred by the Implementing Partners on the basis of requests signed by the designated official of the Implementing Partner.
 3. Direct payments to vendors or third parties for obligations incurred by UN system agencies in support of activities agreed with Implementing Partners.

Where cash transfers are made to the [national institution], the [national institution] shall transfer such cash promptly to the Implementing Partner.

Direct cash transfers shall be requested and released for programme implementation periods not exceeding three months. Reimbursements of previously authorized expenditures shall be requested and released quarterly or after the completion of activities. The UN system agencies shall not be obligated to reimburse expenditure made by the Implementing Partner over and above the authorized amounts.

Following the completion of any activity, any balance of funds shall be refunded or programmed by mutual agreement between the Implementing Partner and the UN system agencies.

Cash transfer modalities, the size of disbursements, and the scope and frequency of assurance activities may depend on the findings of a review of the public financial management capacity in the case of a Government Implementing Partner, and of an assessment of the financial management capacity of the non-UN⁶ Implementing Partner. A qualified consultant, such as a public accounting firm, selected by the UN system agencies may conduct such an assessment, in which the Implementing Partner shall participate. The Implementing Partner may participate in the selection of the consultant.

Cash transfer modalities, the size of disbursements, and the scope and frequency of assurance activities may be revised in the course of programme implementation based on the findings of programme monitoring, expenditure monitoring and reporting, and audits.

3. Resources and Resource Mobilization Strategy

Mandatory text box to be included in this section:

The UN system agencies will provide support to the development and implementation of activities within the UNDAF, which may include technical support, cash assistance, supplies, commodities and equipment, procurement services, transport, funds for advocacy, research and studies, consultancies, programme development, monitoring and evaluation, training activities and staff support. Part of the UN system agencies' support may be provided to Non-Governmental [and Civil Society] organizations as agreed within the framework of the individual work plans (WPs) and project documents.

Additional support may include access to UN organization-managed global information systems, the network of the UN system agencies' country offices and specialized information systems, including rosters of consultants and providers of development services, and access to the support provided by the network of UN Specialized Agencies, Funds and Programmes.

⁶ For the purposes of these clauses, "the UN" includes the IFIs.

The UN system agencies shall appoint staff and consultants for programme development, programme support, technical assistance, as well as monitoring and evaluation activities.

Subject to annual reviews and progress in the implementation of the programme, the UN system agencies' funds are distributed by calendar year and in accordance with the UNDAF . These budgets will be reviewed and further detailed in the work plans (WPs) and project documents. By mutual consent between the Government and the UN system agencies, funds not earmarked by donors to the UN system agencies for specific activities may be re-allocated to other programmatically equally worthwhile activities.

In case of direct cash transfer or reimbursement, the UN system agencies shall notify the Implementing Partner of the amount approved by the UN system agencies and shall disburse funds to the Implementing Partner in [here insert the number of days as per UN system agency schedule].

In case of direct payment to vendors or third parties for obligations incurred by the Implementing Partners on the basis of requests signed by the designated official of the Implementing Partner; or to vendors or third parties for obligations incurred by the UN system agencies in support of activities agreed with Implementing Partners, the UN system agencies shall proceed with the payment within [here insert the number of days as agreed by the UN system agencies].

The UN system agencies shall not have any direct liability under the contractual arrangements concluded between the Implementing Partner and a third party vendor.

Where the UN system agencies and other UN system agency provide cash to the same Implementing Partner, programme monitoring, financial monitoring and auditing will be undertaken jointly or coordinated with those UN system agencies.

4. Monitoring and Evaluation (1-2 pages)

Mandatory text box to be included in this section:

Implementing Partners agree to cooperate with the UN system agencies for monitoring all activities supported by cash transfers and will facilitate access to relevant financial records and personnel responsible for the administration of cash provided by the UN system agencies. To that effect, Implementing Partners agree to the following:

1. Periodic on-site reviews and spot checks of their financial records by the UN system agencies or their representatives, as appropriate, and as described in specific clauses of their engagement documents/ contracts with the UN system agencies'
2. Programmatic monitoring of activities following the UN system agencies' standards and guidance for site visits and field monitoring,
3. Special or scheduled audits. Each UN organization, in collaboration with other UN system agencies (where so desired and in consultation with the respective coordinating Ministry) will establish an annual audit plan, giving priority to audits of Implementing Partners with large amounts of cash assistance provided by the UN system agencies, and those whose financial management capacity needs strengthening.

To include VERBATIM: (Select from the following two options):

- [Where an assessment of the Public Financial Management system has confirmed that the capacity of the Supreme Audit Institution is high and willing and able to conduct scheduled and special audits]:

The Supreme Audit Institution may undertake the audits of Government Implementing Partners. If the SAI chooses not to undertake the audits of specific Implementing Partners to the frequency and scope required by the UN system agencies, the UN system agencies will commission the audits to be undertaken by private sector audit services⁷.

- [Where no assessment of the Public Financial Management Capacity has been conducted, or such an assessment identified weaknesses in the capacity of the Supreme Audit Institution]:

The audits will be commissioned by the UN system agencies and undertaken by private audit services.

5. Commitments of the Government

Mandatory text box to be included in this section:

The Government will support the UN system agencies' efforts to raise funds required to meet the needs of this UNDAF and will cooperate with the UN system agencies including: encouraging potential donor Governments to make available to the UN system agencies the funds needed to implement unfunded components of the programme; endorsing the UN system agencies' efforts to raise funds for the programme from other sources, including the private sector both internationally and in [name of country]; and by permitting contributions from individuals, corporations and foundations in [name of country] to support this programme which will be tax exempt for the Donor, to the maximum extent permissible under applicable law.

