



## **INVESTIGATION FINDINGS AND RECOMMENDATIONS**

**In response to allegations of non-compliance with  
UNDP's social and environmental standards and other relevant policies in the context of  
UNDP's Business Call to Action Project Alliance Phase II 2014-2016**

**Case No. SECU0002  
Draft Date: 8 November 2016**

**DRAFT**

**Basic Data**

Case No.	SECU0002
Category of Non-Compliance:	Primarily Social
Location:	Various Locations, Uganda
Date Complaint received:	12 February 2016
Source of Complaint:	Bugala Farmers Association
Eligibility assessment conducted by:	Richard Bissell, Lead Compliance Officer
Compliance Officer assigned:	Anne Perrault, Compliance Officer
Other investigators assigned:	Paul Goodwin, Research Analyst
Related Case(s):	N/A

DRAFT

Signatures:

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Richard Bissell, Lead Compliance Officer, SECU, OAI

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Helge S. Osttveiten, Director, OAI

## List of Acronyms

BOP	Base of the Economic Pyramid
BFA	Bugala Farmers Association
BPPS	Bureau for Policy and Programme Support
BCtA	Business Call to Action
CSR	Corporate Social Responsibility
DIM	Direct Implementation Modality
DSC	Donor Steering Committee
ESSP	Environmental and Social Screening Procedure
ESG	Environmental, Social and Good Governance
FPIC	Free, Prior and Informed Consent
IDS	Institute of Development Studies
IFAD	International Fund for Agricultural Development
KOPGA	Kalangala Oil Palm Growers Association
MDGs	Millennium Development Goals
OAI	Office of Audit and Investigations
OPUL	Oil Palm Uganda Limited
PSD	Private Sector Development
PAC	Project Appraisal Committee
Prodoc	Project Document
PPP	Public Private Partnership
RAT	Risk Assessment Tool
SECU	Social and Environmental Compliance Unit
SESP	Social and Environmental Screening Procedure
SES	Social and Environmental Standards
SIDA	Swedish International Development Cooperation Agency
UGX	Ugandan Schilling
DFID	UK Department for International Development
POPP	UNDP Programme and Operations Policies and Procedures
UN	United Nations
UNDP	United Nations Development Programme
USAID	US Agency for International Development

## I. Executive Summary

1. The Business Call to Action Alliance (BCtA) project is a United Nations Development Programme (UNDP) Direct Implementation Modality (DIM) project, with a start date of June 2014 and an end date of June 2017. The budget is US\$9,175,404, with funds provided by the Dutch Ministry of Foreign Affairs, Swedish International Development Cooperation Agency (SIDA), UK Department for International Development (DFID), US Agency for International Development (USAID), and the Ministry of Foreign Affairs of the Government of Finland.
2. The project's primary goal is to create 'a global advocacy platform providing public recognition for the private sector's contribution to development.' Its mission is to 'challenge companies to advance core business activities that are inclusive of poor populations and thus contribute to the achievement of sustainable development goals.' The project is premised on the idea that the platform will facilitate and support engagements between private businesses and low-income people 'as consumers, producers, suppliers, and distributors' and otherwise increase employment opportunities. UNDP hosts the Secretariat and serves on the Donor Steering Committee (DSC) with the aforementioned donor institutions. Collaborating institutions include the United Nations Global Compact and the Inter-American Development Bank's Opportunities for the Majority Initiative.
3. On 18 February 2016, the SECU within the UNDP Office of Audit and Investigations (OAI) registered a complaint from the Bugala Farmers Association (BFA) of Uganda relating to the BCtA project. The complaint asserted that BCtA's admission of Bidco Africa (Bidco), a Kenya-based multinational consumer-goods company, onto the BCtA platform violated UNDP's Social and Environmental Standards (SES). The grievances expressed against Bidco largely relate to Bidco's involvement in a palm oil farm in Kalangala, Uganda.
4. In May and June of 2016, SECU conducted field work in Uganda, the location of the complainants, and Turkey, where the BCtA Secretariat and relevant UNDP staff are located. In Uganda, SECU interviewed the complainants, Bidco staff, local government officials, and other relevant stakeholders, to investigate complaint allegations. In Turkey, SECU interviewed senior management at the UNDP International Center for Private Sector Development, which houses the BCtA Secretariat, to gain a deeper understanding of BCtA – particularly its admission, due diligence, and screening processes conducted on prospective member companies.
5. The investigation, including field work, was focused on the adequacy of UNDP's due diligence and related transparency in the context of the BCtA project – **not on whether Bidco has, or has not, violated human rights or is complicit in human rights violations. The latter determination is beyond the scope of this report.**
6. After the fieldwork and additional research, SECU concluded that the processes employed by UNDP for admission of Bidco were not consistent with UNDP policies. To help

ensure UNDP's compliance with its policies, SECU makes several recommendations, the most significant of which include the following points:

The *UNDP Project/Programme Manager in the BCtA Secretariat* should:

- I. Screen the BCtA project using the Social and Environmental Screening Procedure (SESP),
- II. Require use of the full Policy on Due Diligence and Partnerships with the Private Sector as well as the complete Risk Assessment Tool (RAT) or - if the full RAT is not applied – require detailed written justification and a description of how key concerns, e.g. human rights, environment, and labor, etc. will otherwise be addressed.
- III. Revise the Prodoc to specify how individuals/communities potentially supported through BCtA-related activities can know about, and be involved in, initiatives, and
- IV. Revise the Prodoc to ensure it reflects pertinent information (detailed below)

*UNDP Senior Management* should ensure the following:

- V. BCtA membership criteria are revised to ensure attention to social and environmental concerns,
- VI. The process for assessing eligibility is clear and robust,
- VII. Separation exists between staff involved in developing relationships with private sector companies and staff making recommendations and decisions relating to membership in BCtA, and
- VIII. Membership benefits and tenure are tied explicitly and closely to the initiative

*UNDP Senior Management* should ensure the following:

- IX. A formal grievance mechanism exists for receiving and responding to complaints alleging that a given initiative may harm communities.

## II. Overview

7. On 18 February 2016, the Social and Environmental Compliance Unit (SECU) of the UNDP registered a complaint from the BFA concerning the UNDP-supported BCtA Project Alliance Phase II 2014-2016, (<https://info.undp.org/sites/registry/secu/SECUPages/CaseFile.aspx?ItemID=7>).

8. On 1 March 2016, SECU determined the complaint met the criteria necessary for SECU to investigate UNDP's compliance with its social and environmental commitments, and the Director of OAI (UNDP/OAI) approved the eligibility determination (<https://info.undp.org/sites/registry/secu/SECUPages/CaseFile.aspx?ItemID=7>)

9. SECU is mandated to perform a compliance review for eligible complaints received in relation to projects approved after 31 December 2014. The BCtA Phase II Project Document (Prodoc) does not clearly indicate when the project received final approval. The BCtA Secretariat indicated in a 29 August 2016 email that the Prodoc was approved 'after the PAC [Project Appraisal Committee] in July 2014 and by the DSC in September 2014.' However, documents and interviews imply that the PAC process was not completed in July 2014; at that time the PAC requested a revised Prodoc and an opportunity to comment on this revised document. It is not clear when or if the PAC secured a revised document, but UNDP project staff provided SECU with a Prodoc that has a 1 March 2015 revision date, but no signature date.
10. Given the unclear date of approval, but faced with a signed Prodoc with a revision date of 1 March 2015, SECU is investigating in the interest of a fair process to complainants. SECU's Investigation Guidelines note, in this regard, 'In order to foster consistency, compliance review investigations are conducted in accordance with these Guidelines to the extent possible; however, the circumstances of a particular investigation may affect the application of the Guidelines in the interest of a fair process to the complainants' (pg. 3). SECU will focus primarily on the standards that applied when the project was reviewed by the PAC in July 2014.
11. This report describes the investigation, including the following: (I) An executive summary (above); (II) overview; (III) background and concerns that led to the complaint; (IV) social and environmental commitments that applied in the context of this project; (V) findings related to application of the commitments; and (VI) recommendations.

### III. Background and Concerns that Led to Complaint

12. The BCtA initiative began in 2008, when over 60 companies agreed to advance 'inclusive business.' The effort was designed to respond to the call for a new global partnership to help deliver the Millennium Development Goals (MDGs). A 2011 review of inclusive business practices described their significant potential benefits noting, for example, 'Inclusive business models engage people living at the base of the economic pyramid (BOP) in corporate value chains as consumers, producers, and entrepreneurs. Such models offer great promise: to enable business growth in markets that cover two thirds of the world's population, while creating economic opportunity and better standards of living for the poor in the process.'<sup>1</sup>
13. In 2013, after a review of benefits provided by Phase I of the BCtA, including greater

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<sup>1</sup> Gradl, Christina and Beth Jenkins (2011). "Tackling Barriers to Scale: From Inclusive Business Models to Inclusive Business Ecosystems." Cambridge, MA: the CSR Initiative at the Harvard Kennedy School.

attention to, visibility of, and support for inclusive business, BCtA Steering Committee members agreed to pursue Phase II of BCtA. They determined that Phase II would address outstanding challenges, including providing consistent value and services to donors and private sector members, and increasing measurement and evaluation of results (prodoc, pgs. 4-5).

