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Public Access to Information and Documentation at the United Nations Development Programme: Issues, Findings, and Recommendations
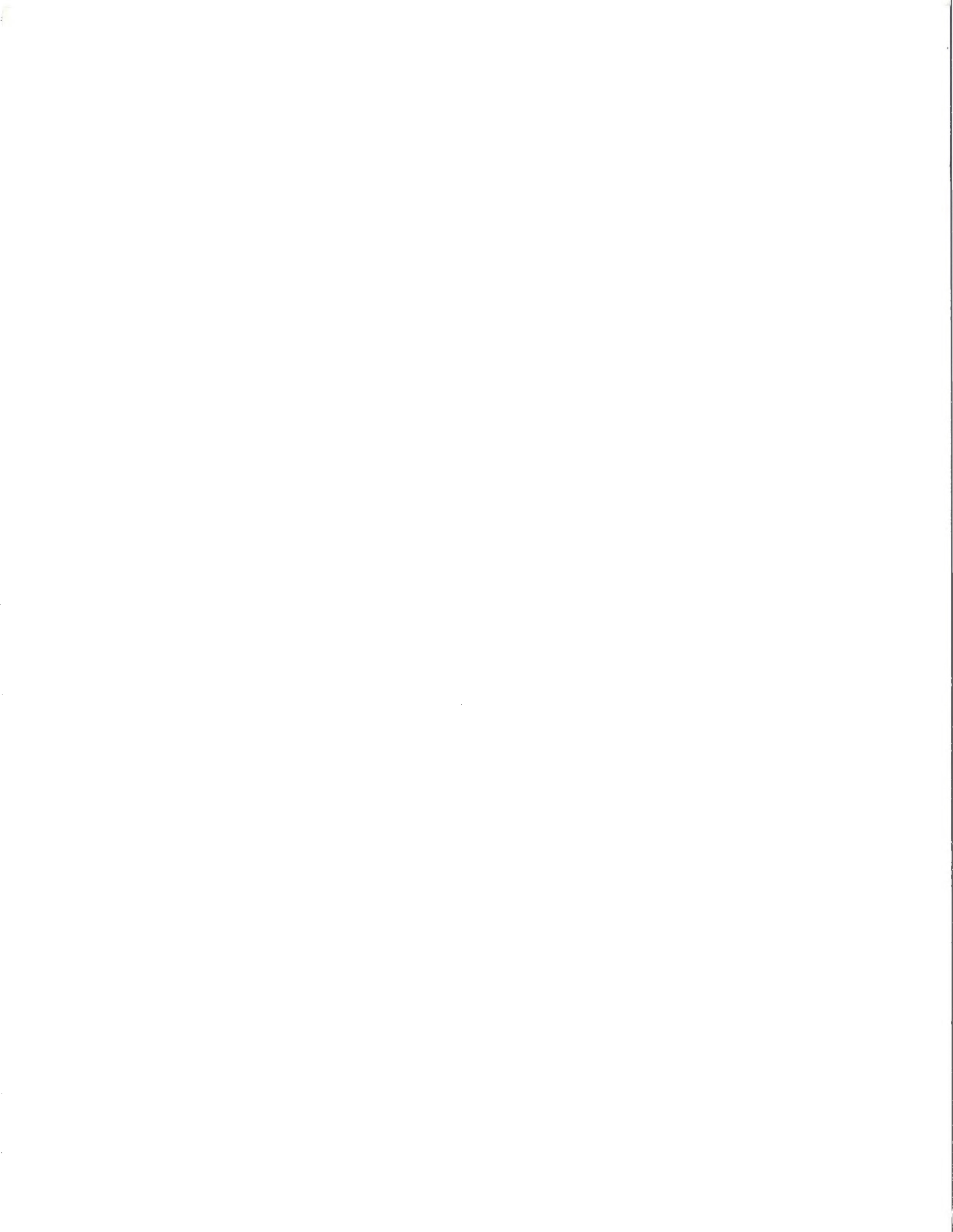
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PUBLIC ACCESS TO INFORMATION AND DOCUMENTATION

AT THE

UNITED NATIONS DEVELOPMENT PROGRAMME

Issues, Findings, and Recommendations

June 18, 1996

CONTENTS

I.   EXECUTIVE SUMMARY

Recently there has been a perception that the number and sensitivity of unsolicited requests from outsiders for information generated or held by UNDP has increased. This, in turn, has generated an awareness both within and outside the organisation of the need for UNDP to regularise its public information and documentation disclosure policies and practises. In response to that perceived need, this document makes preliminary findings and recommendations relevant to a policy for UNDP with respect to public access to information and documentation. It also proposes a delivery mechanism to assure the public accessibility of information made available pursuant to any such policy.

This document consists of three principal sections. The first analyses the principled justification for a public information and documentation disclosure policy by reference to first principles of sustainable human development, examines institutional practises and needs, and identifies the expected benefits of such a policy to UNDP. The second section analyses the major policy and legal issues associated with such a policy, which are segmented into external constraints and areas of potential internal institutional flexibility. This portion of the document makes concrete recommendations for the content of such a policy. Third, the document proposes a delivery mechanism to assure not only that the information and documentation governed by such a policy is passively available to the public, but also to enhance the likelihood that affected interests and parties will have access to that information and documentation in actuality.

The principal finding of the first portion of the report is that UNDP does not have an organisation-wide, generic policy addressing public access to the documentation produced or held by the organisation. As a result of a lack of a comprehensive policy in this area, practice at UNDP with respect to public disclosure of information and documentation is inconsistent. There appears to be a widely held consensus among UNDP's professional staff as to the need for a public information and documentation policy and the benefits that would flow to the work of the organisation. Information disclosure is a prerequisite for sustainable human development, for achieving specific objectives of sustainable human development, and for capacity building. There is no inherent impediment in the institutional culture of UNDP to adopting and fully implementing a policy specifying greater public disclosure of information and documentation than is now the norm. Potential constraints in adopting such a policy include restrictions in the standard basic assistance agreements (SBAAs) currently in force between the UN and over 100 recipient country governments and claims of confidentiality by those governments.

With respect to the content of such a policy, the report recommends that UNDP's information disclosure policy should emphasise public access to operational information. Accordingly, the policy should identify a standard package of documents that tracks the programming and project cycles and that henceforth will be made available to the public as soon as that documentation is finalised. The principal policy and legal issues associated with the adoption of a public information and documentation disclosure policy fall into two broad

categories: (1) external constraints, such as those arising from UN-wide policies or structure; and (2) areas of greater internal policy maneuverability, over which UNDP has an institution has greater control. Subsidiary recommendations for giving life to the principal proposal, segmented into these two categories, are set out in greater detail in section II below.

With respect to a delivery mechanism, the report recommends a primary, but not exclusive, focus on the Internet as a cost-effective mechanism for providing the maximum information to the broadest possible audience at the lowest cost. At the same time, an Internet-based policy is unlikely fully to satisfy all informational needs, particularly of affected parties in rural areas in programme countries. Consequently, documents should be available in full text from a central focal point in New York and from country offices serving the relevant programme country. Even so, affected parties in programme countries may still experience an unmet need for information, a challenge that should be addressed through a separate policy addressing public participation in UNDP's operations.

Every effort has been made to identify those options that minimise costs and the need for resource reallocation. Nonetheless, the adoption of the recommendations in this report could increase workload in New York and the country offices, and might imply the commitment of other resources as well.

II.   SUMMARY OF RECOMMENDATIONS

This section sets out the principal recommendations of the present report concerning UNDP's proposed public information and documentation disclosure policy. Implementation of the following three recommendations is subject to external policy and legal constraints and would require consultation with Office of Legal Counsel and, most likely, programme country governments, through the Executive Board or otherwise:

- UNDP should Relax the interpretation of Standard Basic Assistance Agreements (SBAAs), currently requiring particularised consultation with the host country government for each project, to accommodate a liberalised documentation and information policy.

- New or amended SBAAs should refer to UNDP's public information and documentation disclosure policy as the relevant standard governing public release.

- UNDP should adopt rules governing claims of confidentiality to address unusual cases in which the objective basis for withholding information claimed confidential by programme country governments is questionable.

The following recommendations fall to a much greater extent, or reside exclusively, within UNDP's discretion:

- UNDP's information disclosure policy should emphasise public access to operational information.

- UNDP's public information and documentation disclosure policy should establish a presumption in favour of public disclosure.

- Documents should be released to the public sufficiently soon after preparation to assure their utility for the purpose of public consultation.

- The policy should identify a standard package of documents that tracks the programming and project cycles and that henceforth will be made available to the public.

- UNDP should not create a new class of documentation specifically for public consumption, but instead should assure public access to actual working documents, with material appropriately claimed confidential by programme country governments excised.

- UNDP should specifically assure that pre-decisional documentation, including all technical reports, are made available to the public in timely fashion.

- The policy should establish categories of documents that are not ordinarily available to the public, such as those containing information related to personnel, personal, staffing issues not directly relevant to UNDP's operational mission.

- Public notice of relevant information concerning projects in the pipeline should be provided through a regular, periodic publication.

- The policy should establish minimum rights of access to information and documentation by the public, but should not preclude release of greater amounts on a discretionary basis to facilitate UNDP's institutional mission.

- The policy should not distinguish based on the identity of the requester, but instead should treat all members of the public evenhandedly.

- The policy should not limit information provided to entities to which UNDP is directly accountable, including donor and recipient country governments and UNDP's Executive Board.

- The policy should not limit release of information on a need-to-know basis to UNDP's partners in development, including UN specialised agencies and other

international organisations, such as the World Bank, and contractors and consultants, whether from the private or not-for-profit sectors, employed to implement UNDP-financed projects.

- UNDP should adopt both a generic policy governing public access to information and documentation, as well as instructions for the preparation of programming and project documentation.

- The policy should be integrated into UNDP's agency-wide information strategy.

- A policy establishing terms of access by the public to information and documentation ought not to be considered or treated as establishing new rules. Instead, such a policy can and should clarify, standardise, and embellish the best existing practise within the organisation.

- To the extent that the procedures for environmental impact assessment of the specialised agencies, which act as executing agencies for UNDP projects, are inadequate or do not exist, UNDP ought to adopt detailed EIA procedures for itself.

- The policy should apply to all associated funds and programmes administered by UNDP, with the exception of the GEF.

- The policy should apply from the date of adoption and should be presumed to apply to documentation prepared before that date unless there are compelling reasons to the contrary.

- The policy should be reviewed two years after its adoption and implementation.

- The Publications Board should be expanded to include members of representative sectors of the public, appointed in their personal capacities.

The following are the principal recommendations of the present report concerning a proposed delivery mechanism:

- Electronic communications, and especially the Internet, are a highly useful vehicle for posting short documents and for identifying the range of documents available. At a minimum, the Internet site for each UNDP programme country should identify the documents available for each country as part of the standard package described above.

- Documents should be available in full text from a central focal point in New York and from country offices in the relevant programme country. However, these should not be the sole mechanisms for satisfying requests, consistent with the policy.

- Each Resident Representative should delegate responsibility for implementation of the

policy to a senior staff member in each country office.

- Documents should be made available in the working languages of the UN as well as in the language of languages of the project area.

- To assure that all potentially affected parties are reached, UNDP should initiate a separate undertaking that will result in a public participation policy that tracks the programming and project cycles.

- Incentives in the form of performance reviews should be provided to assure full implementation of the policy at the field office level.

- DPA's programme for training information officers in the field offices should be coordinated with the new policy.

- An oversight body consisting of 5 UNDP staffers and 2 outside experts should be created.

- Procedures should be adopted to govern requests for reconsideration if a document or portion of a document is withheld from public access.

III.   PURPOSE AND METHODOLOGY

The purpose of this paper is to survey, analyse, and make preliminary recommendations with respect to the principal issues associated with an anticipated policy concerning public access to information and documentation at the United Nations Development Programme (UNDP). As such, this document is the initial product resulting from work on this topic undertaken by a Washington-based team of three consultants retained by the Social Development and Poverty Elimination Division (SEPED/NGO Programme) and the Sustainable Energy and Environment Division (SEED Directorate): Chad Dobson, Sukanya Devarajan, and David Wirth, with Ramesh Gajraj providing support in New York. This document has been drafted by Professor Wirth and Dr. Devarajan to serve as a framework for the next phase of this project, namely the drafting of a proposed public information and documentation disclosure policy for UNDP.

Prior to preparing this paper, Dr. Devarajan and Professor Wirth spent a week, from March 4-8, 1996, at UNDP headquarters in New York interviewing more than 25 professional staffers at UNDP and in the liaison offices of UN specialised agencies in New York. The list of appointments for the team is appended as Annex G. A draft of this document dated April 25, 1996 was circulated within UNDP. The present final draft incorporates comments received in response.

Additionally, the team addressed questions to a number of UNDP's country offices to determine the needs of, and perspectives from, the field. The letters addressed to UNDP's

country offices are appended to this report as Annex D. The responses of the country offices have been taken into account in drafting the text of this report.