Cash assistance for travel, stipends, honoraria and other costs shall be set at rates commensurate with those applied in the country, but not higher than those applicable to the United Nations system (as stated in the ICSC circulars).

The Government will honour its commitments in accordance with the provisions of the cooperation and assistance agreements outlined in paragraph [x above in the section on Basis of the Relationship].

Without prejudice to these agreements, the Government shall apply the respective provisions of the Convention on the Privileges and Immunities of the United Nations (the "General Convention") or the Convention on the Privileges and Immunities of the Specialized Agencies (the "Specialized Agencies Convention") to the Agencies' property, funds, and assets and to their officials and experts on mission. The Government shall also accord to the Agencies and their officials and to other persons performing services on behalf of the Agencies, the privileges, immunities and facilities as set out in the cooperation and assistance agreements between the Agencies and the Government. In addition, it is understood that all United Nations Volunteers shall be assimilated to officials of the Agencies, entitled to the

⁷ Seen through a South-South lens, the capacity assessment process presents an opportunity to identify capacity assets that a particular country could offer to other developing countries and the capacity gaps that could be filled by other developing countries. For UNDP, the audit of NGO or nationally implemented projects can be assigned to the national Supreme Audit Institution (SAI) only on the condition that the institution has a demonstrated capacity to carry out the audits in an independent manner. To this effect, the Office of Audit and Investigations (OAI) has made available on its Intranet site guidance on the assessment of SAIs along with a questionnaire that will need to be properly completed, signed and communicated to OAI to support that due diligence has been exercised prior to opting for having such audits undertaken by the national SAI. Please refer to OAI Intranet site for further details.

privileges and immunities accorded to such officials under the General Convention or the Specialized Agencies Convention. The Government will be responsible for dealing with any claims, which may be brought by third parties against any of the Agencies and their officials, experts on mission or other persons performing services on their behalf and shall hold them harmless in respect of any claims and liabilities resulting from operations under the cooperation and assistance agreements, except where it is any claims and liabilities resulting from operations under the cooperation and assistance agreements, except where it is mutually agreed by Government and a particular Agency that such claims and liabilities arise from gross negligence or misconduct of that Agency, or its officials, advisors or persons performing services.

[If required]: Without prejudice to the generality of the foregoing, the Government shall insure or indemnify the Agencies from civil liability under the law of the country in respect of vehicles provided by the Agencies but under the control of or use by the Government.

(a) "Nothing in this Agreement shall imply a waiver by the UN or any of its Agencies or Organizations of any privileges or immunities enjoyed by them or their acceptance of the jurisdiction of the courts of any country over disputes arising of this Agreement".

(b) Nothing in or relating to this document will be deemed a waiver, expressed or implied, of the privileges and immunities of the United Nations and its subsidiary organs, including WFP, whether under the Convention on the Privileges and Immunities of the United Nations of 13th February 1946, the Convention on the Privileges and Immunities of the Specialized Agencies of 21st November 1947, as applicable, and no provisions of this document or any Institutional Contract or any Undertaking will be interpreted or applied in a manner, or to an extent, inconsistent with such privileges and immunities.

A standard Fund Authorization and Certificate of Expenditures (FACE) report, reflecting the activity lines of the work plan (WP), will be used by Implementing Partners to request the release of funds, or to secure the agreement that [UN organization] will reimburse or directly pay for planned expenditure. The Implementing Partners will use the FACE to report on the utilization of cash received. The Implementing Partner shall identify the designated official(s) authorized to provide the account details, request and certify the use of cash. The FACE will be certified by the designated official(s) of the Implementing Partner.

Cash transferred to Implementing Partners should be spent for the purpose of activities and within the timeframe as agreed in the work plans (WPs) only.

Cash received by the Government and national NGO Implementing Partners shall be used in accordance with established national regulations, policies and procedures consistent with international standards, in particular ensuring that cash is expended for activities as agreed in the work plans (WPs), and ensuring that reports on the utilization of all received cash are submitted to [UN organization] within six months after receipt of the funds. Where any of the national regulations, policies and procedures are not consistent with international standards, the UN system agency financial and other related rules and system agency regulations, policies and procedures will apply.

In the case of international NGO/CSO and IGO Implementing Partners cash received shall be used in accordance with international standards in particular ensuring that cash is expended for activities as agreed in the work plans (WPs), and ensuring that reports on the full utilization of all received cash are submitted to [UN organization] within six months after receipt of the funds.

To facilitate scheduled and special audits, each Implementing Partner receiving cash from [UN organization] will provide UN system agency or its representative with timely access to:

- *all financial records which establish the transactional record of the cash transfers provided by*

[UN system agency], together with relevant documentation;

- all relevant documentation and personnel associated with the functioning of the Implementing Partner's internal control structure through which the cash transfers have passed.

The findings of each audit will be reported to the Implementing Partner and [UN organization]. Each Implementing Partner will furthermore:

- Receive and review the audit report issued by the auditors.
- Provide a timely statement of the acceptance or rejection of any audit recommendation to the [UN organization] that provided cash (and where the SAI has been identified to conduct the audits, add: and to the SAI) so that the auditors include these statements in their final audit report before submitting it to [UN organization].
- Undertake timely actions to address the accepted audit recommendations.

Report on the actions taken to implement accepted recommendations to the UN system agencies (and where the SAI has been identified to conduct the audits, add: and to the SAI), on a quarterly basis (or as locally agreed).