14. The BCtA Alliance Phase II (hereinafter 'BCtA') Prodoc was reviewed by UNDP's PAC in July 2014 and revised in March 2015. It indicates a start date of June 2014 and an end date of 30 June 2017. It is DIM project. The project budget is US\$9,175,404, with funds provided by the Dutch Ministry of Foreign Affairs, Swedish International Development Cooperation Agency (Sida), UK Department for International Development (DFID), US Agency for International Development (USAID), and the Ministry of Foreign Affairs of the Government of Finland. The UNDP hosts the secretariat and serves on the Donor Steering Committee (DSC) with the aforementioned donor institutions. Collaborating institutions include the UN Global Compact and the Inter-American Development Bank's Opportunities for the Majority Initiative.
15. The BCtA Alliance Phase II prodoc describes BCtA as 'a global advocacy platform providing public recognition for the private sector's contribution to development. BCtA's mission is to challenge companies to advance core business activities that are inclusive of poor populations and thus contribute to the achievement of sustainable development goals' (prodoc, pg. 2). BCtA does not fund development activities between member companies and targeted low-income populations. The project is premised on the idea that the platform will, in various other ways, facilitate and support engagements between private businesses and low-income people 'as consumers, producers, suppliers, and distributors' and otherwise increase employment opportunities.
16. Before companies apply to be members, the BCtA Secretariat outreach team 'conducts a due diligence/risk screening review of all potential applicants' using the UNDP/PSD [Private Sector Development] due diligence form (Prodoc, Annex 2, pg. 70). According to the Prodoc, this review 'consists of a scan of any major controversies that may influence the Partners' willingness to accept the company as a member, as well as checking the company against the BCtA's exclusionary criteria' (Prodoc, Annex 2, p. 70).
17. When a company applies to be a member, it submits an application form, and UNDP - as the BCtA Secretariat - creates an 'Applicant Summary' form. This form contains a summary of information derived from the BCtA membership application form filled that is filled in by the company, a summary of 'Risk Assessment' findings excerpted from the UNDP/PSD form (described herein, in para. 16), and a brief assessment of whether and how the company meets BCtA eligibility criteria (described herein, in para. 20).
18. UNDP sends the Applicant Summary form to Donor Steering Committee (DSC)

members and leads a process to determine if DSC members agree that membership should be granted 'based on the quality of' a company's proposed initiative' (Prodoc, Annex 3, pg. 74). The full application and UNDP's due diligence information are provided if DSC members request them and sign a non-disclosure agreement.

19. According to an 11 March 2016 email from Mr. Sabha Sobhani, UNDP's Global Programme Advisor-Private Sector within the Bureau for Policy and Programme Support (BPPS), to Richard Bissell, Lead Compliance Officer for UNDP SECU, under BCtA procedures, 'If no objections are raised to the application within two weeks, then we move forward with the acceptance of the application.'
20. Of the three primary criteria BCtA uses to assess a company's eligibility to become a member of BCtA, the criterion focused on how the company's initiative potentially improves the lives of communities is Criterion 2, 'Demonstrates potential to create economic/social returns for low-income communities in developing countries' (Prodoc, Annex 3, pg. 74). This criterion includes two questions, 'Does the initiative integrate underserved populations into company value chains as suppliers, producers, distributors and/or employees?' and 'Is the initiative located in one or more developing countries?' Other criteria include '1. Demonstrate potential to create financial returns for the company' and '3. Able to generate measurable results.'
21. Bidco Africa applied to be a member of BCtA in 2015. According to the summary of the application, the initiative upon which the application was based was 'Bidco's Full Value Chain Initiative' with a commitment to 'integrate over 30,000 Kenyan small holder farmers into agricultural value chains' and 'create over 60,000 direct and indirect jobs through opening its value chains for small scale entrepreneurs' (Applicant Summary, 7 September 2015).
22. UNDP concluded from the application that this initiative would help poor populations primarily by employing them as suppliers through the agricultural supply chain.
23. On 11 September 2015, UNDP circulated a summary of Bidco's application – a 'BCtA Applicant Summary' - to the DSC members for their consideration.
24. Bidco Africa was informed of its acceptance into the alliance on 18 September 2015 through a letter from Mr. Sobhani to Mr. Vimal Shah, which stated, 'Bidco Africa's initiative, approved by partners on 16 September 2015, is to build livelihoods of smallholder farmers and entrepreneurs in the value chain.' When the letter was sent, three DSC members relayed support for Bidco's application. The SIDA representative to the DSC raised a question on 16 September related to Bidco and palm oil, and a response was provided 17 September. The remaining DSC members raised no objection, and this was interpreted by the Secretariat as acquiescence to the application. The cited date of approval – 16



September - was 5 days after circulation of information to DSC members, and the email to Mr. Shah of Bidco was 7 days after circulation of information to DSC members.

25. Bidco's membership into the alliance was publicly announced in January 2016 through a press release on BCtA's website.
26. On 28 January 2016, the BFA delivered to the UNDP office in Kampala a 'petition' addressed to UNDP Administrator Helen Clark and other UNDP and UN employees raising concerns about BCtA's inclusion of Bidco.
27. Shortly thereafter, on 12 February 2016, the BFA filed a complaint to the SECU. The complaint references the 28 January 2016 petition allegations that approval of Bidco Africa Ltd. as a member of the BCtA alliance is a 'tragedy for smallholder farmers' in Uganda. The complaint claims that 100 such farmers have accused a Bidco Africa Ltd venture in Uganda, Oil Palm Uganda Limited (OPUL) of 'violating human rights, destroying the environment and grabbing land from smallholder farmers'. At the time, these farmers were attempting to secure a response to these concerns in the context of this Uganda project, and were awaiting a court decision in their lawsuit against OPUL.
28. The petition states, 'In short, Bidco Africa, which claims to adhere to the U.N. Global Compact, is in fact in violation of all U.N. Global Compact principals, from human rights to protection of the environment. Against the backdrop of such repeated violations, the UNDP/BCtA's partnership with Bidco Africa is a violation of UNDP's core mission and principals....To even the casual observer, UNDP and BCtA are wilfully negligent for their decision to ignore well documented violations of Bidco Africa, to fail to conduct proper due diligence into Bidco Africa, or both. The BFA calls on UNDP and its senior leadership to examine the morally questionable association of such a distinguished U.N. organisation with such a blatant violator of human rights that is Bidco Africa.'
29. Several possible harms are suggested by BFA's complaint. The first is that UNDP's support for Bidco's membership provides an endorsement of Bidco that impairs BFA's efforts – through the Ugandan court system and elsewhere – to secure redress for harms allegedly suffered in the context of the UPOL project.
30. The second is that endorsement could serve to facilitate future harmful activities by Bidco in Uganda and/or impact Ugandan communities.
31. Additionally, BCtA's endorsement of Bidco could serve to facilitate Bidco projects that adversely harm communities in Kenya and other countries.

#### **IV. UNDP's Social and Environmental Commitments in the Context of the BCtA Alliance, Phase II Project**

32. Social and environmental commitments that apply to UNDP projects are reflected in UNDP's Programme and Operations Policies and Procedures (POPP) and in each Prodoc. When UNDP's PAC reviewed the project in July 2014, relevant commitments included the Environmental and Social Screening Procedure (ESSP) and environmental and social commitments listed in the POPP at that time (see Annex 1 to this report). Social and environmental commitments that were effective after 31 December 2014, when the Prodoc was revised (and the application for Bidco Africa Ltd. was approved), included an updated version of the screening procedure – the SESP, and recently enacted Social and Environmental Standards (SES).

33. When BCtA was prepared, the ESSP required screening of projects 'submitted to a PAC with a budget of US\$500,000 or more' (ESSP Guidance Note, March 2012, pg. 5). This screening ensured that possible social and environmental risks, particularly risks to local communities, were identified and the potential significance of risks determined. Projects were categorized according to the potential significance of risks. If risks were moderate or significant, additional assessment likely was necessary, and measures to avoid and mitigate these risks had to be identified and applied.<sup>2</sup>

34. Relevant project-related documents, including the environmental and social assessment and environmental and social management plan, were to be disclosed publicly. Transparency in this context was to enable potentially-impacted local communities and other stakeholders to both know of potential adverse and positive impacts related to a UNDP-supported project, and to engage in discussions related to such impacts (ESSP, pg. 17).