Questionnaires were also sent to UN specialised agencies. The specialised agencies were polled to ascertain their practise for purposes of comparison of sister UN organisations in the UN family, as well as in their capacity as implementing agencies for UNDP projects. The letters addressed to UNDP's country offices are appended to this report as Annex E. The responses of the specialised agencies are summarised in Annex B.

Members of the consultancy team conducted consultations with representatives of a variety of non-governmental organisations (NGOs) in New York on May 23, in Accra, Ghana on June 3, and in Managua, Nicaragua on June 10. Additionally, the April 25 draft was circulated on a selective basis to certain experts and NGO representatives outside the UN system. This final draft reflects comments received by the team as a result of this consultative process involving members of the public.

IV. JUSTIFICATION FOR A PUBLIC INFORMATION AND DOCUMENTATION DISCLOSURE POLICY

First principles require timely public* access to complete and accurate information as an essential precondition to sustainable human development. These principles have already been affirmed and embraced in a multiplicity of United Nations fora, including UNDP. However, as a result of a lack of a comprehensive policy in this area, practise at UNDP is inconsistent. The benefits to UNDP from the adoption of such a policy are significant and numerous.

A.   United Nations framework for sustainable development

"Sustainable human development," UNDP's basic paradigm and mission, includes as one of its central tenets the need for public participation and involvement in development-related decisions. A necessary corollary to this principle is that the timely provision of operational information to the public, and particularly to affected parties, is an essential component of sustainable human development. Accordingly, any policy concerning public access to information and documentation should not be seen as a free-standing end in itself, but instead as a necessary vehicle to facilitate a larger strategy of improved public participation and consultation with organs of civil society with the goal of furthering UNDP's substantive mandate. Moreover, an important objective of any information and documentation disclosure policy is to build capacity both within UNDP and in the developing

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* Unless the context requires otherwise, in this study the terms "public" and "the public" refers without distinction to any non-governmental entity, including but not limited to individuals, non-governmental organisations (NGOs), businesspersons, scientists, and media representatives.

world. This task will be facilitated to the extent that information disclosure is seen as a development issue and not as a political question.

1.   General principles

Assuring the continued integrity of the natural environment is an essential component of sustainable human development. In this regard, Principle 10 of the Rio Declaration on Environment and Development, endorsed by over 100 heads of state and government at the United Nations Conference on Environment and Development in Rio de Janeiro in June 1992, specifies the availability "at the relevant level" of "information concerning the environment." "Environmental" information is very difficult to define, and paragraph 27.9 of Agenda 21, the action plan for the future also adopted at Rio, makes clear that the exhortation extends to international organisations such as UNDP and includes development information more generally. Likewise, paragraph 38.44 of Agenda 21 specifies that NGOs "should have access to reports and other information produced by the United Nations system."

References to the need for transparency, public participation, and good governance in the 1995 summit-level Copenhagen Declaration on Social Development and the Programme of Action of the World Summit for Social Development are too numerous to set out individually. Against that background, the instrument specifically stresses access to information as a precondition to effective development in a wide variety of following passages, in particular in paragraphs 71, 72, and 85.

The World Commission on Environment and Development was constituted by the United Nations General Assembly in 1983 and charged with "propos[ing] long-term environmental strategies for achieving sustainable development to the year 2000 and beyond." The Commission consisted of 21 eminent individuals appointed in their personal capacities. While not representing governmental policies as such, the Commission's work established much of the conceptual framework for sustainable development initiatives in the UN system and elsewhere. With respect to information access, the Commission's report, *Our Common Future*, in a recommendation identifying UNDP by name emphasised the "need to recognise and extend NGOs' right to know and have access to information on the environment and natural resources."

The UN General Assembly has recognised, as in Resolution 49/38, adopted in 1995, the need to keep the public informed of UN activities. The Secretary General, as in his article "Global Leadership After the Cold War," which appeared in the March/April (Spring) issue of *Foreign Affairs*, has stressed the need for cooperation by the United Nations with NGOs.

2.   Adoption of sustainable development principles by UNDP

For its part, UNDP's focus on sustainable human development recognises the necessity for public access to information as a key element. For example, the "Initiatives for Change" agenda, intended in part as a vehicle for implementing the sustainable human

development mandate, expressly identifies capacity-building among NGOs and working closely with organisations of civil society. As a matter of principle, if not practise, UNDP is already committed to providing stakeholders, affected parties, and the public generally meaningful development-related information. The task would thus appear to be to operationalise, or deliver on, a commitment that, at least in principle, has already been made.

For example, the August 1995 UNDP publication entitled "Promoting Sustainable Human Development: National Entry Points" identifies the need for "sound governance," which

> mean[s] a system of public management based on the rule of law, a fair and efficient system of justice, broad popular involvement in political, social and economic processes, and access to information and communications.

In operational terms, that document notes that

> participatory development . . . will require adjustment of some of UNDP and UN system agency procedures, as well as an understanding that "delivery" patterns may vary widely from the past. Moreover, public participation techniques will be needed to ensure accountability to the people who are the intended beneficiaries of the development actions. Because much of this work will involve a transformation of traditional views and practices, it will to a great extent represent a learning process for UNDP and its development partners.

Additionally, staff are exhorted to recognise that

> [a] key aspect in building national capacity for development is to ensure people's participation at all levels of development. This means enhancing the skills of development professionals to manage process. Research has shown that people's participation in programme formulation and implementation is crucial to sustainability, and results in: better identification of development priorities, use of indigenous skills in implementation, lower project costs and community sharing of costs, more relevance to local conditions and cultures, more concern for the environment, and willingness to take responsibility for outputs.

Along similar lines, UNDP Executive Board Resolution 95/22 of 16 June 1995, which adopted sustainable human development as a primary mission of the institution, calls for "increased flexibility and transparency" in the organisation.

The Administrator does not appear to have issued a "Direct Line" on non-governmental organisations (NGOs), civil society organisations (CSOs), public participation,

access to information and documentation, or similar issues. Nonetheless, Direct Line No. 7, dated 17 January 1996, addresses "reaching the media and promoting advocacy." Under the heading "Coming Closer to CSO and NGO Community," that document notes the following:

> In general, we must all work to create a "culture of civil society" within which UNDP staff at all levels show they care about NGO views, just as they appreciate government views. This means inviting NGOs into our offices and into our projects and programmes so they can share what they see.

B.   Institutional practises and needs

Existing mechanisms and systems by which UNDP communicates as an institution with the public are described in Annex A. None of these vehicles amounts to a public information and documentation disclosure policy as contemplated in the terms of reference for this project. Significantly, the information made available through the channels discussed in Annex A is all the result of UNDP's internal initiative, and not directly in response to outside requests.

Additionally, UNDP receives unsolicited requests from outsiders for information generated or held by the organisation. For example several NGOs have recently requested operational information concerning UNDP-financed river development projects in Southeast Asia and South America. While the number of such particularised inquiries is not clear, the perceived sensitivity of, and sense of urgency surrounding, such requests has increased significantly over the past year or so.

1.   Existing information and documentation disclosure policy

So far as can be determined, UNDP does not have an organisation-wide, generic policy addressing public access to the documentation produced or held by the organisation. Anecdotal reports suggest that there may have been such a policy at one time; if there was, it apparently disappeared or somehow was eliminated under circumstances that are far from clear.

Interestingly, part 30601 of the Programme and Projects Manual (PPM) does establish a policy for the limited category of documentation identified as "documentary outputs" from UNDP-financed projects, but that category of documents is quite limited. It is not clear to what extent that rule is applied in practice to the category of documentation to which it applies or whether such a rule might be extended to other kinds of documents.

2.   Existing practise with respect to
         information and documentation disclosure to the public

As might be expected in a situation in which there is no formal policy regarding public disclosure of information and documentation, practise in this regard within UNDP varies enormously. Inevitably, disclosure often depends on the identity of the requester and the reason for the request. For example, a prospective private sector contractor that requests prior information on infrastructure projects may not be accommodated, whereas similar

information might be released to university faculty who want the data for statistical purposes. Frequently, it seems, information is disclosed or withheld on a basis of trust, or lack thereof, which has or has not been built over the years, and decisions are invariably made on an *ad hoc* basis.

Much of the need for standardisation appears to arise from a lack of certainty, if not outright confusion, about the rules regarding specific categories of documentation. Some professional staff believe that certain documents are properly available to the public, while others are convinced that the same documents are not available for public release. For example, there is no clear guideline regarding the availability of the following to the public: reports of the Executive Board; country programme notes; project documents; mid-term and tripartite reviews; and final evaluation reports. There appears to be neither a policy governing these documents nor an institutional mechanism for resolving questions of public availability. The team itself was unable to obtain a definitive answer to the question of public availability with respect to certain categories of documents.

There is a virtually unanimous view to the effect that information claimed confidential or sensitive by governments must be withheld from the public, no matter how unreasonable UNDP (either as a corporate view or in the opinion of individual members of the professional staff) may consider such a position to be. Such an approach is considered necessary to maintain UNDP's "neutrality." Attempts to craft rules governing confidential information could jeopardise UNDP's working relationship with governments, which then might no longer provide the necessary information. On the other hand, a number of UNDP staff do not always trust the accuracy of information provided by governments, and UNDP often has limited capacity to verify data supplied by governments or to generate its own.

3. Institutional culture

Although there might be a range of views as to the appropriate content of such a scheme, there is wide consensus at UNDP as to the need for a public information and documentation policy. More specifically, the need for rules and procedures to handle *ad hoc*, unsolicited requests for documentation from outsiders is keenly felt. Undoubtedly UNDP recognises the need for a more businesslike approach.

Clearly there is no inherent impediment in the institutional culture of UNDP to adopting and fully implementing a policy specifying greater public disclosure of information and documentation than is now the norm. There is little or no "culture of secrecy." To the contrary, virtually all UNDP professional staff appear to be justifiably proud of their own work and the institution's accomplishments and would appreciate more public recognition for it. Many staffers prefer to release more, rather than less, to the public and expressly profess a "belief in information and the power of information." Consequently, the challenge does not appear to be changing the attitudes of individuals within the organisation; rather, the task seems to be the considerably easier one of removing uncertainties concerning, and impediments to, disclosure.

UNDP is traditionally accustomed to working with governments, to which the institution is ultimately accountable. There is a real concern within the institution about preserving the integrity of the working relationship between UNDP and national governments. Governmental attitudes, not those internally within UNDP, was identified as the most meaningful factor. This attitude is reflected most profoundly, although not exclusively, in the treatment of information considered by governments to be sensitive or confidential, as discussed above. It is considered inappropriate (and perhaps unprofessional) for UNDP to compel public disclosure in situations in which governments might object, or even be made uncomfortable. However, these attitudes are not necessarily empirically justified, and the adoption of somewhat more forthcoming rules concerning the treatment of information inappropriately claimed confidential by governments need not necessarily disrupt relationships between UNDP and governments.

Considering all the foregoing, a policy establishing terms of access by the public to information and documentation ought not to be considered or treated as "new." Instead, such a policy can and should clarify, standardise, and embellish the best existing practise. Many documents are already available to the public, or at least there is no inherent impediment to their release. Regularising this area alone would amount to significant progress. Moreover, to the extent "new" principles that go further than this approach may be required, those new rules can and ought to be viewed as giving operational effect to first principles of sustainable human development that have already been firmly embraced by UNDP as the organisation's core mission.

C.   Benefits to UNDP

A clear public information and documentation disclosure policy can be expected to improve the sense of transparency, accountability, and legitimacy of UNDP's operations. Calls for transparency and good governance in UNDP's operations are now said to be more frequent and intense. This has been emphasised in recent statements by the Administrator, who on 23 June 1995 delivered a speech in which he remarked that "one area where we can make more progress is in information policy, and full transparency." The responsibilities that go with UNDP's status as a multilateral, intergovernmental institution cannot be overemphasised. As UNDP traditionally deals exclusively with governments as clients, there is a general sense that UNDP has not been particularly effective in this area.

Second, such a policy will facilitate involving institutions of civil society as partners in development. Providing the public with accurate, comprehensive information in a timely manner is quite obviously a precondition for achieving this goal. Such an approach is also a critical vehicle for realising the capacity-building element of the sustainable human development framework. It is widely acknowledged that CSOs should be involved from the beginning. Accomplishing that aim requires the early provision of information to CSOs, affected parties, and the public more generally, especially in programme countries. For example, in his June 1995 speech, the Administrator observed that UNDP is

committed to improving the policy dialogue between governments and CSOs. We are committed to improving our own institutional capacity to foster collaboration among CSOs. We are committed to ensuring that CSOs participate fully in the many national plans that must be developed as a result of UN conferences and other agreements.

Public access to information is a development tool essential for realising substantive development benefits within the SHD framework. There is a symbiotic relationship between public participation in the development decision making process in recipient countries and the efficacy and sustainability of donor-financed development interventions. Information disclosure as a component of capacity building can be expected to be cost-effective in the long run.

As a corollary to this principle, a document disclosure policy may help UNDP mobilise necessary financial resources. Somewhat surprisingly, professional staff in New York, citing specific examples, observed that openness and transparency to constituencies other than governments are a powerful mechanism for increasing voluntary contributions to UNDP by governments.

A written policy will help to standardise approaches to information throughout the organisation. Not only the reality, but also the appearance of regularity in dealing with unsolicited, *ad hoc* requests for information will tend to reduce the risk of criticisms that the institution is less than evenhanded, inconsistent from staffer to staffer or region to region, and the like. Similarly, a generic policy can be expected to afford both individual staffers and the organisation as a whole greater confidence in making decisions concerning documentation. This principle would apply equally well in affirming not only the organisation's capacity to release information and documentation, but also to withhold it.

Last, a more forthcoming information policy can be expected to increase UNDP's efficacy in disseminating lessons learned by sharing the results of its "comparative advantage" in technical assistance with development professionals, academics, NGOs and CSOs, and the like. More specifically, through its own information policy UNDP can set a strong standard for transparency, accountability, and legitimacy in bilateral and multilateral assistance programmes, as well as at the national level in donor and programme countries alike.

V. MAJOR POLICY AND LEGAL ISSUES

The principal policy and legal issues associated with the adoption of a public information and documentation disclosure policy fall into two broad categories: (1) external constraints, such as those arising from UN-wide policies or the structure of the UN system; and (2) areas of greater internal policy discretion, over which UNDP as an institution has greater control.

A.   External constraints

1.   The Standard Basic Assistance Agreement (SBAA)

By memorandum dated February 2, 1996, Bruce C. Rashkow, Director of the General Legal Division of the Office of the Legal Counsel responded to a number of questions raised by Roberto Lenton, Director of UNDP's Sustainable Energy and Environment Division (SEED), located in the Bureau of Policy and Programme Support (BPPS). A copy of that memorandum is appended as Annex F to this report.

The principal legal framework for UNDP's in-country operations is the Standard Basic Assistance Agreement (SBAA). Over 100 such agreements, which are binding and enforceable under international law as bilateral treaties between the United Nations and recipient country governments, are said to be currently in effect. As a general matter, the main objective of these agreements is to establish the framework through which UNDP can effectively provide technical assistance. For example, the SBAA specifies that UNDP may maintain a permanent mission and station a resident representative in the relevant programme country and addresses the functions and rights of those entities.

The Office of the Legal Counsel reports that its general policy is to preserve the text of the standard form of the agreement intact to the greatest extent possible in negotiations with successive programme country governments. Consequently, an analysis of the standard language gives a good indication of the kinds of obligations to programme country governments that govern UNDP operations in most, if not necessarily all, recipient countries.

The chief limitation in the SBAA on the disclosure of operational information by UNDP would appear to be paragraph 7.5, which provides in full as follows:

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Article VII
Information Concerning Projects

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. . . .

7.5 The Parties [*i.e.*, the programme country government and UNDP] shall consult each other regarding the publication, as appropriate, of any information relating to any UNDP-assisted project or to benefits derived therefrom. However, any information relating to any investment-oriented project may be released by the UNDP to potential investors, unless and until the Government [of the programme country with which the agreement is in force] has requested the UNDP in writing to restrict the release of information relating to such projects.

As interpreted by attorneys in the Office of the Legal Counsel, this provision requires particularised consultation with the host country government for each project. The scope of the consultation requirement, as interpreted by that office, is very broad and includes all

information and documentation connected with any UNDP-financed project.

While this interpretation is not inherently inconsistent with the notion of an information policy, such a process would appear to be very burdensome, with few benefits. Significantly, it is quite clear that such an interpretation is not at all consistent with existing practice at UNDP. While some professional staff in headquarters and/or country offices may engage in such consultation, the organisation routinely may or does make project documents publicly available without express consultation with the government concerned.

On a substantive level, the interpretation of paragraph 7.5 by the Office of Legal Counsel would appear to preclude the release of any information claimed by the government in its unreviewable discretion to be sensitive or confidential, no matter how arbitrary or ill-founded that claim might be (see discussion of confidentiality below). Mr. Rashkow's February 2 memorandum also refers to "otherwise restricted information." To the extent that "otherwise restricted information" exceeds the scope information required to be withheld at government request, that category would appear to be amenable to treatment in a generic information and documentation policy.

The interpretation provided by the Office of Legal Counsel is not the only plausible construction of paragraph 7.5 of the SBAA. For example, the consultation requirement between UNDP and individual governments might well be satisfied by consultation with the Executive Board over a generic information and documentation policy -- a process expressly envisaged as a precondition of the adoption of any such policy -- thereby obviating the need for discussions with each government on every UNDP-financed project. If thought to be necessary, somewhat broader discussions could be undertaken on an informal basis with the governments of those countries not represented on the Executive Board as, for example, through UN permanent missions in New York. Similarly, "publication, as appropriate . . ." could well refer to "publication in accordance with UNDP's generic policy governing information disclosure."

The text of the SBAA is reported to be under revision, and presumably new negotiations are expected to commence in the future. Mention was also made of supplemental agreements that amend existing SBAAs. Either or both would be good occasions for modifying the standard text of the first sentence of paragraph 7.5 along the following lines:

> The Parties agree that UNDP may publish information relating to any UNDP-assisted project or to benefits derived therefrom in accordance with UNDP's policy governing public disclosure of information and documentation, as that policy may be amended from time to time by the Administrator, in consultation with Executive Board.

Because of the number of agreements already in place, such a strategy would be expected to consume some time. For the immediate and medium term, a reexamination of the acceptable

interpretations of the first sentence of existing paragraph 7.5 would consequently appear to be a top priority.

In view of the importance of this issue, UNDP's lack of its own in-house counsel seems to limit in a most unfortunate manner the extent to which UNDP can engage in a meaningful dialogue with attorneys in the Office of Legal Counsel. UNDP is said to have had its own in-house counsel as recently as the 1970s. While there are clearly benefits from having centralised legal counsel that represents the entire United Nations, Senior Management at UNDP ought to give serious consideration to mobilising the kind of legal and policy expertise needed to impress upon its lawyers the need not only for accountability to governments, but also for greater openness to the public.

2. Confidentiality

UNDP staff in New York estimate that 10 to 20% of information is claimed confidential by governments. However, relatively numerous anecdotal accounts identified innocuous information that was withheld from public disclosure by governments: female literacy, labour statistics, population size and growth rate, poverty levels, and information concerning endowment of natural resources, to name a few. Other data identified as potentially confidential or sensitive include information concerning contracts or bids, foreign reserves, and balance of payments. In one country, the temperature is a state secret, thanks to a law that requires the government to close if the temperature reaches a certain level. Arab states seem to be especially inclined to insist on the confidentiality of much information in UNDP documents.

Assuming that the legal considerations identified in the previous section can be resolved, an important policy issue confronting UNDP concerns the treatment of information claimed confidential by governments where the objective basis for withholding the information is questionable. The resolution of this issue one way or the other has the potential profoundly to affect UNDP's relationship with governments, and particularly programme country governments. With respect to the merits of claims of confidentiality, UNDP should balance the benefits of confidentiality with the benefits of disclosure. Current practice is to withhold all confidential information regardless of the reason given by government, an approach that realises all the benefits of confidentiality but none of the advantages of disclosure.

As a preliminary matter, the concept of "ownership" of information would not appear to be particularly helpful. For one thing, certain information claimed confidential -- as in the case of the country in which the temperature is a state secret -- might very well be in the public domain or obtainable from a source other than that government. UNDP is a multilateral, intergovernmental institution with different lines of accountability from those of national governments. As part of the UN system, UNDP is considerably more than just an agent of its programme country governments. It is far from unreasonable to conclude that, in providing data or information in return for receipt of technical assistance grants from UNDP, a programme country government has relinquished its claim of sole "ownership" of

that information. So, by including a particular country government in its technical assistance grants programme, UNDP quite plausibly might be considered to have acquired certain rights to use information provided by governments that is necessary for UNDP effectively to operate that programme and for UNDP to meet the legitimate needs of the interests to which UNDP itself is accountable.

Second, it might be worthwhile to consider adopting a presumption of disclosure and nonconfidentiality even if determinations of confidentiality were to continue to be left to governments. Thus, information might be considered appropriate for public consumption unless the government providing the information were expressly to claim otherwise in accordance with certain principles regarding form and timing -- *e.g.*, in writing at the time the data are provided to UNDP. Regardless of whether UNDP were inclined to review claims of confidentiality or not, such an approach might well have the virtue of regularising the process by which confidential information is handled and speeding the public disclosure process more generally. Such a policy and its relationship to the SBAA, as discussed in section V.A.1 above, could be an express component of Executive Board consultations to assure that UNDP is not acting "unilaterally" in this sensitive area.

Practice in the Global Environment Facility (GEF) is particularly instructive in this regard. The Administrator in his speech of June 23, 1995 stated that "[w]e have good disclosure and information policies from our GEF work; we must now move to adapt them to UNDP as a whole." Nonetheless, UNDP's information disclosure policy for the GEF, in the form of a letter dated 29 September 1993 over the Administrator's signature, is silent as to the treatment of information claimed confidential by a recipient country government. By contrast, the World Bank's analogous procedures, paragraph 5 of Bank Procedures 17.50 Annex A, provide a mechanism for resolving claims of confidentiality, although staffers for that institution report that such questions rarely if ever have arisen.

Among analogous institutions, the IDB appears to have given the greatest attention to regularising the treatment of information claimed confidential by governments. Based on those models, the team recommends that the following categories of information be eligible to be withheld at the specific request of governments:

- Intellectual property or similar information which has been disclosed to UNDP under conditions of confidentiality, or the intellectual property of UNDP;

- Internal financial information which may affect UNDP's programming activities (*e.g.*, proposed changes in voluntary contributions or financial matters concerning executing agencies);

- Information dealing exclusively with UNDP's internal administration and/or its operating systems which has no direct effect outside the institution or on its operations in programme countries;

- Internal notes, memoranda, and correspondence among UNDP staff, unless these are specified for public circulation;

- Privileged information (*e.g.,* legal advice and matters in legal disputes or under negotiation), including disciplinary and investigatory information generated within UNDP or for UNDP, except that intended for public release;

- Personal, health, or employment-related information about staff, except to the individual staff member concerned;

- Information related to procurement processes which involves prequalification information submitted by prospective bidders, proposals or price quotations, or records of deliberative processes; and

- Records of internal deliberative processes, unless the Executive Board determines they be made public.

B.   Areas of greater internal policy discretion

1.   Nature of information released

The kind of information proposed to be released is the single largest question that will have to be confronted. Presently the greatest unmet demand is for information on UNDP's ongoing and proposed activities rather than information concerning what the organisation knows, says, or "thinks." In other words, UNDP ought to focus on making operational information available to the public to a greater extent than in the past. This focus is entirely consistent with UNDP's character as a development assistance institution with an operational mission that may, at least in some cases, have a direct impact, for better or worse, on the individual and collective interests of affected parties, most particularly in countries of the South. And not coincidentally, operational information is currently in the best shape as a candidate for public release.

If it is the case, as the team of consultants would recommend, that UNDP ought to give greatest attention to the public release of operational information, then the disclosure policy most naturally should track the programming and project cycles. If disclosure is built into every stage of the programming and project cycles, then the release of information to the public will be that much more regular. Establishing public availability of a "standard package" of documents at the time they are created, governed by predetermined rules set out in the anticipated policy, would seem to be the most straightforward approach. Moreover, such a strategy would assure clear notice to UNDP staff, programme country governments, the public, and other potential constituencies.

The following are the categories of documents in the new programming cycle, each of which should be publicly available as part of the standard package of documentation:

- Preliminary programming note (PPN);

- Country cooperation framework (CCF);

- Target for resource assignment from core (TRAC); and

- Monitoring, review and reporting documents.

Additionally, the latter category of documents should reflect comments from the public, which should be solicited in the preparation of this documentation.

Although the information received by the consultancy team is not entirely clear on this point, it appears that at least some of the current project cycle will remain intact, even if the proposed changes to the programming cycle are adopted and implemented. To that extent, the following categories of documents, or their analogues in any restructuring of the project cycle, ought to be part of the publicly available standard package:

- reports of Executive Board meetings (which are already public, at least in principle, although perhaps not readily available);

- national human development reports (already public in published format);

- country strategy notes (in principle already public);

- country programmes;

- environmental overviews (not clear whether currently publicly accessible);

- project briefs (at least some of which are already public, as described in Annex A, section A.2);

- feasibility and pre-feasibility studies ("working documents");

- project documents; and

- evaluation reports -- mid-term, tripartite, and final evaluation reports (which should, however, be purged of information relative to the performance of individuals).

A related issue concerns the question whether any new categories of operational documentation ought to be created expressly for public consumption. As discussed in Annex C, this is the approach taken by the World Bank and adopted by the EBRD, but rejected by the AsDB and the IDB. Practice at the World Bank has tended in this direction even with the creation of a new class of documents. Based on this experience, the better approach

would appear to be the release of actual working documents, with any material appropriately claimed confidential by governments excised and those excisions indicated.