35. The ESSP helped ensure consistency with environmental and social commitments of the POPP, which included attention to consultation and participation of local communities in project design and implementation, consistency with international law and respect for human rights, biodiversity protection, resettlement, cultural heritage, indigenous peoples, etc. (See Annex 1 to this report).

36. Issues raised in the complaint appear to relate to several overlapping areas reflected in these commitments, including primarily the following: screening and impact assessment, due diligence, human rights, and transparency.

#### **V. Findings Related to Application of UNDP's Social and Environmental Commitments in the Context of the BCtA, Phase II Project**

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<sup>2</sup> The current SES, which had been approved when Bidco's application was approved, cover the same substantive areas as those reflected in the POPP when BCtA was considered, (and a few more), and provide more extensive guidance.

### *Screening and Assessment of BCtA Project*

37. As described above, when the BCtA Prodoc was being prepared, the POPP required UNDP to screen projects for impacts/risks to local communities and the environment using the ESSP.
38. The ESSP provided a series of questions the answers to which allowed UNDP staff to identify and assess the significance of these risks, determine the 'category' of the project based on this assessment, and, in turn, choose the appropriate measures for addressing risks.
39. UNDP did not apply the ESSP to the BCtA project, and did not undertake an alternative formal evaluation (explicitly as least) of the social and environmental risks related to UNDP's support for the BCtA platform for engagement of private sector companies with poor communities.
40. As described below, the failure to robustly assess social and environmental risks that might occur through such a platform appears to have left measures to avoid and mitigate these risks off UNDP's radar and out of the Prodoc.
41. For example, although the Prodoc describes 'Risks and Assumptions' associated with the BCtA project, risks identified were mostly unrelated to social and environmental risks to communities (Prodoc, pg. 19). Risks identified were focused on '*strategic risks*' e.g., negative press, donors and companies shifting away from inclusive business, companies not following through on commitments; '*reputational risks*' – members contacted too frequently, BCtA providing low value and perceived as a lobbying group; poor conduct by member companies and/or consequent negative press that adversely impacts BCtA by association; and '*operational risks*' – companies not measuring or reporting progress adequately, donors insufficiently engaging, high BCtA staff turnover leading to weak member relationships, BCtA overexpanding or committing without adequate resources, and complexity of change at UNDP delaying the Secretariat's ability to deliver planned activities.
42. The identified risk most relevant to social and environmental risks is 'poor conduct by BCtA member companies and/or consequent negative press may adversely affect BCtA by association.' The identified 'mitigation approach' is 'Carefully screen companies in the application stage for such risks' and 'Institute clear criteria for companies to maintain membership.'
43. The identified mitigation measure to 'Carefully screen companies in the application stage' clearly can be a useful measure for avoiding or mitigating risks to communities, but the Prodoc does not clearly describe what this should entail or what 'poor conduct' might involve. As detailed below, the risk assessment/screening review process used by BCtA for Bidco was not as robust as the screening process required by UNDP for other private sector entities.

44. The identified mitigation measure to ‘Institute clear criteria for companies to maintain membership’ can be useful as well, but could not be identified as a project requirement. The Prodoc indicates, ‘Members are companies that have completed the BCtA application process and made a formal public commitment to an inclusive business initiative. Members that have completed their commitments will remain members of BCtA as long as they express an interest in participating in and contributing to the BCtA community’ (Prodoc, pg. 18).
45. If UNDP had applied the ESSP to the BCtA Prodoc, it could have determined that, in addition to potential benefits, risks associated with support for private sector companies engagements with poor communities as suppliers, consumers, producers, and distributors of goods and services, include risks related to power imbalances and the potential for exploitation. For example, a fundamental issue for the BCtA project is that populations targeted for assistance – ‘the poor’ – are financially marginalized by definition, and often also politically marginalized in practice. In this context, in the absence of explicit attention to social safeguards, including the protection of rights of marginalized populations and their ability to access information related to projects, participate in key project decisions, and have access to adequate remedy for harms, etc., exploitation is possible. For example, if, while promoting the integration of the impoverished in a supply chain of a BCtA company, UNDP fails to consider and promote adequate price/wage and labor conditions, UNDP could simply be facilitating inexpensive labor or supplies for the member company. These impacts could adversely damage UNDP’s reputation and the communities it seeks to help.
46. The ESSP could have helped UNDP determine how to identify and respond to BCtA-related risks. Platforms such as the BCtA pose special challenges to UNDP for the identification of risks. While UNDP is providing a platform and other (nonfinancial) support for company initiatives that include the poor as producers, entrepreneurs and consumers, companies that become members directly engage with communities, and social and environmental risks are largely associated with this engagement, the quality of which reflects back on the BCtA and UNDP.
47. The ESSP described that, for such projects (likely ‘Category 2’ projects under the ESSP), ‘there are possible environmental and social benefits, impacts and/or risks associated with the project (or a project component) but these are predominantly indirect or very long-term and so extremely difficult or impossible to directly identify and assess...In these cases, UNDP will often have an important role to play in supporting and developing capacities for taking an integrated approach to development’ (ESSP, pg. 10).
48. Indeed, even in the absence of ESSP screening results, documents and interviews demonstrate the concerns of non-project UNDP staff. As part of project review and approval, such staff identified potential environmental and social risks associated with the BCtA project, and expressed interest in the Prodoc reflecting a rights-based approach, incorporating UNDP’s

environmental standards, and describing how the beneficiaries' perspectives are incorporated.

49. Under the ESSP, for such projects, UNDP staff had to identify the key decision-making points and processes into which it could 'mainstream' consideration of environmental and social concerns and measures to ensure that environmental and social risks/impacts were addressed in future activities that could harm communities and/or the environment.
50. In the context of the BCtA project, one obvious decision-making point and process for such mainstreaming is when and how companies are evaluated for membership in BCtA. Measures that can be mainstreamed during such an evaluation (to ensure that environmental and social risks and impacts are addressed in future activities) include policies and tools that assess the capacity and willingness of a company to address social and environmental concerns and that identify measures to support company capacity building to improve its performance.
51. One set of measures relevant in this regard includes the Policy on Due Diligence and Partnerships with the Private Sector (the Policy, See Annex 2), complementary RAT (See Annex 3) – designed to support implementation of the Policy - and Guidelines for Private Sector Partner RAT (Guidelines) – designed to support implementation of the RAT. These measures include attention to social (human rights) and environmental concerns, although primarily to avoid risks to UNDP's reputation.
52. As described in greater detail below, application of the Policy to UNDP engagements with private sector entities has been required since December 2013, and the RAT has been a 'mandatory requirement for any type of partnership between UNDP and a private sector entity' since 2014. The Policy and RAT require screening and assessment of potential UNDP partners, as well as application of key principles '*regardless of the nature of UNDP's engagement or partnership*' (emphasis added) with other entities (Policy, pg. 12).
53. The Prodoc includes a commitment to apply the Policy and RAT. The Prodoc, for example, notes that the due diligence/risk screening review performed by the BCtA Secretariat 'complies with UNDP and Partner policies for partnerships with corporations (BCtA utilizes the UNDP's Private Sector Partner RAT), as well as ensures that we do not damage any relationships by engaging companies that cannot be accepted as members' and 'BCtA utilizes the UNDP's Private Sector Partner RAT' (Prodoc, Annex 2, pg. 70).
54. The UNDP/PSD Due Diligence form (UNDP/PSD form) similarly explicitly acknowledged the RAT, stating, 'This form is part of the due diligence process that UNDP undertakes in considering companies and other private sector organizations for potential partnerships.... This procedure template complements the RAT and provides an overview of corporate controversies and other, relevant corporate social responsibility information.'
55. Several additional factors support the idea that UNDP should have treated members to

BCtA as partners and/or assessed using UNDP's RAT, and in a manner consistent with the Policy: (1) the definition of 'partner' in the Policy is broad, and the reasons for the Policy support its broad application; and (2) examples in the Policy of 'types of engagements' UNDP has with partners are similar to UNDP's engagements with members to BCtA.

56. Regarding (1), above, the Policy defines partnership as 'a voluntary and collaborative agreement or arrangement between UNDP and the private sector, as well as potentially other entities, in which all participants agree to work together to achieve a common purpose or undertake a specific task and to share risks, responsibilities, resources, and benefits' (Policy, pg. 12). It notes the following purpose of the Policy: 'The growing role of the private sector in the changing development landscape brings both new opportunities and risks. As UNDP aims to scale up its engagement with the private sector it needs to do so in a way that manages risks to its reputation...The purpose of this Policy is to facilitate and guide the selection of private sector partners and the formulation of partnerships in such a way that enables effective and creative collaboration, while maintaining a principled approach that manages risks and ensures the integrity and independence of UNDP' (Policy, pg. 1).

57. Through BCtA, UNDP and DSC members have a 'voluntary and collaborative' arrangement with members to the platform to work together to achieve a common purpose: to increase 'inclusive business' toward poverty alleviation. UNDP, DSC members, and others, are providing benefits and resources to the members – including 'global visibility and validation', 'a direct channel to provide inputs' into policy, and 'initiative advice and linkages with other companies, donors, governments and other key stakeholders' - in exchange for various 'commitments' by the members that will increase inclusive business (Prodoc, pgs. 5-6). And as UNDP is hosting the Secretariat, it is assuming a larger role than other funding partners in the functioning of BCtA.

58. Finally, the Policy's description of types of engagements indicative of partnerships include engagements similar to those of UNDP with Bidco and other member companies through BCtA. The Policy's description of engagements indicative of partnerships include 'Harness the private sector's core business strengths (expertise, services, technology, etc.) to implement or promote inclusive business models' and 'Influence and encourage the private sector to bring about a change in the way business is done through more responsible and sustainable approaches' (Policy, Annex 2, pgs. 15 – 18, See, also, Annex 2 to this report).<sup>3</sup>

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<sup>3</sup> The Policy's Annex 2: Types of Engagement, labels this first type of engagement as 'Core Business for Inclusive Market Development,' and describes it as follows, 'In this kind of partnership, UNDP has an agreement with one or more companies and other development actors to carry out certain activities that can help to implement more inclusive business models at these companies. These activities might include upgrading the supply capacity of local producers and SMEs, improving the ability of producers to comply with industry standards, or transferring knowledge and relevant skills for more efficient production processes, for example' and the second type of engagement as 'Advocacy and Policy Dialog', describing it as "In this type of partnership, UNDP will mainly act as a facilitator and broker of public-private dialog and cooperation mechanisms' by convening 'public-private

59. BCtA documentation reviewed by SECU confirms that the intended purpose of the cooperation was a type of partnership.<sup>4</sup>

60. For all engagements the Policy requires attention to certain principles. It notes: 'Regardless of the nature of UNDP's engagement or partnership with the private sector...they should be guided by the principles outlined below.' These include to: (1) advance UNDP goals – 'a clear purpose for the partnership...should be clearly defined'; (2) maintain integrity, independence and impartiality; (3) ensure transparency – 'cooperation with the private sector must be transparent, with information on the purpose and scope of the collaboration being available... Relevant information about the partnership should be made available on UNDP's website'; and (4) ensure 'non-exclusivity and no unfair advantage or implied endorsement...which might lead to unintended consequences' (Policy, pgs. 12-13).

61. Despite the apparent applicability of the Policy and full RAT to UNDP's engagement with Bidco through BCtA, the full Policy and full RAT were not applied to the screening and assessment of companies for membership into the BCtA. As detailed below, the UNDP/PSD form used was not fully consistent with Policy and RAT requirements.

62. The Prodoc does not indicate why the full Policy and full RAT were not applied, although, after the complaint was filed, the UNDP Secretariat to the BCtA apparently (based on "before" and "after" screenshots) revised the website to indicate that private sector company members to BCtA were not 'partners' – with, perhaps, an implication that UNDP did not need to apply the full Policy and RAT to its engagements with private sector companies through BCtA.

63. The following section evaluates the measures taken by UNDP staff, through BCtA, to assess and address social and environmental risks related to engagements with private sector companies. It primarily considers how these measure up to UNDP's Policy, RAT, and Guidelines, but also touches upon other possible measures (in addition to the Policy and RAT) to address social and environmental risks related to BCtA member activities - including those focused not primarily on risks to UNDP's reputation.

### *Measures to Address Potential Risks: The Private Sector Due Diligence Policy, RAT, and Guidelines*

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dialogs and collaborative platforms aimed at catalyzing and incentivizing sustainable private sector solutions and investment, and building sustainable and inclusive markets.'

<sup>4</sup> The Policy implies that 'partnerships' need not involve a formal agreement or financial implications for UNDP. It notes, 'When a partnership arrangement will have financial implications for UNDP, a formal written agreement should be established between UNDP and the private sector' (Policy, pg. 13). This statement implicitly acknowledges that a partnership may exist without these two conditions. As noted earlier, while no formal written agreement existed between UNDP as the BCtA Secretariat and Bidco, Bidco's written application and agreement to certain commitments, BCtA's explicit written description of benefits to be secured through membership, and BCtA's approval of Bidco's application and notice of such approval in writing, constitute at least an informal agreement.

*as Compared to UNDP Due Diligence Efforts in the Context of BCtA*

64. As described earlier, UNDP did not fully apply the UNDP Policy and RAT for screening and assessment of Bidco as a member of BCtA, but did apply another risk assessment tool - the UNDP/PSD form. This form was used to assess risks related to UNDP's possible association with the applicant company. Information from this form was, additionally, summarized in BCtA's 'Applicant Summary' form sent to DSC members.

65. This form provided important recognition of the need to screen potential members of BCtA, reflected an effort by UNDP to pursue due diligence related to its association with member companies to BCtA, and captured many of the issues and concerns reflected in the Policy and RAT.

66. However, as detailed below, the steps and questions in the UNDP/PSD form are not as comprehensive as those reflected in the Policy and RAT, the approach to gathering and verifying information is less robust than required by the RAT, and conclusions drawn about next steps are less sound than recommended by the Policy and RAT.

67. Differences between UNDP's RAT and the UNDP/PSD form may be most evident in their length and when they are applied. The RAT is a twelve-page document with questions to walk staff through a five-step process (See Annex 3 to this Investigation Report). The described process begins prior to outreach to a private sector partner (if UNDP pursues outreach), and continues after outreach if the partner is not disqualified from engaging with UNDP. In contrast, the UNDP/PSD Due Diligence form includes three pages of questions, with primarily 'yes' and 'no' responses, and appears explicitly tailored for use only in prescreening.

*Measures to Address Potential Risks: Exclusionary Criteria and 'Significant Controversies' for Pre-Screening*

68. The first step of the Policy and RAT is to consider listed 'exclusionary criteria' to exclude from consideration private sector entities that involve 'highest risk' engagements 'with sectors of the economy or business practices that are incompatible with UNDP's vision, mission and values, or companies that are in violation of UN resolutions or included on UN ineligibility lists. (Policy, pg. 2).

69. These criteria include, primarily, those related to the manufacture, sale, etc. of harmful products, e.g., guns and tobacco, *but also* include, 'Violation of human rights or complicity in human rights violations' and questions related to labor rights (Policy, pgs. 3-5).

70. These criteria are relevant when potential partners are involved in activities through



subsidiaries or through supply chain/distribution activities (Policy, pgs. 3-5).<sup>5</sup> More specifically, UNDP is directed not to engage with a given company when an excluded activity is occurring via a business relationship and the relationship meets a certain threshold, i.e., the exclusionary criterion 'Violation of human rights or complicity in human rights violations' requires 'No engagement if potential partner owns >20% of subsidiary' (Policy, pgs. 3-5).

71. The BCtA Prodoc's Annex 2, which describes the 'Due Diligence Review Process' for BCtA, similarly reflects the importance of exclusionary criteria used by UNDP. In one section, the Annex indicates BCtA will apply all exclusionary criteria used by UNDP – including the criteria dealing with human rights. It states, 'The Risk Screening Framework applies (sic) following procedure: Checking against exclusionary criteria... companies from any industry sector are eligible for participation, except those companies that are involved with: ... i) Violation of human rights or complicity in human rights violations, j) Use or toleration of forced or compulsory labor, k) Use or toleration of child labor' (Prodoc, Annex 2, pg. 71).
72. Annex 2 indicates elsewhere, however, that BCtA will check 'the company against the *BCtA's exclusionary criteria*' (Prodoc, Annex 2, pg. 70). These include only three of UNDP's exclusionary criteria - two relating to the manufacture of armaments and one relating to marketing of breast milk substitutes contrary to WHO guidelines. It omits the human and labor rights-related criteria from exclusionary criteria.
73. The latter was the approach employed in the UNDP/PSD due diligence form; human rights and labor criteria were not included as 'exclusionary criteria.'
74. This omission of human rights from exclusionary criteria in the UNDP/PSD form contrasts not only with the assertion in Annex 2 that BCtA's Risk Assessment Framework would include these criteria, but also with the explicit attention to human rights found in Annex 6 to the Prodoc, titled, 'The BCtA's Focus on Gender Inclusion and Human Rights' (Prodoc, pgs. 85-87).
75. This Annex describes 'areas in which the BCtA include *a human rights perspective*, and *a gender perspective*' in its work, and expresses a commitment to act on human rights principles through 'using the appropriate criteria in screening applicant companies' and 'tracking any relevant controversies through the lifetime of companies' affiliation with BCtA (Prodoc, pg. 85). Similar to the Policy, the Annex provides attention to both violation of human rights and complicity in human rights violations (using language similar to the Policy on this point).<sup>6</sup> The

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<sup>5</sup> Additionally, the Guidelines for the RAT state, 'Based on the UN Guiding Principles on Business and Human Rights, responsibility for respecting human rights requires that companies seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships (business partners, entities in its value chain, other non-State or State entity), even if the company itself has not contributed to those impacts' (Guidelines, pg. 9).