2. Timing of release

There are at least two subissues that raise questions of timing. The first, and perhaps easier, concerns the period between when the information or documentation is collected or generated by UNDP and the timing of the release of that information to the public. If, as recommended above, the organisation elects to make a standard package of documentation that tracks the programming and project cycles publicly available, timing could and should be tied to the release of the individual documents constituting that package. The earliest possible release consistent with the realities of how UNDP does business would appear to be the preferable course. Presumably, by the time a document is in final form, all the necessary clearances have been obtained internally within UNDP. So far as can be determined from this consultancy's research, governments have not necessarily reviewed documents considered by UNDP to be final. A blanket rule providing for the release of documentation upon adoption, with claims of confidentiality resolved before a document is final, is one possibility consistent with practice at the international financial institutions.

The second, and more challenging, subquestion concerns the release of information and documentation that has reached a level of finality such that it represents a credible working proposal for a project or other operational undertaking, but that is still preliminary in the sense that it precedes a final decision to go forward. Pre-feasibility and feasibility studies, for example, would fall in this category.

For the institution effectively to carry out its mission, deliberative decision making processes within UNDP, or any public institution for that manner, must to a certain extent be shielded from public view. Carried too far, a "fishbowl" mentality may well chill the kind of unrestrained give-and-take that is necessary for effective policy making. As a development assistance institution, the capacity of UNDP's staff to engage in a free and frank exchange of views needs to be preserved. These considerations suggests that public release should not be required for internal communications of a deliberative or preliminary nature (such as at least some of those on the Higgins system), confidential communications from governments relative to proposals for project design, and other documents that have not reached a sufficient level of "maturity" that they reflect meaningful proposals for action by the institution. Although not in any sense preliminary, personnel, personal, and staffing data would also appear to be inappropriate for public release, except to the extent that they relate to UNDP's operational activities and institutional mission.

On the other hand, first principles of sustainable human development, as discussed in section IV.A above, counsel release not only of what UNDP has done, but also what it proposes to do. If the goal is meaningful consultation and input at a time that can make an operational difference, there would appear to be no alternative. For CSOs and members of the public generally to have meaningful opportunity to comment in advance of decisions, certain pre-decisional information must be made available. An appropriate balance would

appear to be struck by applying the concept of a minimum level of "maturity" such that a proposal has been the subject of pre-feasibility or feasibility studies. This consideration suggests the need clearly to identify junctures in the programming and project cycles before the preparation of final project documentation at which information ought to be made publicly available.

Considering the desirability of early access to reasonably mature preliminary information, as discussed above, documentation should be targeted explicitly designed to provide public information on pipeline projects, either by undertaking a new publication or expanding existing ones.* As discussed in Annex C, similar publications at the multilateral development banks have been very useful vehicles for providing minimal but essential information for projects in the pipeline.

3. Target audiences

A question which surfaced repeatedly concerns treatment of various sectors of the public. Among those said to be "interested in UNDP's business," with rather disparate reasons for that interest, are the following (in no particular order):

● donor and recipient country governments, including opposition parties and parliamentarians;

● UNDP's Executive Board;

● other UN agencies and other international organisations, such as the World Bank;

● commercial interests, especially in Northern countries that may be interested in bidding on those projects in which a component is contracted out to the private sector;

● the media;

● taxpayers in donor and recipient countries;

● professional groups, particularly those interested in development issues;

● academics;

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* The "Compendium of Ongoing Projects," as its name suggests, would need to be expanded to include both anticipated, as well as ongoing projects, in order to satisfy this need.

- affected parties in recipient countries; and

- NGOs, which can be further subdivided into Northern groups, Southern organisations, and those that might play some role in project implementation.

There appears to be a roughly equal division among UNDP staff as to whether these different sectors ought to be treated differently for purposes of information disclosure. The real question is whether the institution's degree of openness ought to depend on the identity of the requester. This factor currently appears to be quite important in UNDP's existing *ad hoc* practice.

The first three categories identified above are relatively easy cases. These are entities either to which UNDP is directly accountable or which must have preferential access to information for UNDP to accomplish its institutional mission. This same principle would appear to apply to contractors and consultants, whether from the private or NGO sector, employed to implement UNDP-financed projects. In particular, to the extent that NGOs or CSOs are implementing partners in UNDP projects, they would not appear to be part of the public at large, but instead ought to be treated more along the lines of contractors who should receive preferential access to information on a need-to-know basis.

Otherwise, differentiation among different sectors of the public would appear to be fraught with peril, in particular by inviting criticism that the institution is less than neutral. Defining an NGO can be very difficult. If the goal is, as the consultancy team believes it should be, improved communications with a wide variety of constituencies among civil society in the developing world, the institution should be transparent to all, not just those that are likely to support or benefit from its work.

A recommended approach to dealing with the entirely understandable desire to differentiate among various segments of the public is to adopt an information policy that establishes as "floor" of disclosure, but not a "ceiling." That is, the proposed policy would establish the right of any member of the public to certain categories of information and documentation. That would not, however, preclude UNDP staff, including in particular Resident Representatives and country offices, from providing more information on a discretionary basis as the need arises to facilitate UNDP's institutional mission. Conversely, regardless of the content of UNDP's policy, its level of implementation in programme countries must of necessity take local realities into account. The need for this sort of flexibility on the part of the country offices was emphasised by interviewees who identified the highly varied circumstances under which UNDP operates in different countries and the increasingly decentralised character of UNDP, in which much decision making authority has devolved to field offices that are often critically positioned to seize opportunities that fortuitously present themselves.

4. Procedural vehicle for an information and documentation policy

The consultancy team assumed that the final work product from this exercise would be a generic UNDP policy concerning public access to information and documentation. A number of staffers in New York suggested instead that such a policy might be more effective if instead it were integrated into general instructions for the preparation of project documentation. The team recommends that both approaches be adopted to maximise the penetration of the policy into UNDP's operations.

UNDP administers a number of associated funds and programmes with their own sources of financing. The policy should apply to those associated funds and programmes administered by UNDP -- in particular UNIFEM and UNCDF -- that do not now have their own information policies. Applying the anticipated policy to the GEF, which already has its own documentation disclosure policy, could disrupt those existing relationships, could undermine the GEF's ongoing work, and would consequently appear to be counterproductive.

UNDP will also have to determine the applicable date of any such policy. The World Bank made its policy applicable prospectively, while noting that it would attempt to give life to the policy to documents prepared before the effective date on a case-by-case basis. While some transition provisions are probably necessary to deal with questions of notice to programme country governments, it would appear desirable to adopt the opposite presumption from that of the Bank: that any new policy ought to apply unless there is a good reason for not applying it, which could be determined on a case-by-case basis.

5. Schedule for reevaluation

A schedule for evaluating, revisiting, and potentially revising the anticipated policy would seem to be in order. Two years seems to be an appropriate time horizon. That amount of time would appear to be necessary to gain a reasonable degree of experience with the implementation of any policy and to take stock of lessons learned and experience gained. Additionally, during that two-year time horizon the impact of other initiatives that are closely related to the proposed public information and documentation disclosure policy, such as the Integrated Programme Management (IPM) project (see Annex A, section B) and the dissemination of Internet capabilities among the country offices (see section VI below), can be more readily appreciated. As a result of the IPM project, for example, data bases that do not now exist may have become available for public access.

VI. PROPOSED DELIVERY MECHANISM

A public information policy is only of use to the extent that it effectively provides relevant information in a timely fashion to those who need it most. Accordingly, the consultancy team was requested to make preliminary recommendations concerning an affirmative vehicle for accomplishing this purpose.

The widespread perception within UNDP is that the impetus for the present exercise is an upsurge in demand for information among donor country NGOs about UNDP's

operations. Regardless of the accuracy of this perspective, the consultancy team feels that there is a considerably greater need for access to information and documentation in programme countries. There is particular urgency to reaching affected parties in recipient countries, who may experience a direct impact on their lives and livelihoods from UNDP-financed operations. Given the practicalities of communication in countries of the South, and particularly in rural areas, these considerations also present a greater challenge than communications in the North. For example, one can imagine a quite plausible scenario in which rural minorities might be excluded from the benefits of a UNDP-financed project without their knowledge. Any proposed delivery mechanism should respond to cases such as these.

One possibility is to establish a central focal point or clearinghouse in New York. As discussed in Annex C, the MDBs by and large have adopted this approach. Indeed, one individual in the Division of Public Affairs (DPA), located in the Bureau for Resources and External Relations (BREA), is already charged with communications with NGOs. Each bureau has identified a focal point -- an individual -- responsible for this issue, at least for the purpose of the present study. Those channels, which can exercise important coordination, standardisation, and oversight functions, ought not to be attenuated. Moreover, it would be helpful for outsiders to know that there is one central office that is responsible for responding to requests for documentation.

That avenue, however, should not serve a gatekeeping function, potentially amounting to a bottleneck. Moreover, an approach that requires that all requests for information be processed only through a single focal point in New York does not appear to be consistent with the institutional culture at UNDP, where any number of professional staff expressed their desire to be involved in information disclosure decisions in their areas of expertise in a hands-on way. Furthermore, given UNDP's goal of decentralisation, it may prefer to designate regional foci as well.

UNDP's existing experience with the Internet suggests that this electronic mechanism is a cheap and effective means of disseminating information, potentially including project documentation in full text. By 1997-98 all country offices are expected to have an Internet terminal. An Internet strategy will require some support at headquarters in New York, which appears to have at best an equivocal commitment to the existing modest pilot programme. Of greater concern, however, is that an Internet strategy is less than fully sufficient for reaching the most important target audiences in Southern countries. Moreover, judging by the existing Internet sites for UNDP and the MDBs, it is not practicable to post anything other than brief documents in full text on this electronic medium. The principal utility of the Internet would consequently be to alert the public to the existence of a variety of documents, which then could be requested in full text either from New York or from country offices.

Most importantly, such an approach does not address the needs of individuals and organisations in programme countries, for which the country offices would appear to be the

more effective intermediaries. The potential of UNDP's field offices in implementing any policy on public access to information and documentation is widely recognised at headquarters. The utility of the United Nations Information Centres (UNICs) as delivery vehicles, despite the fact that they are technically under the supervision of Resident Representatives is widely regarded with skepticism. The preferred approach would appear to be to delegate responsibility for implementation of any policy to a senior staff member in each country office. Such a person might be responsible for responding to requests from members of the public for paper copies of documents concerning UNDP-financed technical assistance projects in the relevant country, for assisting users in obtaining Internet access in country offices and elsewhere, and for tracking requests as part of the evaluation process for the new policy.

To meet in-country needs, country offices should have an Internet terminal and hard (paper) copies of the standard package of documentation discussed above for each project. Documents should be made available in the language or languages of the project area. Such an approach, while incrementally helpful, is still unlikely to reach all the parties likely to be affected by a particular UNDP-financed project. For that purpose, the best suggestion appears to be the adoption of a public participation policy that closely tracks the programming and project cycles. UNDP should give serious consideration to undertaking such an exercise, which is beyond the scope of this consultancy, even before a public information and documentation access policy is in place.

The Resident Representatives and country offices vary, and some are less rather than more accessible to organisations of civil society. Undoubtedly, there is a need to create incentives for Resident Representatives and staff in field offices. One possibility is to include public access to information and documentation, receptivity to requests for documents, and the quality of communications with organisations of civil society as an express component of the Performance Appraisal Review (PAR). New guidelines that are said to require an annual review of each project would also be an occasion for evaluating public access to information as part of project preparation, implementation, and evaluation.

It is critical that staff be rewarded, not punished, for facilitating the goals of any information and documentation disclosure policy. As discussed in UNDP's own documentation quoted in section IV.A.2 above, realising a mission of sustainable human development requires changes in the way UNDP does business, and in particular in its dealings with the public. If, for example, a project is controversial, or has become so, as the result of a public disclosure of information, then it should not reflect poorly on an individual's professional performance.

The Administrator may want to consider issuing a "Direct Line" on public access to information and documentation immediately after any policy is adopted. Alternatively, UNDP could adopt a checklist as part of the proposed policy for use by country offices to facilitate implementation. DPA has held training workshops for Resident Representatives, Deputy Resident Representatives, and Public Affairs Officers among the regional bureaux for Latin

America and the Caribbean, Arab States, and Africa. Further undertakings in this regard are apparently planned for the regions of Asia and the Pacific and Eastern Europe and NIS. There would appear to be no reason why this effort could not be coordinated with the implementation of a delivery mechanism for a documentation and information disclosure policy.

As part of the internal review process any delivery mechanism should include a vehicle for collecting and evaluating information concerning the efficacy of implementation, as well as supervising and overseeing that process. Accordingly, the consultancy team recommends that an oversight group be established to monitor the implementation of the policy. This should not be mistaken for a body directly responsible for implementation, which should be the responsibility of all UNDP staff. A group of, say, 5 UNDP professional staff could be appointed by the Administrator from among the following groupings:

- the central contact point in DPA in New York for inquiries by NGOs;

- the central office, currently located in DPA in New York on a preliminary trial basis, responsible for posting documentation on the Internet;

- the focal points for each of the bureaux in New York responsible for questions of public access to information and documentation;

- the regional headquarters for each bureau; and

- the staffers in country offices charged with implementing the proposed policy.