<sup>6</sup> It states, 'responsibility for respecting human rights requires that companies seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships (business partners, entities in its value chain, other non-State or State entity), even if the company

paragraph concludes with the observation that ‘Should any evidence be found of ongoing violations during the due diligence review, BCtA will follow UNDP’s policy to discontinue engagement with the company’ (Prodoc, pg. 85).

76. Despite BCtA’s apparent commitment in Annex 6 to acting on human rights principles through ‘appropriate criteria in screening,’ the form used by BCtA to screen potential partners – the UNDP/PSD form - omitted explicit attention to human rights not only in the exclusionary criteria, but also, as described below, in other relevant questions.

77. Moreover, this form abbreviated attention to other social and environmental concerns (in addition to human rights) in both the exclusionary criteria and subsequent questions, including those related to ‘controversies.’

78. The RAT’s ‘controversies’ question includes the following list of illustrative issues to be considered and additional considerations (See, also, Annex 2 to this report for full RAT):

<b>2.1 Potential Controversies</b>	
<p>Potential partner companies may be exposed to controversies. Annex 2 of the <i>RAT Guidelines</i> contains guidance on how to gather information.</p> <p>List below any controversies that are not already covered in step 1.1., i.e. controversies not directly related to exclusionary criteria. Use the comment box to provide details of the criticism. Controversies may relate to issues such as:</p>	
<p><b>Labor</b></p> <ul style="list-style-type: none"> <li>• Discrimination at work</li> <li>• Freedom of association and the right to collective bargaining</li> <li>• Occupational health and safety</li> <li>• Poor employment conditions</li> </ul>	<p><b>Governance</b></p> <ul style="list-style-type: none"> <li>• Corruption</li> <li>• Fraud</li> <li>• Tax evasion</li> </ul>
<p><b>Communities</b></p> <ul style="list-style-type: none"> <li>• Community health and safety</li> <li>• Impact on livelihoods</li> <li>• Local participation</li> <li>• Social discrimination</li> <li>• Indigenous peoples</li> </ul>	<p><b>Product-related</b></p> <ul style="list-style-type: none"> <li>• Product safety</li> <li>• Controversial products or services</li> <li>• Marketing of <b>breast milk substitutes contrary to the WHO's International Code of Marketing of Breast-Milk Substitutes.</b><sup>7</sup></li> </ul>
<p><b>Environment</b></p>	<p><b>Ownership or management</b></p>

itself has not contributed to those impacts. These include violation of human rights or complicity in human rights violations, use or toleration of forced or compulsory labor, and use or toleration of child labor, among others’ (Prodoc pg. 85).

<sup>7</sup> The WHO’s International Code of Marketing of Breast-Milk Substitutes is available at WHO website

<ul style="list-style-type: none"> <li>• Pollution (including climate change)</li> <li>• Impact on ecosystems and landscapes Overuse of resources</li> <li>• Waste management</li> <li>• Mistreatment of animals</li> </ul>	<ul style="list-style-type: none"> <li>• Controversies related to the individuals owning or managing the company</li> </ul>	
Significant criticism from local or global NGOs / media/social media or other significant partners of UNDP (including CSO advisory committee, marginalized people etc.) locally or globally	<input type="checkbox"/> <b>No evidence</b>	<input type="checkbox"/> Evidence <input type="checkbox"/> Not known
Significant criticism from governmental agencies / political parties that makes UNDP participation politically sensitive	<input type="checkbox"/> <b>No evidence</b>	<input type="checkbox"/> Evidence <input type="checkbox"/> Not known
Recurring local public events against the company (e.g. local demonstrations)	<input type="checkbox"/> <b>No evidence</b>	<input type="checkbox"/> Evidence <input type="checkbox"/> Not known
Global public events (e.g. significant demonstrations at several locations, significant online protests)	<input type="checkbox"/> <b>No evidence</b>	<input type="checkbox"/> Evidence <input type="checkbox"/> Not known
Relevant legal case in progress/in court etc.	<input type="checkbox"/> <b>No evidence</b>	<input type="checkbox"/> Evidence <input type="checkbox"/> Not known
Other (specify):	<input type="checkbox"/> <b>No evidence</b>	<input type="checkbox"/> Evidence <input type="checkbox"/> Not known
Comments: [Comments]		

79. Finally, the RAT directs UNDP staff to ‘provide details of the criticism’ in the comment box, and further to ‘Research publicly available sources (e.g. search for public statements from the company), or contact the company to assess how it addresses the identified significant controversies’ and to ‘List these elements in the comment box below’ (RAT, pg. 5).

80. In contrast, the UNDP/PSD form requests that controversies relating to environmental social and corporate governance be disclosed.

81. Despite the less detailed request in the UNDP/PSD form, BCTA staff did list, in this form for Bidco, several relevant controversies in response. These responses cannot be quoted – the form is marked ‘Internal, not for circulation’ - but the summary of due diligence findings in the Applicant Summary (which is provided to the DSC even in the absence of a signed disclosure form) reflects that staff identified several important risks – at least partially fulfilling the requirement to assess risks – but did not clearly follow up in a satisfactory way or characterize risks accurately. Information widely and publicly available at the time indicated several activities that could pose risks for UNDP, including allegations of so-called ‘landgrabbing’ in

Uganda, the related pending lawsuit filed by Ugandan farmers claiming to have been evicted from their land for the Bidco Uganda project, and occasional worker strikes over poor working conditions. Information captured in the form was consistent with this information.

82. This UNDP/PSD form did not, however, provide details of the criticism, indicate whether and/or how UNDP staff evaluated the controversies, e.g., whether staff discussed the controversies with the company or others, or indicate how the controversies had been, or would be, addressed. No analysis of possible implications for the BCtA initiative was provided (or requested in the form), and, perhaps most significantly, the form did not include a space to identify measures that might prevent similar concerns in the context of the BCtA initiative.
83. Instead, in response to controversies that were listed, and very brief answers to a few additional pre-outreach questions relating to social and environmental concerns - including how the sector is viewed by local communities at large and whether the company is a participant in the UN Global Compact and/or adheres to sustainability or ethical-related principles or guidelines, e.g., Voluntary Principles on Security and Human Rights, Equator Principles, etc. – UNDP staff characterized (in documents and in in-person interviews) social and environmental risks related to Bidco as ‘moderate,’ and indicated that Bidco was a strong candidate for membership in BCtA.
84. Making a decision to proceed with engagement with Bidco, e.g., via membership in BCtA, at this point suggests UNDP staff may have been pursuing a ‘limited due diligence’ approach to its engagement with Bidco.
85. Under the RAT, if the partner’s financial contribution is less than US\$100,000 AND the sector of activity at the center of the partnership is not a ‘high risk’ sector, a decision to advance (or not) with the partnership is appropriate without additional due diligence *unless* there is evidence the company should have been excluded from engagement (pursuant to the exclusionary criteria) or evidence of ‘significant controversies’ (RAT, pg. 12).
86. Bidco made no financial contribution to BCtA, but the sector of activity at the center of the partnership may be considered risky. Promoting inclusive business is not inherently ‘high risk,’ but Bidco’s proposed initiative for BCtA membership – the Full Value Chain Initiative – involved agriculture supply chains. As noted in the Policy, the ‘Growing of crops, including palm oil or other large monocultures’ may be considered high risk, and for such sectors, ‘an extra careful approach is required’ (Policy, pg. 5).
87. It is not clear the company should not have been excluded from engagement – not all exclusionary criteria were included and considered during due diligence. And, as described in greater detail below, the evidence was relatively more clear that identified controversies were ‘significant’ and not just moderate. A finding of ‘significant’ controversies’ would have required a full assessment.

88. Under the RAT, a full assessment requires attention to responses to a relatively long list of environmental, social, and governance questions (RAT, pgs. 7-10, and see, also, Annex 2 to this report).
89. These questions were almost entirely absent from the UNDP/PSD form. As noted in paragraph 83, the UNDP/PSD form asked a few of these questions, including those related to membership in the UN Global Compact and adherence to sustainability or ethical-related principles or guidelines, but the majority of other pertinent questions were omitted.
90. If all questions in the RAT had been used, or if other measures to identify and address risks associated with UNDP engagement with member companies to BCtA had been adopted by UNDP, staff may have given more thorough consideration to possible concerns identified in the UNDP/PSD form and Applicant Summary – some of which were mirrored in the complaint.
91. It is possible, for example, that if UNDP had responded to questions with an explicit focus on human rights and complicity, UNDP may have given more thorough consideration to Bidco Africa’s relationship to Bidco Uganda, the UPOL project, and the land rights and displacement-related claims and their relevance (or irrelevance) for the BCtA project.
92. To be clear, this observation **in no way implies that Bidco has, or has not, violated human rights or is complicit in human rights violations. Such a determination is beyond the scope of this report**, which is focused primarily on the adequacy of UNDP’s due diligence and related transparency in the context of the BCtA project.
93. However, a more thorough consideration of concerns likely would have been prudent. Bidco Africa and its Full Value Chain Initiative may not have been directly involved in activities that were the subject of the complaint – indeed, several interviewees indicated that the complaint was unwarranted because Bidco Africa and the proposed initiative in Kenya were not directly related to activities of Bidco Uganda and UPOL in Uganda. However, Bidco Africa has at least financial links to Bidco Uganda and the Kalangala oil palm project referenced in the complaint.<sup>8</sup> A UNDP staff member with the BCtA Secretariat indicated in an email that Bidco Uganda is ‘a joint venture between Wilmar Group...and Bidco [Africa] with financing from IFAD.’ According to several websites, including the OPUL website, OPUL is a subsidiary of Bidco Africa.<sup>9</sup> A recent IFAD report states, ‘Kalangala is the first phase of a longer-term PPP between the government and Bidco Oil Refineries Ltd. of Kenya (Bidco)’<sup>10</sup> (now known as Bidco Africa).

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<sup>8</sup> <http://www.bul.co.ug/about-us.html>

<sup>9</sup> <http://www.bul.co.ug/palm-oil-uganda.html>; <http://www.bul.co.ug/about-us.html>;  
<http://www.monitor.co.ug/Business/Commodities/Bidco-dismisses-land-grab-claims-Kalangala-farmers/-/688610/3091206/-/jrgpktz/-/index.html>

<sup>10</sup> IFAD and Institute of Development Studies (IDS). (2015) Brokering Development: Enabling Factors for Public-Private-Producer Partnerships in Agricultural Value Chains, Summary of Uganda Case Study

Additionally, since Bidco Africa lends its name to Bidco Uganda, there is branding and reputational support from Bidco Africa to Bidco Uganda.

94. Additionally, more detailed questions likely would have led to more in-depth consideration of labor rights-related concerns at Bidco Africa's operation in Kenya (concerns previously raised), and possible implications (including the possibility of no implications) for supply chain laborers in Kenya involved in Bidco's BCtA Initiative.

#### *Due Diligence and Finding of 'Moderate Risk' for Bidco Membership in BCtA*

95. When asked about the process for arriving at the finding of moderate risk with no obvious recommendations to avoid concerns in the context of the BCtA initiative, staff provided the following reasons: (1) the government of Uganda and the company had indicated that Bidco was not involved in the land acquisition process – and the government had, in that sense, 'cleared Bidco' in terms of land-related claims and concerns; (2) there had yet been no finding – specifically no determination of culpability - in the lawsuit related to Bidco, Bidco expressed a willingness to abide by any court decision and indicated all other issues had been resolved, and the external entity used by UNDP to inform understandings of risks related to a given private sector company indicated that pending lawsuits pose only moderate risks; (3) the 2013 IFAD report supported the idea that the project was more beneficial than harmful and social and environmental concerns were largely addressed, and other local farmer associations submitted statements indicating as much; and (4) Bidco was a member of the UN Global Compact.

#### *UNDP's Due Diligence Finding that Land-related Claims Were of Insignificant Concern*

96. Among the several reasons UNDP staff provided for their decision that controversies were not 'significant' included point (1) - that Bidco did not directly engage in land transactions for the project; these were handled by the Ugandan government.

97. Ugandan government officials and a Bidco Uganda representative confirmed that the government was responsible for acquiring the land. Said a representative from Bidco Uganda, 'All the stakeholders was willing buyer/willing seller.... All land must be purchased by the government and then given to us for use.'<sup>11</sup> A government representative indicated: 'The district identified this land, surveyed it, and gave it to Uganda Land Commission who then leased it to Bidco. There was private – you own it and you sell it to the Uganda Land Commission. They called people and they came to buy and sell willingly. The Government was buying, in the name of Land Commission.'<sup>12</sup>

98. Moreover, both described that Bidco Uganda had indicated it did not want the

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<sup>11</sup> 25 May 2016 in-person interview with SECU.

<sup>12</sup> 27 May 2016 in-person interview with SECU.

government to acquire land that was being claimed by individuals, and that it sought to resolve outstanding disputes with individuals after land was acquired. 'We never touched a place where someone was already cultivating an area. We walked parcel to parcel, did the survey. If there were crops we didn't touch it. We also left 200 meters of buffer. This meant 2,500ha ended up not being used.'<sup>13</sup>

99. Information gathered during the investigation indicated that while Bidco Uganda was not directly involved in acquiring land for crops for its refinery, it knew of, relied on, and encouraged this purchase by the government. Bidco Uganda also, apparently, was engaged in decisions and discussions related to the purchase. These activities mean **IF** human rights violations were established (this report does **not** reach a determination of Bidco's culpability or not with regard to violations of human rights), Bidco could be complicit in these violations.

100. In this regard, as indicated briefly below, this investigation determined that human rights concerns (including complicity issues) relating to the land acquisition about which complainants have concerns, were 'live' – of great concern to at least some community members and unresolved legally. And potential impacts both to UNDP's reputation and for local communities could and should, therefore, have been more robustly considered during the due diligence review. As noted by one interviewee, "It is not good for Bidco. Even if they weren't involved in land acquisition, it looks bad. They have title (lease) by Uganda Land Commission. Even if Bidco wins the case, if a local man is not happy, it doesn't look good.'<sup>14</sup>

101. Although Bidco Uganda believes the dispute is about only one location, stating, 'The dispute we were talking about - there is only this one place...'<sup>15</sup> more than one person claims to have been impacted by the Bidco Uganda project; in-person interviews indicated concerns from other individuals. Meetings with a group of individuals included assertions that 29 families were wrongly displaced. Meetings with several women who claim to have been resettled from land now used by Bidco (for the 'nucleus estate'), provided the following assertions: (1) they were either not compensated or not informed of their options and did not feel able to negotiate or reject the offer made; (2) when money was provided, the amount was much lower than an amount that would have allowed them to purchase new land – the price of land increased significantly after plans by the government and Bidco became known; (3) they are now living in a shantytown, where growing food is not possible, and they have no means of making money to pay for their needs; (4) they are living without the fathers of their children because there is no way for these men to make a living in the shantytown. Some of these women claimed to have been on the land for more than ten years and believe they had customary rights to this land. Others had occupied the land for less than ten years.<sup>16</sup>

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<sup>13</sup> 25 May 2016 in-person interview with SECU.

<sup>14</sup> 27 May 2016 in-person interview with SECU.

<sup>15</sup> 25 May 2016 in-person interview with SECU.

<sup>16</sup> 26 May 2016 in-person interview with SECU.

102. From interviews it appears that, for at least some of the land acquired (possibly most of the land related to the complaints), negotiations occurred with the registered owners of the land – some of whom were *mailo* owners whose ownership related to colonial occupation and had not lived on or used the land for a significant number of years. In this situation, the occupants had been paying the registered landowner nominal rent, but, apparently, were not involved in negotiations relating to government expropriation of the land. Occupants were expected to discuss compensation and/or other forms of redress for their eviction with the registered owner. One interviewee explained the arrangement, ‘...this was a local arrangement between the landlord and his tenants. The district was not involved. They did their part. The stand was that you negotiate with your tenants. Some of them wanted to go to court calling them squatters and it was said if you take them to court we are not buying.... It was said go sit with these people and agree. If you agree, then you bring evidence they have signed, and you will be paid [for purchase of the land].’<sup>17</sup>

103. One interviewee who had farmed land for more than twenty years described that negotiations between him and the *mailo* owner broke down because he believed the offer to him from the titled owner was inadequate. He claims he has customary rights to lands, but without formal registration – a process that is unclear and difficult for him.<sup>18</sup>

104. A USAID analysis indicates that Uganda’s 2009 Land Act recognizes that occupancy of customary land for a certain number of years conveys legal rights, but also notes that Ugandan tenants with unregistered customary rights do face significant challenges and pressures. It notes, ‘There are 13 steps to registering property which take 227 days to complete and cost several million Uganda Shillings (Ush) (World Bank 2009a; 2009b). Most unregistered land is undocumented customary land. The majority of poor people do not hold granted rights of occupancy, often because they lack the knowledge, capacity, and resources needed to navigate the application process and meet the title conditions. Unregistered land is vulnerable to expropriation by the government and grabbing by political and economic elites—an increasingly common occurrence.’<sup>19</sup>

105. Some interviewees, including representatives from Bidco and the government, indicated that outstanding claims to land were exaggerated, and requests for compensation outside reasonable bounds.<sup>20</sup>

106. Other interviewees – including individuals with knowledge of the situation but not apparently benefiting from or harmed by Bidco activities – believe both sides have valid points. One such interviewee indicated a perception that while some claims by complainants were

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<sup>17</sup> 28 May 2016 in-person interview with SECU.