To assure responsiveness to the concerns of the intended beneficiaries -- *i.e.*, the public -- two highly qualified individuals from outside UNDP, one from a programme country and another from a donor, might also be appointed by the Administrator.

The group might also be charged with the "appellate" function of considering requests for reconsideration if a document or portion of a document is withheld from public access. It would appear to be desirable to establish procedures to deal with such cases. Such procedures should address, among other things, the office to which a request for reconsideration should be addressed, the mechanisms and procedures for reconsideration, and time limits within which a response should be provided. Second, the oversight group might assist in implementing proposals to award UNDP core resources to programme country governments on the basis of "merit," by reflecting responsiveness by governments to the need for information disclosure as a component of such determinations.

Relying primarily on the Internet and existing staff in the country offices would appear to be the least expensive, most cost-effective manner of delivery consistent with accomplishing the goals of such an undertaking. Donor country governments might be

prepared to finance any incremental costs through dedicated voluntary contributions.

ANNEX A

UNDP'S EXISTING COMMUNICATIONS SYSTEMS

This annex describes information management storage and delivery systems that are contemplated or already in place at UNDP. So far as could be determined from the week of interviews in New York, UNDP has two principal formal vehicles for systematic delivery of documentation to the public: (1) the organisation's publications programme, administered through the Division of Public Affairs (DPA); and (2) publication on the Internet, the subject of an existing pilot programme in DPA and an option that has been less than systematically employed by the organisation. This annex also describes the Integrated Programme Management (IPM) initiative, which appears to be the most serious effort to address UNDP's in-house information management needs in a systematic manner.

A. Communications with the public

1. Publications programme

UNDP does not have a coordinated or integrated publication programme. Instead, each bureau or division has its own series of publications. While the Division of Public Affairs produces material for the "general public," the bureaux and other divisions produce "technical material." A 12-member Publication Board, one from each bureau or division and all of whom are members of UNDP's professional staff, coordinates and oversees the programme. Proposals for publications are submitted for its prior approval to the Board, which then determines adequate peer review, target audience, languages, and distribution. Additionally, the Board ensures that individual publications are consistent with UNDP's corporate image.

The *Human Development Report* (HDR) falls in a category of its own as an output that is not exclusively UNDP-originated. The HDR is produced by Oxford University Press for UNDP by a team of independent consultants. This team of consultants, which is chosen to reflect a particular theme, changes from year to year. Although UNDP does not have editorial control over the publication, the draft report is submitted to an extensive internal reader review at UNDP.

Based on the model of the HDR, UNDP ought to consider modifying the composition of the Publications Board somewhat by inviting a number of representatives of significant outside constituencies to join the Publications Board. These might include individuals drawn from among development professionals, academics, and the NGO/CSO sector.

The other principal outputs of UNDP's publication programme, all of which in principle are available for public consumption, are the following:

a. Division of Public Affairs
- "UNDP Flash!," a brief 4-page newsletter published in English, French, Spanish and Arabic, with generic news items, the only weekly in the (New York based) UN

system. The Arabic version is not on the Internet;

- **Choices**, a quarterly on development issues, whose publication was discontinued but is about to resume. Although it is not certain in what languages the resuscitated periodical will appear, the earlier version was published in English, French, Spanish, and Japanese;

- **Building a New UNDP**, the illustrated annual report, which not published last year as UNDP is considering changing its format. The most recent issue was 1994/95, published in English, French, Spanish, Japanese, and Arabic;

- **United Nations Development Programme**, an *ad hoc* publication. This is a basic informational brochure available in English, French, Spanish, Arabic, and Japanese; and

- **UNDP in the 90s**, another *ad hoc* publication. This publication, which appears in English, French and Spanish, consists of a series of information reports on UNDP and how the organisation is changing to meet the development needs of today's world.

b. BPPS Publications

(1) SEED
Most of SEED's publications are Capacity 21-related documents, including the following:

- Capacity 21 programme summaries, which are brief descriptions of Capacity 21 programmes. The updates describe the current status of each programme;

- Capacity 21 monitoring and reporting strategy, which includes summaries of monitoring and reporting techniques;

- Capacity 21 annual reports, of which two have been published so far, for 1994 and 1995;

- Capacity 21 independent review, one each for 1994 and 1995; and

- Capacity 21 monitoring reports.

(2) Science and Technology
Twelve documents describing the private sector development programme, about which the consultancy team has no further information.

c. RBEC

- "To Beijing and Beyond: The Gender Gap in Eastern Europe and the CIS;"

- "Living with Transition: The Struggle of Women in Eastern Europe and the CIS;"

- "Saving the Black Sea;" and

- "A Democratic response to HIV and AIDS in the CIS;"

d. RBAP

- "Fifty Years: Challenges and Opportunities," a brief history of UNDP's development work within Asia and the Pacific.

e. RBAS

- "Making a Difference;"

- "Sudan: Seeds for the Future;" and

- "Investment Promotion Forum," a pamphlet.

f. RBLAC

No publications.

g. OESP

(1) Main series on lessons learned (book format)

- "Evaluation Findings 1994;" and

- "National Execution: Promises and Challenges."

(2) Companion series on monitoring and evaluation (magazine format)

- "Improving Programme Assessment at UNDP," a concept paper;

- "UNDP Assistance to the Energy Sector," an evaluation study;

- "A Study of Government Monitoring and Evaluation Systems: The Case of Morocco;" and

- "A Study of Government Monitoring and Evaluation Systems: The Case of the United Arab Emirates."

(3)   <u>Main series on managing change (book format)</u>

- "Building a New UNDP: A Strategic Planning Framework;" and

- "Strategic Management in UNDP."

(4)   Companion series on managing
<u>change - update (magazine format)</u>

- April update;

- Corporate plan (June);

- July update; and

- October update.

h. <u>UNV (publications, videos, posters and photographs)</u>

- "UNV News," a quarterly newsletter in English, French, and Spanish;

- UNV country booklets, describing cooperation between UNVs and governments in eight countries (Yemen, Bhutan, Lesotho, Central African Republic, Botswana, Cambodia, Nepal, and in Central America);

- "UNV At a Glance: The Key Statistics;"

- "UNV Spectrum," a biannual update on the roster of candidates;

- "People Helping People;"

- "UNV and Domestic Development Services: A Success Story in Asia and Africa;"

- "India: Sharing and Learning;"

- "Malaysia: An Enterprising Development;"

- "Nepal: Focus on the Child;"

- "UNV in Oman: Supporting Sound Development;"

- "UNV in the Comoros: Part of the Solution;"

- UNV thematic series: programme advisory notes;

- UNV thematic series: volunteers participating in working with the urban poor;

- "Volunteers against Conflict;"

- Thematic flyers, consisting of information on various aspects and activities of the UNV programme;

- UNV 25th Anniversary video; and

- UNV Photo library, consisting of thousands of photographs (slides and print) which broadly illustrate the activities of the UNV programme in the field. The library is divided into three categories: UNVs in action; institutional photographs (special events); and general illustration photographs.

2.   The Internet

Currently in place are "Interim Policies and Guidelines for UNDP's Presence on the Internet" (undated). The very first words of that document note that

> Publishing on the Internet presents exciting opportunities and benefits for UNDP: (i) as an important component of our Communication and Advocacy Strategy to increase the visibility of UNDP and our mission; (ii) in support of our substantive programme work, providing a common technology base and boundless reference universe; (iii) as a programme area itself, promoting communications capacity-building and fostering dialogue among our partners particularly in the South; (iv) facilitating our own global, organisational communication.

The interim policy notes the "vast and rapidly expanding global audience (40 million across 168 countries) for the Internet and its infinite information resources." The interim policies and guidelines identify a number of "target audiences, including, IGOs; Government (Parliamentarians, Members of Congress, Missions to the U.N./Executive Board members in capital cities); NGOs (Northern/Southern); corporate private sector, research institutions [and] academia" as "natural 'markets' for policy and programme information." The interim Internet policy also notes that "[r]eady access by NGOs to our information can empower them as partners in advocacy." Information cleared by the Executive Board enters the public domain on the Internet, where it is presented both thematically and geographically.

The main target audiences are thought to be NGOs, as ready access to information by NGOs can strengthen the capacity of those organisations as partners in development. UNDP staffers appear to recognise that public access to information concerning the institution's operations, development processes, and procedures not only facilitates public education but also enhances UNDP's image as a transparent organisation. As it is the organisation's objective to reach its development partners, and particularly communities including governments and civil society in the South, UNDP plans to select its information with these different foci and audiences in mind.

Interviews with the consultancy team confirmed enthusiasm among UNDP staff over the potential of the Internet as communications delivery vehicle. Nonetheless, preliminary data indicate that users are almost exclusively from the North. Chief among the visitors to the home page are academic institutions, diplomatic missions, government agencies, intergovernmental organisations, other UN agencies, academics, and NGOs. UNDP staff report that they may later consider creating restricted audiences for targeted publics accessible by password. The Internet, as it is currently structured, divides its user audience through technological capabilities needed to access the information. Southern audiences, the bulk of the programme constituents, predominantly access text-based information with lower end machinery. However, their access to information on the web is growing steadily.

Significantly, the interim guidelines do not oblige UNDP to publish any particular document on the Internet. Indeed, they explicitly note that "[w]e are only obligated to disclose information prepared for the Executive Board and the U.N. General Assembly." Nonetheless, among the documents noted as "appropriate for posting" on the Internet are selected project briefs, country programme documents, country framework papers, country strategy notes, national human development reports, regional programme documents, country programme mid-term reviews (the latter subject to the specific notation "[o]n approval of BPPS"), and evaluation reports (this last "with approval of OESP"). Programme and project documents, according to the interim policy, may be reproduced in full "[e]xceptionally, with the concurrence of the BPPS."

At the level of operational information relative to particular country programmes and projects, the Internet appears to have been used only sporadically and intermittently by UNDP professional staff for the purposes envisioned in the interim policies and guidelines. A pilot project in Ukraine, which is a component of that country's UNDP technical assistance programme, is a good example of the possibilities for exploiting this relatively new information delivery system. Those who wish to familiarise themselves with the general activities of the UN office in Ukraine can access under the following headings, which pertain to the UN system as a whole, not just UNDP:

- "Who We Are," which is divided into activities the UN supports. One is environmental security. As this is the country in which the Chernobyl nuclear power plant is located, Ukraine faces acute air and water pollution in its industrial areas. Another is legal and constitutional security, an approach that stresses the rights of every individual to legal protection and to participation in the democratic process. The United Nations assists in drafting or reforming the national constitution and laws, preparing for democratic elections, and training in public administration.

- "What We Do," which gives very brief information on a variety of areas. Activities with respect to technical cooperation include creating a more effective system of public administration (UNDP), enhancing the contribution of women to sustainable development (UNDP), accelerating privatisation,

improving nuclear safety and radiation protection (UNDP and IAEA), mitigating the consequences of the Chernobyl disaster (WHO, UNESCO, UNICEF, IAEA, and FAO), and studying the ecology of the Black Sea (UNDP, UNEP, and the World Bank). In the area of aid coordination, the UN office in Ukraine facilitates multilateral and bilateral aid coordination and ensures that assistance is not duplicated. As concerns political reporting, the UN office collects and studies information on political development, particularly that which has a bearing on peace and security in the region. The staff from the office participated in the verification of the effectiveness of UN sanctions on the former Yugoslavia (Serbia and Montenegro), and undertook fact-finding missions to the Crimea (Sevastapol, Simferpol and Yalta), Odessa and the Danube Basin. The staff of the UN office prepare a monthly news bulletin that is distributed to the government departments, foreign missions, and to the UN family; and

●   "Basic Facts about Ukraine," which reports basic statistics, country background and major development issues (economy, energy and environment, human development), along with a bit of information about the economic reform programme.

The Internet site also presents a summary review of external assistance and the proposed programme of UN cooperation, which is divided into four columns: programme area; nature of assistance (*e.g.,* technical, legal, training); name of implementing agency; and other donors (*e.g.,* EBRD, EU, OECD, bilateral). The information in these categories is very limited to the point of being insufficient, with no data on where a project is implemented or programming details. Some information concerning implementation and monitoring arrangements and evaluation is provided. For detailed information, users are directed to project briefs, country strategy notes, and the country programme. However, the project briefs appear to consist purely of a one-line identification of projects, including completed, ongoing, and pipeline projects, by title only. The country strategy notes consist of the cover page only, with a table of contents. The country programme is not accessible on the Internet. While the Internet has considerable potential in this regard, users with any more than a cursory interest, especially in operational information related to UNDP-financed projects, will quite plainly require access to more extensive paper documentation.

A Sustainable Development Networking Project sponsored by UNDP is designed to provide an interface among in-country groups of officials and agencies responsible for the environment, research, non-governmental, grassroots, and entrepreneurial organisations, among which UNDP plays a mediating role. The Network is now reported to be operational in 21 countries, and all relevant information is said to be on the Internet, which serves as an important delivery vehicle in support of the programme.

UNDP, in collaboration with FAO, UNEP, the World Bank, and WHO, also sponsors "Development Watch." This Internet-based system was developed in response to chapter 40

of Agenda 21, which calls, among other things, for improved coordination among the institutions of the United Nations system with regard to activities related to development data and the development of indicators for sustainable development. In particular, that portion of Agenda 21 requests countries at the national level, and intergovernmental and non-governmental organisations at the international level, to develop the concept of indicators of sustainable development in order to identify such indicators. The Commission on Sustainable Development (CSD) raised this issue during its first two sessions. While some countries emphasised the need for such indicators, others expressed concern and insisted the indicators be developed in close contact with governments. Accordingly, the Development Watch initiative is targeted to decision- and policy-makers, especially at the national level. The principal objective of the programme is to monitor progress on sustainable development by disseminating relevant information, especially emphasising the aim of making indicators for sustainable development accessible to decision-makers at the national level.

B.   Communications among UNDP's professional staff

There is a widespread recognition within UNDP of the need to regularise the collection and management of information for purely internal purposes. Much factual and technical information collected and held by UNDP is not in a form in which it can be made available to others within the organisation. For example, a recent report issued by the Office of Evaluation and Strategic Planning entitled "Integrated Programme Management (IPM); Decentralised Programme Management: UNDP Information Needs Fact-Finding" made the following findings:

> In most units in UNDP, information is not conserved efficiently nor processed and analyzed systematically to serve as a management tool for decisions on which course of action is most appropriate to deliver the expected output. It is often sought when there is a need to report to a higher level and exchanged only when pressingly demanded. From the identification of information needs, it appears that there is currently no standard corporate system in UNDP to consolidate non-financial programme and non-programme related information. Home-grown applications have been developed by some non-core units which are attempting to capture substantive information. But they still do not go far enough to reach the level of reporting needed to be fully convincing. Recording of experiences, achievements and failures is not done systematically and records are not stored in easily accessible locations or devices. This create [*sic*] obstacles to a regular flow of useful information and contribute [*sic*] to the generalization of '*ad hoc*ism' in reporting and last minute rushes to produce reports for the Administrator, the Regional Bureau management, the Resident Representative and external bodies.

The consequences of this situation are manifold. For one, it represents a serious impediment to what was described as the Administrator's goal of rendering UNDP a "knowledge-based institution." For another, the current lack of an organisation-wide information management strategy was reported to create difficulties in terms of institutional

memory and continuity. Perhaps most relevant for current purposes, much information is not in a form in which it can readily be made available to the public.

The Integrated Programme Management (IPM) initiative appears to be the principal response to this situation. After the conclusion of an initial evaluation by Price Waterhouse, UNDP staff are now working with that firm to address these challenges, including the need for devolution to the field offices, improved financial management, and frequent development of cooperation assistance reports. These three aims, integrated with a stronger Resident Coordinator support system including enhanced field coordination, are presently being studied by a team appointed by Senior Management. The new approach toward integrating the information system as currently envisioned would utilise the electronic media almost exclusively and would involve the entire organisation in a much more comprehensive and coherent corporate information structure.

ANNEX B

SUMMARY OF RESPONSES OF UN SPECIALISED AGENCIES

Narrative responses to the inquiry submitted by the consultancy team (see Annex E) were received from the following five UN specialised agencies: UN Educational, Scientific and Cultural Organisation (UNESCO); UN Economic and Social Commission for Asia and the Pacific (ESCAP); UN Industrial Development Organisation (UNIDO); the International Fund for Agricultural Development (IFAD); and the World Health Organisation (WHO). Additionally, the Food and Agriculture Organisation (FAO) transmitted a copy of UN Document ACC/1994/ISSC/9 of 25 January 1994, entitled "Task Force on Inter-Library Co-operation, Standards and Management Proposed Work Programme and Budget for 1994/1995," described by FAO in a cover memorandum as "practices and procedures with regard to the handling of FAO's documentation."

Significantly, no comprehensive, formal written policy was supplied in support of the narrative descriptions provided by the five specialised agencies responding in this fashion; indeed, IFAD and ESCAP expressly stated that no such formal policy exists, and WHO's rules of disclosure are less than exhaustive. The document provided by FAO is not a public information and documentation disclosure policy, but instead discusses the far more limited subject of "measures for improving co-operation among the libraries in the United Nations system." Further, none of the responses indicated any adverse consequences that would flow from UNDP's adoption of its own disclosure policy.

Of the group, WHO's response addressed the questions raised by this study most directly. WHO, like the UN system generally, classifies documents, in increasing levels of sensitivity, as "General," "Limited," or "Restricted." The first two categories of documents may be released to requesters from the public on a case-by-case basis, but "Restricted" documents must be reclassified into one of the other two categories before release. In responding to outside inquiries, WHO rules distinguish among different categories of requesters. In apparent order of increasing level of scrutiny, these include (1) health administrations, professional scientific associations, and other "non-profit-seeking parties;" (2) commercial publishers and data base companies; and (3) other parties with commercial interests and special interest groups, which include "associations, groups or lobbies representing special interests [and] other parties whose requests suggest that the name and good repute of the Organization might be used for their own advancement or that of their products or interests." It is not clear, for instance, whether advocacy-oriented NGOs would fall in category (1) or category (3). In practice, and individual disclosure decision "depends very much on the content of the document and is often decided ad hoc." WHO's response recommends that UNDP consider the question of public information and documentation disclosure in the context of emerging electronic technologies.

UNESCO's *de facto* policy appears to be quite restrictive:

> . . . national development projects with which UNESCO is associated remain the property of the Governments concerned. Project related information, including the project document, periodic and final reports are communicated only to the Government and funding agency, with the explicit understanding that such reports are of a restricted nature. They are usually not communicated to other Governments, to unauthorized persons nor [*sic*] to the public Their use is therefore restricted to the parties directly involved.

> When final reports on projects are submitted to Governments, there is usually included in the accompanying letter a request to the Government to indicate whether it has any objection to UNESCO [*sic*] divulging information contained in the report to other parties. After six months, if the Government has not registered any objection, it is assumed that the report may be no longer be considered to of a restricted nature.

The closest analogue to UNDP operational information identified in ESCAP's response appears to be what that Commission describes as "advisory services rendered to governments at their request." This category of information is "not released for general information and [is] restricted until such time that the governments concerned authorize ESCAP to the contrary." Nonetheless, ESCAP's response notes that

> ready availability and access to information retained at UNDP would be in the mutual interest of both UNDP and ESCAP as it could contribute to the elimination of duplication and fragmentation of the UN development system's activities at the national, subregional and regional levels; ultimately this would be in the best interest of the member countries.

It is not clear, however, whether this latter comment relates to public disclosure of information or sharing within the UN system.

UNIDO reports that "projects, funded from extra-budgetary resources, are subject to clearance by the recipient" pursuant to language contained in a Standard Basic Cooperation Agreement similar to the SBAA discussed in section V.A.1 above. UNIDO's response also notes that "[i]t is conceivable that this policy could be revised so that all documents, project reports or whatever, are automatically released for public perusal after a certain period of time."

IFAD reports that it "soon hope[s] to come out with our own disclosure policy, which we expect to be as liberal as possible on disclosure issues. This will only support our efforts in truly becoming a knowledge institution and increase our transparency and accountability, important factors in the developmental [*sic*] process."

ANNEX C

PUBLIC INFORMATION AND DOCUMENTATION DISCLOSURE POLICIES
OF THE INTERNATIONAL FINANCIAL INSTITUTIONS

The practise of the international financial institutions, and in particular the multilateral development banks (MDBs) -- the World Bank and the regional development banks for Africa (AfDB), Asia (AsDB), Eastern Europe and the former Soviet Union (EBRD), and Latin America (IDB) -- offer helpful analogies for the present study. At the same time, there are quite valid distinctions in institutional structure and output between UNDP on the one hand and the World Bank and the regional development banks on the other. It is also possible, however, to exaggerate those distinctions. Although they vary in their apparent level of commitment to the concept, each of the MDBs, like UNDP, has endorsed a sustainable development agenda.

Alone among the development banks, the AfDB has no public information and documentation disclosure policy. The EBRD recently adopted such a policy, which closely tracks that of the World Bank for public sector projects. The World Bank, the AsDB, and the IDB all have policies in place. The International Monetary Fund (IMF) does not have such a policy, nor does the Organisation of American States (OAS), which engages in some operational activities similar to those of UNDP.*

Of those MDBs that have policies, all establish a presumption in favour of public disclosure of operational information. All make some information available to the public in advance of loan approval by the respective Board of Executive Directors. In the case of the World Bank, as originally envisioned, the principal documentation was to be a brief "project information document" (PID) of not less than 2 pages prepared especially for public consumption and, according to the Bank's policy, "updated and expanded periodically as project preparation proceeds." This document is typically available 12 to 18 months before consideration of a proposed loan by the Bank's Board of Executive Directors. The fact that PIDs are prepared expressly for public consumption has led to some unease among the NGO/CSO community over the potential that controversial material might be excluded from these documents. In practise, PIDs can be substantial documents, especially as updated while the process of loan preparation and appraisal proceeds. Moreover, because of the burden associated with the preparation of two sets of documentation, some Bank staff in practise often utilise PIDs as genuine working documents.

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* Because UNDP provides technical assistance grants solely to governments as clients, this discussion does not address lending to the private sector, which, for instance, is the exclusive mandate of the International Finance Corporation (IFC). While UNDP projects may rely upon private parties as contractors or consultants for implementation, the recipient is always a government.

The AsDB and the IDB release similar documentation in the form of project profiles at approximately the same stage of the project cycle. By contrast with the World Bank, these institutions release some of the actual working documents with information appropriately claimed confidential. For example, in the case of the AsDB, these documents could include country operations strategy studies, economic review and bank operations, and country programme notes, among others. In the latter two cases, the AsDB may sometimes withhold a portion of the document for reasons of sensitivity or confidentiality, and only in exceptional cases may a country operations strategy study be classified as confidential.

The other important pre-approval documentary vehicle for facilitating public access to information is the environmental assessment or, variously, environmental impact assessment (EIA) or other similar terminology. EIA is a process involving public participation that results in documentation describing, at a minimum, a project's expected environmental impact. The World Bank, the AsDB, and the IDB all have a system to provide information and documentation on environmental impacts a project at least 4 months prior to Board discussion of a loan. More generally, at the development banks EIA documentation is uniformly accessible to the public and serves as a principal, and in some cases the most important, vehicle for providing the public with prior documentary information about proposed operational activities of those institutions.

By contrast, UNDP policy currently requires only environmental overviews of country programmes and projects, and it is not clear whether the associated documentation is public available; the institution appears to have no detailed policy of a rigour that meets generally recognised international standards for EIA. Because UNDP provides technical assistance and not project-based loans, questions have been raised as to whether UNDP's institutional mission lends itself to the process. Nevertheless, at least some staffers within the organisation believe there is a need to adopt standards for EIA. In any event, unlike the development banks that have such procedures in place, UNDP very likely cannot make use of this category of documentation to facilitate public access to information. One of the items in the battery of questions submitted to the UN specialised agencies concerns the extent to which those institutions, in their capacity as executing agencies for UNDP projects, have procedures for preparing EIAs and releasing them to the public. To the extent such procedures do not exist or are inadequate, UNDP ought to give serious consideration to adopting more detailed EIA procedures for itself.

All the MDBs release "board documents," containing the basic components of project design. At the World Bank, the principal component of this category of documentation is known as the "staff appraisal report." Those documents, however, are released only after loan approval by the respective Board of Executive Directors.

Provisions in the information policies of all the MDBs govern information claimed confidential by borrowing country governments. As discussed in section V.A.2 above, the Global Environment Facility (GEF) has detailed procedures in this regard. Nonetheless, practise both among staff at both the GEF and the World Bank seems not to have been

standardised with respect to (1) who makes the determination of confidentiality -- whether bank staff or governments; and (2) if the former, whether Bank staff are obliged to follow the government's request or may disregard it.

The World Bank publishes a "Monthly Operational Summary" that describes the status of projects in the pipeline, and the regional banks have analogous mechanisms for informing the public about loans in preparation. The World Bank, the AsDB, the IDB and now the EBRD each have a central clearinghouse at headquarters to respond to requests for information. Each of these institutions also utilises its field offices in recipient countries as delivery vehicles in responding to requests. Satellite offices in donor countries -- in the case of the World Bank Paris, London, and Tokyo -- also serve as repositories for distribution of documentation in those regions. While less extensive than the sort of operational information anticipated by this report, documentation produced by the formal publications programme of the World Bank and the AsDB are also housed in depositary libraries around the world.

Documentation is ordinarily produced by the World Bank, the EBRD, and the AsDB only in English. IDB documentation appears in English and Spanish, although the institution technically has 4 working languages. The World Bank is currently implementing a pilot project in 8 countries involving translation of operational documentation into local languages.