<sup>18</sup> 26 May 2016 in-person interview with SECU.

<sup>19</sup> USAID, August 2010. USAID Country Profile Property Rights & Resource Governance Uganda, <http://www.usaidlandtenure.net/uganda>.

<sup>20</sup> 25 May 2016 and 28 May 2016 in-person interviews with SECU.



exaggerated, others were accurate and warranted a response. This individual concurred that options likely were not clear to individuals occupying the land and ‘negotiating’ with titled owners, that most occupants lacked the capacity to understand the personal and economic implications of selling their land (e.g., ‘people wanted that quick money’ ‘but ‘If you sell your land you are just making yourself landless and depriving yourself’), and that the price of land skyrocketed (e.g., land that was purchased for 80 thousand shilling may now be worth 10 million shilling). This person further noted, for example, that at least one individual, ‘had a legitimate claim. Except now ... is inflating. The only problem with this issue is agreeing on the amount of compensation. And even these other people...it was not grabbing land...it was failing to agree on compensation.’<sup>21</sup> This interviewee also indicated that the project has been beneficial for others.

107. The determination of Bidco’s culpability was being considered by the Ugandan court system through the pending lawsuit. Given the significant risks related to issues raised, it would have been prudent to reserve judgment on membership until this court case was resolved.

#### *UNDP’s Due Diligence Finding that Pending Court Case Presented ‘Moderate Risk’*

108. Regarding (2), and UNDP’s due diligence determination that the pending lawsuit against Bidco by local farmers warranted a finding of only moderate risk: Staff agreed that, although Bidco had not been found culpable, Bidco had, conversely, not been found not culpable. As such, staff acknowledged that, if Bidco were to lose the lawsuit, impacts to UNDP and BCTA, e.g., reputational risks, would be significant given that the company’s initiative through BCTA relates to work with smallholder farmers.

109. This acknowledgment suggests that standard definitions of ‘risk’ in this context – including, in particular, risk as corresponding to a future uncertain event that may impact the achievement of objectives - may not have been considered fully by UNDP when filling out the UNDP/PSD form. If a future verdict against Bidco might significantly impact UNDP and BCTA, as acknowledged by UNDP staff, risks related to involvement with Bidco likely should have been considered significant. Moreover, a culpable verdict might pose not only significant reputational risks for UNDP, but also indicate possibly significant risks for local communities.

#### *UNDP’s Due Diligence Finding That External Reviews Provided Adequate Reassurance Risks Were Insignificant*

110. Concerning point (3), above, UNDP was reassured by an IFAD report, as well a statement and representations by some farmers’ associations, that benefits of the project are significant, and key social and environmental concerns addressed.

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<sup>21</sup> 27 May 2016 in-person interview with SECU.

111. Indeed, an April 2013 IFAD report – IFAD’s first country programme evaluation in Uganda, which assessed the IFAD-Uganda partnership over the period 1997-2011,<sup>22</sup> indicates that support for oil palm (including IFAD’s financial support), ‘has a high probability of helping households escape poverty for good while also having a highly positive impact on the future trade balance.’ Additionally, Bidco’s ‘refinery, mill and nucleus estate provide much needed jobs; and Bidco’s local firm OPUL has become one of Uganda’s largest tax payers.’ It notes the concern that ‘smallholders have no alternative market outlet and are entirely dependent on the behavior and performance of Bidco. Thus, potentially there is a risk of exploitation.’ It indicates in response, ‘However, Bidco has, in line with its past record, demonstrated social and environmental responsibility... and significant efforts were also invested in organizing and empowering the smallholders and ensuring them a fair contract with Bidco/OPUL.’ An in-person meeting with an IFAD representative indicated much the same, ‘We believe the project has one of the highest impacts in the region - 1,700 farmers so far earning 900-1000 net per hectare, which is absolutely much higher than whatever they were getting before. Overall impact is absolutely impressive....’<sup>23</sup>

112. UNDP staff and the IFAD report noted that the Kalangala Oil Palm Growers Association (KOPGA), an association of local farmers, indicated support for the Bidco initiative. A February 2016 letter submitted by KOPGA to UNDP Administrator Helen Clark, after the complaint was filed to SECU, describes that KOPGA includes 1800 farmers who support and benefit from the initiative.

113. However, a subsequent report by IFAD and the Institute of Development Studies (IDS) highlights not only many of the benefits described in the earlier IFAD report, but also several negative unintended consequences – including some that are reflected in the complaint. In terms of benefits, the Executive Summary states, ‘Evidence suggests that the PPP has certainly generated significant livelihood and employment opportunities in Kalangala – formerly one of the country’s poorest and most remote districts, with limited livelihood options based on subsistence farming and fishing (dominated by men). The PPP has increased household assets, formalized tenure rights for many smallholders (and expanded landholdings for some, including women) and provided more stable incomes (many families reported being able to afford to send children to school as a result). It has overcome the challenges facing smallholders by providing a guaranteed market for their produce, and through mechanisms to set prices based on market rates. It has also brought many new job opportunities (in the mill, processing plant, and the construction and services sectors), while improvements to infrastructure (particularly roads and a new ferry service) have benefited the entire local

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<sup>22</sup> Independent Office of Evaluation, IFAD. Number 23, April 2013, ‘Value chain development through public-private partnerships: opportunities and challenges for small farmers.’

<sup>23</sup> 25 May 2016

population.<sup>24</sup>

114. On negatives described in the Executive Summary: 'But there have also been some less positive outcomes. Many of the new job opportunities have been filled by migrants, putting pressure on local health and education services. The rising price of land as a result of the development has increased tensions and led to rising conflicts, particularly as some absentee landowners have begun to return. There are concerns about longer-term impacts on household food security when the oil palm trees become too large to allow intercropping. And the environmental impacts have led to a great deal of public scrutiny, particularly given the size of the investment. Finally, at household level, there has been a reported increase in domestic conflict, although more positive impacts are evident in terms of women's empowerment and building capacity of farmers' organisations.'<sup>25</sup>

115. An additional observation that is closely related to complaint concerns includes the following: 'Another unintended consequence is the significant rise in the price of land on the island (from UGX150,000 per acre in 2002 to 800,000 in 2008). While this is beneficial for poor farmers wanting to sell land or use it as collateral for loans, it risks poorer farmers losing land they used to access through traditional tenure systems. A lawsuit has recently been filed by farmers who claim they were evicted from their land illegally. Absentee landowners have also begun returning to the area, causing problems for farmers who had not regularised their occupancy rights. Around two-thirds of participants in the focus groups reported greater incidence of land conflicts since the introduction of oil palm.'<sup>26</sup>

116. Although all of these reports support apparent benefits for a large percentage of the population, the latest report reflects significant social and environmental concerns that were not clearly, robustly considered in UNDP's due diligence.

#### *UNDP's Due Diligence Finding That Membership in UN Global Compact Reduced Risk*

117. UNDP staff also felt reassured about Bidco because of Bidco's membership in the UN Global Compact, and expressed, '...the moderate risk means there are issues we should be aware of, but the company has policies in place to mitigate impacts such as the commitment to Global Compact, their internal policies and commitment to human rights. The grievance mechanism that company has in place.'<sup>27</sup>

118. It appears that details about this membership were not requested, and it is not apparent

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<sup>24</sup> Institute for Development Studies (IDS) and IFAD. 2015. *Brokering Development: Enabling Factors for Public-Private-Producer Partnerships in Agricultural Value Chains, A case study of the Oil Palm PPP in Kalangala, Uganda.* <https://www.ifad.org/documents/10180/479f2ed6-c77f-4acc-8474-62e7cc0d1b90>

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> 30 May 2016 in-person interview with SECU.

from the UNDP/PSD form or Applicant Summary how the commitment to the Global Compact ensures ‘policies in place to mitigate impacts’ or that Bidco has an effective grievance mechanism in place to respond so individual and community concerns.

119. In contrast, as noted earlier, the Policy and RAT provide a relatively longer list of questions to assess a company’s commitment to environmental, social and good governance (ESG) issues. These include a question related to associations with entities such as the UN Global Compact. The Policy indicates that preference would be given for ‘above average’ ratings in global assessments like the ones done by outside reputable vendors (Policy, pg. 7). Bidco’s score is average.