For most documents, the World Bank charges a flat fee of $15.00 per document to requesters. Certain limited categories of documents, such as PIDs, are exempt from the fee. The fee is waived for "documents on the user's country," but not in general for not-for-profit organisations or NGOs.
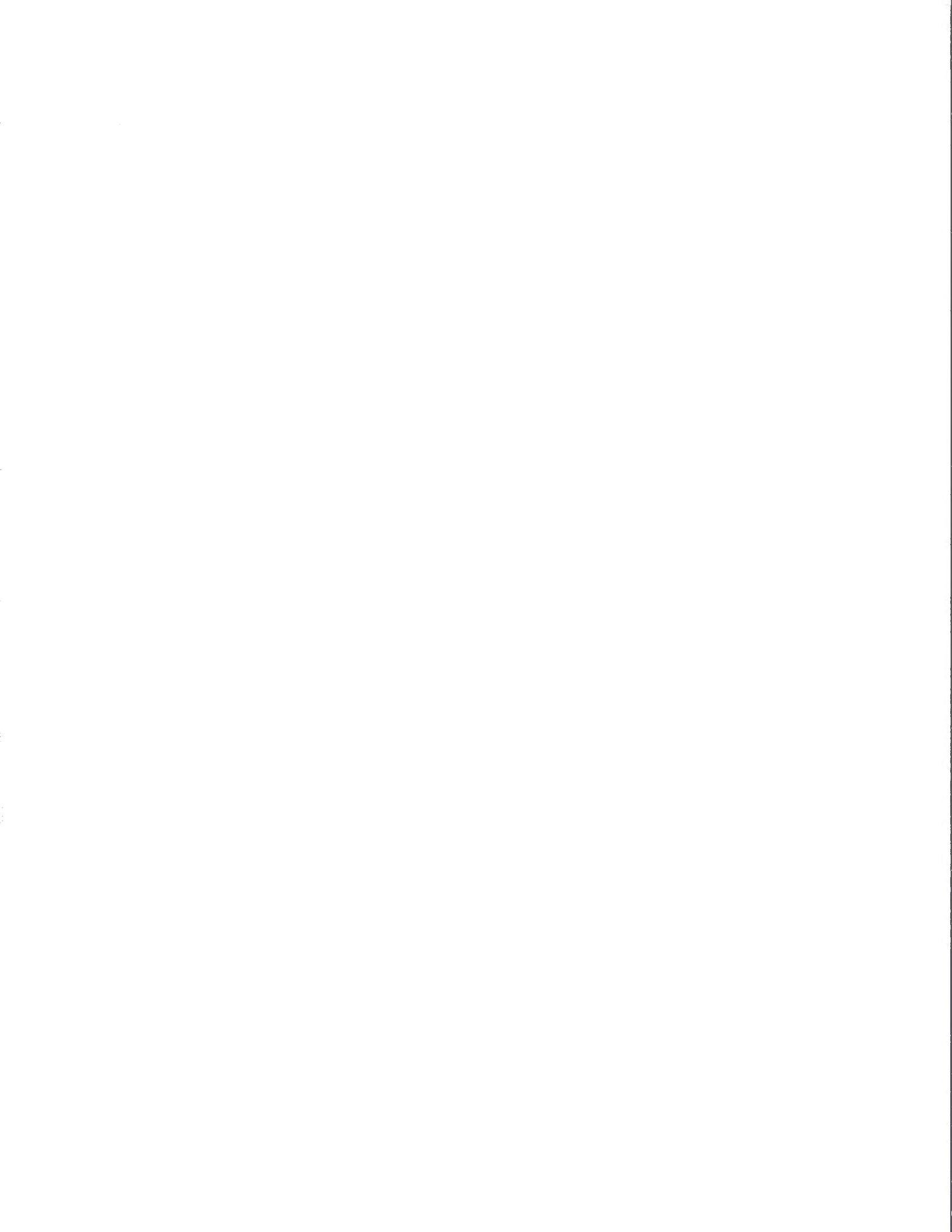
undp 🅤🅝

Dear...,

As you probably know, the UNDP is currently in the process of preparing an "Information Disclosure and Public Participation Policy". A copy of the terms of reference, prepared in consultation with various parts of the UNDP, including the Regional Bureaux and the UN Office of Legal Affairs, is attached for your reference.

While public involvement in UNDP programmes and projects is implicit in existing policies and Instruments, particularly within the framework of Sustainable Human Development, it is increasingly clear that the UNDP, governments, cooperating Agencies, private sector institutions, NGOs and the public at large will benefit from an explicit and consistent UNDP-wide policy on information disclosure. Such a policy will enable UNDP partners (UN Agencies, governments, CSOs including NGOs, private sector) to learn how UNDP works and to help the UNDP work better with its multiple partners. A transparent and accountable system will ultimately enhance public participation.

Three consultants have been recruited to assist the UNDP with this important task. Chad Dobson, who heads a Washington-based NGO, the Bank Information Center, has extensive knowledge of information disclosure policies of large agencies including the World Bank's. He will assist UNDP with process issues related to information disclosure and public participation. David Wirth, an experienced lawyer, will help draft the information disclosure policy. Sukanya Devarajan, a development specialist, will assist the work of David Wirth and Chad Dobson.

Briefing sessions for the consultants were organized recently in New York. The consultants had useful discussions with a large number of UNDP staff, including those of the Regional Bureaux, OESP, OA, DPA and BPPS. In addition, they also met with staffs of the UN Office of Legal Affairs, FAO, UNICEF and WHO. Due to budgetary constraints they are unable to visit country offices at this stage. Opinions and feedback from country

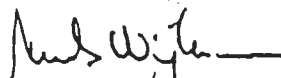Resident Representative
UNDP

ANNEX D

END

offices, however, are critical to the success of such a policy. It has been suggested that rather than contacting all the country offices, we focus on a representative sample of countries, most specifically those countries identified as being part of the 'centers for experimentation'. In this context, we would greatly appreciate your feedback and response to the following questions posed by the consultants to help them draft the policy and to facilitate public participation.

1. Does UNDP need an information disclosure and public participation policy, and if so, why?

2. Who would benefit from such a policy and why?

3. What kinds of information should UNDP disclose? What should be withheld?

4. How, if UNDP decided to do so, could documentation and information be made available systematically and effectively?

′ I would like to reiterate that your contribution is greatly appreciated, particularly in light of the pressures and demands country offices are faced with, from various sources, including Headquarters. Your inputs and comments are, however, extremely valuable to this exercise and we count on your support. In view of the urgency associated with this task and the tight schedule, I look forward to receiving your response no later than 20 April 1996, and to sharing with your office the drafts of the reports as they become available.

Yours sincerely,

Anders Wijkman
Assistant Administrator and Director
Bureau for Policy and Programme Support (BPPS)

cc: DeeDee Angagaw (RBA)
       Suki Devarajan, Consultant
       Chad Dobson, Consultant
       Ramesh Cadraj, Intern
       Thierry Lemaresquier (SDPED/BPPS)
       Roberto Lenton (SEED/BPPS)
       David Wirth, Consultant

Information Disclosure
Letter to UNDP Resident Representatives

Ms. Thelma Awori
RR - ZIMBABWE

Mr. J.K. Robert England
RR - PAKISTAN

Mr. Walter D. Franco
RR - BOLIVIA

Mr. John Hendra
RR - LATVIA

Mr. Michael Heyn
RR - THAILAND

Mr. Hans D. Kurz
RR - COSTA RICA

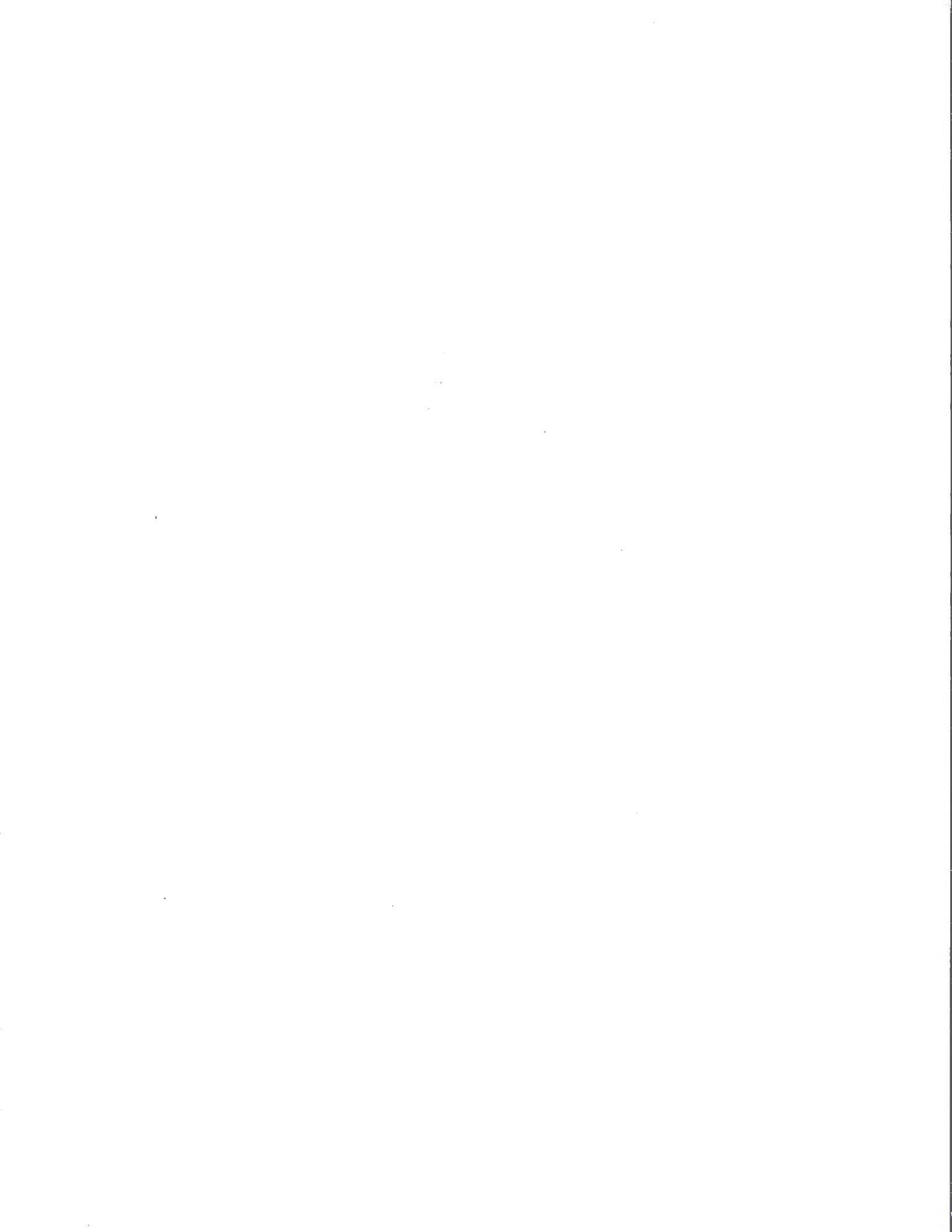Ms. Leeun Miller
RR - ROMANIA

Mr. Roy D. Morey
RR - VIETNAM

Mr. Ercan Murat
RR - KYRGYZSTAN

Mr. Constante Muzio
RR - EGYPT

Mr. Ahmed Rhazaoui
RR - CAMEROON

Mr. Finn Tore Rose
RR - MALI

United Nations Development Programme

undp 🌐

4 April 1996

Dear AGENCY,

As you might know, the UNDP is currently in the process of preparing an "Information Disclosure and Public Participation Policy". A copy of the terms of reference, prepared in consultation with various parts of the UNDP, including the Regional Bureaux and the UN Office of Legal Affairs, is attached for your reference.

While public involvement in UNDP programmes and projects is implicit in xisting policies and instruments, it is increasingly clear that the UNDP, governments, cooperating Agencies, private sector, NGOs and the public at large will benefit from an explicit and consistent UNDP-wide policy on information disclosure. Such a policy will enable UNDP partners (UN Agencies, governments, CSOs including NGOs, private sector) to learn how the UNDP works and help the UNDP cooperate more effectively with its multiple partners. A transparent and accountable system will ultimately enhance public participation.

Three consultants have been recruited to assist the UNDP with this important task. Chad Dobson, who heads a Washington-based NGO, Bank Information Centre, has extensive knowledge of information disclosure policies of large agencies including the World Bank's. He will assist UNDP with process issues related to information disclosure and public participation. David Wirth, an experienced lawyer, will help draft the information disclosure policy. Sukanya Devarajan, a development specialist, will assist the work of David Wirth and Chad Dobson.

Briefing sessions were organized recently in New York. The consultants had useful discussions with a large number of UNDP staff, including those of the Regional bureaux, OESP, OA, DPA and BPPS. In addition they also met with staff of the UN Office of Legal Affairs, UNICEF and UNFPA as well as with FAO and WHO liaison offices in New York. To reflect the views and concerns of all parties, we have decided to continue this gathering of information at the country office level as well as with our agency partners. The small size of budget, however, makes on-site interviews impractical at this stage. Your opinions and feedback are critical to the success of such a policy. In this context, we would greatly appreciate your candid comments and response to the following questions posed by the consultants to help them draft the policy and to facilitate public participation.
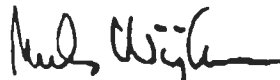
UN AGENCIES

ANNEX E

1. Does your agency have an information disclosure policy ? If so, could you provide us with information on your agency's policies. If not, could you elaborate on existing practices of your agency in this respect.

2. Given the close working relationship between the UN system, describe how an information disclosure policy within UNDP may affect your work, if appropriate, and any special factors for consideration.

3. Does your agency have its own policy with respect to environment impact assessment, social impact assessment or gender impact assessment? If so, could you provide us with copies of these policies. Do these policies facilitate public access to information?

4. Any other comments you wish to submit.

We would be very interested in your thoughts as to how the UNDP ought to approach this effort based on your agency's experience. We are interested not just in your formal policy in this area, but also in any practical experience your agency may have gained in, for example, responding to requests from members of the public. If your agency executes projects for the UNDP, we would also like to know how an information and participation policy might affect the UNDP's work with your agency.

I would like to reiterate that your contribution is extremely valuable to this exercise, particularly in view of our close working relationship. UNDP is committed to developing its policies in close collaboration with its partners, particularly those of the UN family. In order to ensure that we can adequately reflect your views, we would appreciate receiving your response no later than 25 April 1996. I look forward to sharing with your office the drafts of the reports as they become available.

Yours sincerely,

Anders Wijkman
Assistant Administrator and Director
Bureau for Policy and Programme Support (BPPS)
United Nations Development Programme

cc: Thierry Lemaresquier, Director, SEPED
     Roberto Lenton, Director, SEED

Information dislcosure
letter to the agencies

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Mr. Gert Rosenthal
Executive Secretary
Economic Commission for Latin America and the Caribbean (ECLAC)
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Santiago, CHILE

United Nations 🇺🇳 **Nations Unies**	RZ/BCR/VG/KLW/PJ/sw
INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR	Log No. 9047

TO:
A.
	Mr. Roberto Lenton, Director
	Sustainable Energy and Environment
	   Division (SEED), Bureau of Policy
	   and Programme Support (BPPS), UNDP
		DATE 2 February 1996

THROUGH: S.C DE.		REFERENCE:
FROM: DE:	Bruce C. Rashkow, Director BCR General Legal Division Office of the Legal Counsel	
SUBJECT. OBJET.	**Environment Related Information Disclosure Policy**	

1.   This is in response to your memorandum of 15 December 1995 requesting our input on your efforts to formulate an environment related information disclosure policy. In particular, you have raised several questions on which you seek legal advice.

2.   We set out below our comments to the specific questions raised, but note that we would also like an opportunity to review the policy before it is finalized and released to UNDP offices so as to ensure that it is consistent with UN practice and policy, and that it provides adequate protection for the UNDP.

3.   We also recommend, in this regard, that the policy be submitted to the Executive Board of the UNDP for approval, and for guidance as to the parameters of the policy, before it is disseminated. The approval by the Executive Board will make it much easier for the UNDP to justify the policy to host or recipient countries who may have an interest in some of the information covered by the policy.

4.   In addition, we have decided to reverse the order of your questions and respond to number 7, on the UNDP's accountability, first because it relates to some of your other questions, which we will address in the order you have raised them.

To whom is the UNDP ultimately accountable - to countries, to NGOs, to affected peoples, the UN system?

5.   The UNDP is a subsidiary organ of the General Assembly established in accordance with Article 22 of the UN Charter by, among others, General Assembly resolution 2029(XX) dated 22 November 1965, which combined the UN Expanded Programme of Technical Assistance with the Special Fund. By that resolution, the General Assembly also established the Governing Council of the UNDP, an inter-governmental body responsible for overseeing the programmes and funds of the UNDP, whose members are elected by ECOSOC. The mandate and organizational structure of the UNDP is defined in General Assembly resolution 2688(XXV) of 11 December 1970 (the "Consensus"). The Governing Council was

ANNEX F

transformed into the Executive Board of the UNDP by General Assembly resolution 48/162 dated 20 December 1993, and is responsible for providing inter-governmental support to and supervision of the activities of the Programme in accordance with the overall policy guidance of the General Assembly and the ECOSOC in line with their respective responsibilities set out in the Charter.

6.   In light of the above-described legal status, the UNDP is first accountable to its Executive Board and through it to the ECOSOC and the General Assembly. This also means that the UNDP is accountable through these organs to Member States of the United Nations, who are constituents of the Organization.

7.   We are unclear as to what your concerns are regarding accountability to the UN system. Nonetheless, the UNDP's accountability would have to be analyzed from the perspective of the various components of the UN system: the United Nations, the specialized agencies and other related organizations. The UNDP is clearly accountable to the United Nations and must carry out its responsibilities in accordance with its mandate, as defined in the relevant General Assembly resolutions. The UNDP is not directly accountable to the specialized agencies or other related organizations. Any accountability to these agencies and organizations would have to result from a specific mandate by the General Assembly to the UNDP.

8   In addition, the UNDP is also accountable to recipient or host countries which benefit from UNDP programmes and projects. Such programmes and projects are carried out in accordance with project documents or other agreements used for this purpose and are undertaken within the framework of, and as defined in, the Standard Basic Assistance Agreements ("SBAAs").

9.   With respect to the beneficiaries of UNDP programmes and projects, the UNDP has secondary or "moral" accountability to these "affected peoples", as "intended beneficiaries" of the assistance, such that UNDP should carry out its programmes so as to ensure that these "affected peoples" are not injured as a result of UNDP's programmes.   This accountability is shared with the other organizations, agencies and offices in the United Nations development system which participate in the UNDP programmes as executing or implementing agencies in accordance with the UNDP Standard Basic Executing Agency Agreements ("SBEAAs").

10. In the absence of a project document or some other specific agreement between the UNDP and a non-governmental organization ("NGO"), the UNDP has no particular accountability to NGOs.

- 3 -

Do any legal constraints exist vis-à-vis Complete Information Disclosure?

11.   You indicate that you would like to extend GEF's underlying principle of full disclosure to all UNDP environment-related documentary information. While we understand that the Organization is moving in the direction of increased openness, full disclosure may not be possible in every context. Moreover, UNDP activities within the framework of the GEF should be distinguished from other UNDP programmes as it operates under an entirely different structure.

12.   The restructured GEF was established in 1994 as a financial mechanism for international cooperation in providing funds to achieve global environmental benefits in the defined areas. It operates on the basis of collaboration and partnership among the Implementing Agencies, namely the UNDP, UNEP and the World Bank, which are accountable to the GEF Council for their GEF-financed activities and are bound by the provisions of the Instrument, a constituent document of the GEF, providing that the activities of the GEF shall be characterized by the principles of accountability and transparency. Each agency is also required to cooperate with, inter-alia, State Participants in the Facility, parties receiving assistance under the GEF, and other interested parties, including local communities and non-governmental organizations ("NGOs"). Thus, the underlying principles governing UNDP activities within the framework of the GEF are different from other UNDP programmes and projects and the extension of GEF's underlying principle of full disclosure will not be appropriate for all UNDP environment-related documentary information.

13.   Beyond the question of the GEF, other legal constraints do exist to a policy of full disclosure. In your memorandum, you have already highlighted one major constraint, namely cases in which the information source requests that the information be treated as "confidential".

14.   In addition, information that falls within the framework of a specific agreement must be treated in accordance with the terms of the agreement. Under the SBAA, for example, parties must consult before information related to the project is published, and the host or recipient Government may request that information related to the project be restricted. (Article IV, para. 5). Thus, a full-disclosure policy would have to be subject to the information disclosure requirements of the SBAA and any other relevant UNDP contractual arrangements.

15.   Finally, the full disclosure of minutes of meetings and similar internal documentation may not be in the best interests of the Organization, as such disclosure may inhibit participating State representatives or other UN officials from freely and fully

expressing their ideas on a given subject. We note from the material that you have forwarded us that a similar approach has been taken by the World Bank, one of the three implementing agencies associated with the GEF.

Can confidential material be excised from a document?

16. The manner in which the confidential, or otherwise restricted information, is preserved is a policy decision that UNDP will have to make. However, we note that publishing a document from which such information has been removed may focus more attention on the deleted information depending upon the presentation of the document and how the information was removed. As a consequence, in certain circumstances, it may be better simply to withhold the entire document. :

Can a UNDP Resident Representative have responsibility for providing information to the requesting party?

17. There are no legal restrictions to Resident Representatives providing non-confidential or otherwise unrestricted information to requesting parties. However, depending upon the circumstances, there may be practical constraints, such as time or cost, which prevent a Resident Representative from immediately responding to a request. We would, therefore, suggest that the disclosure policy make a provision for such constraints. You may wish to consider, for example, requiring the requesting parties to pay for the costs of copying the subject information.

Could we provide that all documents be disclosed at all project stages and in a manner to allow sufficient time for the NGO community to respond?

18. There is no legal restriction to including a provision requiring that non-confidential or otherwise unrestricted documents be provided to NGOs or other persons at all project stages. However, we do not see any particular reason for giving NGOs a preferred status unless they have been accorded such a status as participants in the UNDP programmes by the UNDP Executive Board and agreements defining such status have been concluded with the respective NGOs. As we mentioned in paragraph 10 above, the UNDP does not have any accountability to NGOs. Conditioning implementation on the NGO responses would effectively make the UNDP accountable to the NGOs within the context of the disclosure policy and specific project at issue, without a requirement to do so from the General Assembly.

Could we provide that any decision not to disclose information be appealed by an outside party to a UNDP representative and, if so, who would be appropriate?

19.   General Assembly resolutions governing UNDP activities do not provide for the establishment of a mechanism whereby an outside entity or individual can appeal a decision taken internally.   However, you may wish to consider the establishment of an informal mechanism providing for a review of administrative decisions concerning the disclosure of environment related information.   The purpose of such a mechanism would be to ensure that information is being disclosed in accordance with the disclosure policy established by UNDP.

To what extent may countries request that UNDP-held information not be disclosed?

20.   While Governments may always request that UNDP-held information not be disclosed, the UNDP is not under a legal obligation to honor such requests except when the source of the information has indicated that the information should be kept confidential, the disclosure of the information is restricted under the SBAA, project documents or other contractual arrangements, or the information is restricted for the reasons discussed in paragraph 15 above.   For example, the UNDP is not under a legal obligation to keep information confidential that it has rightfully obtained from a third party, even if the Government, for whatever reason, requests the information not be disclosed.   Nonetheless, in such a case, the UNDP could decide to consent to the Government's request for policy reasons.

VISIT OF DAVID WIRTH/SUKANYA DEVARAJAN
INFORMATION DISCLOSURE

HERBERT M'CLEOD Director/Policy Div/BPPS	MONDAY 4 MARCH	11:30	DC1-2018
JUDITH CHANG HOPKINS	MONDAY 4 MARCH	1:30	DC2-2634
Ms. Perry Johnson UN Legal Department	Monday 4 March	4:00	S-34thFLR
D. KHUN	TUESDAY 5 MARCH	11:00	DC2-2605
Jorge Chediek RBEC	TUESDAY 5 MARCH	12:00	FF-476
ANDRE CAVALHO Info Disclosure (OESP)	TUESDAY 5 MARCH	3:00	DC12174
Marylin Hanley Francois Coutu (DPA)	TUESDAY 5 MARCH	4:00	DC1-1922
DeeDee Angagaw (RBA) X5964	Wednesday 6 March	9:30	DC1-2446
Thierry Lemaresquier DIRECTOR/POVERTY (X6029)	WEDNESDAY 6 MARCH	11:15	DC1-2064
Ricarda Rieger/A. Khan RBAS	WEDNESDAY 6 MARCH	12:00	DC1-2062
Kanni Wignaraja RBAP/X5844	WEDNESDAY 6 MARCH	2:30	DC1-2310
Abu Selim RBAP/x5843	WEDNESDAY 6 MARCH	4:00	DC1-2380
ANN RONCEREL	THURSDAY 7 MARCH	10:00	FF536
Gail Sealy (DPA)	THURSDAY 7 MARCH	11:00	FF-574
Andrew Radolf UNESCO/963-5974	THURSDAY 7 MARCH	12:00	DC2-900
Roberto Lenton: Director/SEED/BPPS	THURSDAY 7 MARCH	3:00	FF10th FLR
John Clarkson 0-I-C DAIS: DIVISION FOR ADMINISTRATIVE & INFORMATIVE SERVICES	THURSDAY 7 MARCH	4:00	DC1-1628

ANNEX G

VISIT OF DAVID WIRTH/SUKANYA DEVARAJAN
INFORMATION DISCLOSURE

Boubacar Toure FAO/963-6036	FRIDAY 8 MARCH	9:15	DC1-1125
Peter Hazlewood GEF/X5084	FRIDAY 8 MARCH	10:00	FF-1074
Rosina Wiltshire GIDP/x5082	FRIDAY 8 MARCH	12:00	DC1-2036
Mortin Giersing Deputy Director of Info	FRIDAY 8 MARCH	2:30	UNICEF 988