#### *UNDP’s Due Diligence, Applicant Screening, and Information Gathering*

120. A broader issue made apparent during the investigation relates to information gathering and verification in the context of due diligence and evaluating the initiative. Staff appeared to rely heavily on assurances from the company that (1) the initiative was/would be supported by local communities; and (2) past concerns related to Bidco were resolved (or would be after the lawsuit concluded) and irrelevant to the initiative.

121. The Applicant Summary form did not include any additional evidence that intended beneficiaries (the ‘poor’) of the initiative believed potential commitments proposed by Bidco would be fair and welcomed the initiative as proposed.

122. Similarly, the UNDP/PSD Due Diligence form does not indicate how company-provided information was verified.

123. The Policy, RAT and Guidelines indicate that collecting information from a company is an effective and efficient approach to information gathering, but also note that assertions should be verified – including through documentation from the company and consultations with communities if community-related concerns are part of the project, etc.

#### *Due Diligence and Member Companies: Making a Decision*

124. Under the Policy, RAT, and Guidelines, the fourth step in the due diligence process is a decision about whether or not to proceed with engagement, based on the completed due diligence and including a risk/benefit analysis of the partnership. This decision can include conditions that should be put in place for the partnership to be worth pursuing.

125. There is no indication in the UNDP/PSD form that any additional assessment or conditions were possible to address any identified risks.

#### *Due Diligence and Member Companies: Monitoring Implementation of Plans*

126. The final step in the Policy, RAT, and Guidelines is to develop a risk log, a monitoring plan to follow possible controversies related to the partner and assess whether partner is meeting conditions of partnership, and communications material.

127. The UNDP/PSD Due Diligence Form includes no such step.

#### *Due Diligence – Observations by BCtA staff*

128. In a meeting held with UNDP staff in the BCtA Secretariat, UNDP staff agreed that a robust due diligence process to avoid exploitation is important, as is a transparent robust grievance mechanism. Communities, it was agreed, should be empowered.<sup>28</sup>

#### *Other Concerns – Transparency*

129. In addition to screening and assessment of projects and due diligence to assess potential partners, UNDP required attention to transparency, including transparency related to results of the screening, assessment and due diligence.

130. In the context of BCtA this would have required making results of screening and assessment of the BCtA Prodoc public.

131. At the level of engagement with potential member companies to the platform, the Policy similarly requires attention to transparency. 'UNDP is a public organization and cooperation with the private sector must be transparent, with information on the purpose and scope of the collaboration being available to the public. Developing accountable and transparent governance structures, setting measurable targets, and having a robust monitoring and reviewing framework also reinforces the transparency of the partnership. Relevant information about the partnership should be made available on UNDP's website (Policy, pg. 12). Results of such due diligence are important for communities potentially helped and harmed by the BCtA projects – it is especially important to provide these communities information and an opportunity to express support for or concern about a project intended to benefit them. The entire BCtA project is described as community-focused, to empower those in poverty, and thus the release of project details, in appropriate languages and explained at a level where people can understand the issues, is particularly important.

## **VI. Recommendations**

### **Screening of BCtA and Due Diligence Related to Member Initiatives**

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<sup>28</sup> 30 May 2016 in-person interview with SECU.

We recommend that the UNDP Project/Programme Manager in the BCtA Secretariat perform the following tasks:

132. Screen the BCtA project using the SESP to identify: (a) social and environmental risks and potential impacts associated with providing a platform for inclusive business and with downstream engagements of UNDP with private sector entities; and (b) measures to avoid and mitigate these risks and impacts;
133. Relatedly, require use of the Policy on Due Diligence and Partnerships with the Private Sector and complete RAT as key measures to avoid and mitigate risks in the context of the BCtA project. If the full RAT is not applied, explain in writing and in detail why it is not, and indicate how key concerns, e.g. human rights, environment, and labor, etc. will otherwise be addressed.
134. Ensure attention to the correct definition of 'risk' in this context during the screening process, and, in particular, change consideration of 'risk' from risk that exists after possible mitigation measures to risk as it exists prior to mitigation measures, e.g., risk as corresponding to a future event that may impact the achievement of UNDP's objectives.
135. Revise the Prodoc to specify how individuals/communities potentially supported through BCtA-related activities can know about, and be involved in, initiatives, i.e., describe how the primary beneficiaries of BCtA initiatives will have adequate information and opportunities to engage in BCtA initiative-related processes and to share their thoughts on how the project and initiatives can best support them and/or not impact them.
136. Revise the Prodoc to ensure that when the BCtA Secretariat relies on affiliations with other entities, e.g., the UN Global Compact, to partially allay potential concerns related to social and environmental risks, project documentation indicates the full extent to which the member is complying with standards of that entity.

### **Eligibility of Member Companies to the BCtA**

We recommend that UNDP Senior Management ensure the following:

137. BCtA membership criteria is revised to ensure attention to social concerns (including fundamental human rights concerns, e.g., fair pay/wages, healthy working conditions and non-exploitation in the supply chain, etc., in addition to 'integration into company value chains'), and environmental concerns in the context of each initiative.
138. The process for assessing eligibility is clear and robust. More specifically, describe in greater detail how eligibility decisions are made. Is UNDP the primary decision maker? How

much time do DSC members have to ask questions and receive information? Is silence clearly acquiescence? etc.

139. Separation exists between staff involved in developing relationships with private sector companies and staff making recommendations and decisions relating to membership in BCtA (consistent with RAT Guidelines).

140. Membership benefits and tenure are tied explicitly and closely to the initiative. Membership in BCtA is focused on the capacity and willingness of the member to advance inclusive business in the context of a specific business initiative proposed by the member. Benefits of BCtA membership, including, particularly, BCtA 'verification and validation' should be tied the initiative - including on the member website and in member materials and presentations. Additionally, the criteria and process for continued membership in, and benefits from, BCtA after the considered initiative has ended should be more explicit and in writing. Such an action would respond to the Policy requirement to maintain impartiality and provide 'no implied endorsement' of any private sector organization 'which might lead to unintended consequences....' Additionally, create formal standards for how a member would be delisted.

## Responding to Grievances

We recommend that UNDP Senior Management ensure the following:

141. A formal grievance mechanism exists for receiving and responding to complaints alleging that a given initiative may harm communities. This should be advertised on the BCtA website.

## Annexes

**Annex 1.** UNDP's minimum Environmental and Social Standards (prior to 31 December 2014) – as reflected in UNDP's POPP

Social and environmental sustainability is fundamental to the achievement of development outcomes including the MDGs, and shall be systematically mainstreamed into UNDP's Programme and Project Management Cycles. Opportunities to strengthen social and environmental sustainability shall be identified at the earliest stage of programme and project design, realized through implementation and tracked through monitoring and evaluation. A precautionary approach shall be applied, and potential adverse impacts and risks shall be avoided or, where avoidance is not possible, adverse impacts shall be minimized, mitigated and managed.

As such, UNDP shall strive to ensure that its programmes and projects:

- Shall not knowingly engage in programmes or projects that are in contravention of domestic or international law.
- Ensure effective and informed participation of stakeholders in the formulation and implementation of programmes and projects.
- Provide fair and equitable access to benefits in a manner that is culturally appropriate and inclusive and does not impede equal access to basic services (including health services, clean water, energy, education), safe and decent working conditions, housing, and land rights.
- Contribute to reducing gender inequalities in access to and control over the resources and benefits of development.
- Respect and promote the human rights principles of transparency, accountability, inclusion, participation, non-discrimination, equality and the rule of law, and standards derived from international human rights law.
- Foster full respect for indigenous peoples right to self-determination, human rights, and cultural uniqueness; ensure indigenous peoples full and effective participation in designing, implementing, and monitoring programmes or projects that affect them; apply the principles of free, prior and informed consent (FPIC) as it is defined in the UNDG guidance on Indigenous Peoples.
- Avoid the need for involuntary resettlement. When involuntary resettlement is unavoidable, UNDP shall strive to ensure that displaced persons are informed of their rights, consulted on their options, and offered technically and economically feasible resettlement alternatives or fair and adequate compensation.
- Enhance climate resiliency, reduce waste, maximize energy efficiency, and minimize material resource use (including harmful chemicals and pesticides), in order to minimize the release of pollutants to the environment, avoid unwarranted increases in greenhouse gas emissions, and avoid potential risks to human health.
- Support the sustainable management, protection, conservation, maintenance and rehabilitation of natural habitats and their associated biodiversity and ecosystem functions. This includes avoiding the introduction of known invasive species, and the conversion or degradation of critical natural habitats, including those that are (a) legally protected, (b) officially proposed for protection, (c) identified by authoritative sources for their high conservation value, or (d) recognized as protected by traditional local communities.
- Conserve physical cultural resources and avoid the alteration, damage or removal of any physical cultural resources. Physical cultural resources include archaeological, paleontological, historical, architectural, and sacred sites including graveyards, burial sites, and unique natural values.

## **Annex 2. Attached Policy**

## **Annex 3. Attached RAT**