

United Nations Development Programme – OAI, Social and Environmental Compliance Unit



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TERMS OF REFERENCE (TOR) FOR INVESTIGATION

**In response to allegations of non-compliance with
UNDP’s social and environmental commitments in the context of
UNDP’s “Integrated climate-resilient transboundary flood risk management
in the Drin River basin in the Western Balkans (Drin FRM Project)”**

Case No. SECU0021

Date: 24 April 2023

Basic Data

Case No.	SECU0021
Category of Non-Compliance:	Social and Environmental
Location:	North Macedonia
Date Complaint received:	5 December 2022
Source of Complaint:	Ohrid SOS
Eligibility assessment conducted by:	Richard Bissell, Lead Compliance Officer
Compliance Officer assigned:	Richard Bissell
Other investigators assigned:	Paul Goodwin, Christine Reddell, Sina Spiegler
Related Case(s):	N/A

I. Overview

1. On 5 December 2022, the UNDP Social and Environmental Compliance Unit (SECU) received a complaint from Ohrid SOS, a citizen's initiative in the Ohrid region in North Macedonia, regarding the UNDP's "Integrated climate-resilient transboundary flood risk management in the Drin River basin in the Western Balkans" project (hereinafter the "Drin FRM Project").
2. The complaint relates to the re-diversion of the River Sateska in the Ohrid Region of North Macedonia to its natural riverbed, a component of the Drin FRM Project, alleging significant shortfalls in the environmental impact assessment (EIA) that was conducted for this river diversion. The complainant asserts that although diverting the river to its original path is well-conceived and necessary, it is being conducted "with an extremely substandard environmental impact assessment". The shortfalls in the EIA allegedly include: a severe lack of study of aquatic life in the river; out of date climate data and other data; little to no analysis of groundwaters; little to no analysis of the species-impact of a sediment-collecting dam that will be placed on the river; little to no analysis of the impact that the rerouted river will have on the River Black Drim; little to no analysis of the natural sediment and organic debris flow that may be required for optimized ecosystems downstream of the dam; little to no analysis of the impact to Lake Ohrid of the sudden removal of a decades-old inflow (albeit a polluting and unnatural one); conclusions that there will be no impact on soils during the operational phase, despite the moving of a river; and no establishment of reference/desired conditions. In addition to the list of deficiencies, the complainant alleges that significant parts of the environmental impact assessment appear to have been simply copied from other, not necessarily relevant assessments and documents and that comments submitted by the complainant as part of a public consultation procedure have disappeared with the Ministry of Environment and Physical Planning of North Macedonia (MoEPP) claiming not to have received them. The complainant further alleges that requests for information about the project by the Commission for the Management of the Natural and Cultural Heritage of the Ohrid Region have also gone unanswered, leading to the Commission not having been able to issue an opinion about the project, as required under the Law on Management of the Natural and Cultural Heritage of the Ohrid Region.
3. According to the October 2019 Project Document (Prodoc) for the Drin FRM Project, "the objective of the project is to assist the riparian countries in the implementation of an integrated climate-resilient river basin flood risk management approach in order to improve their existing capacity to manage flood risk at regional, national and local levels and to enhance resilience of vulnerable communities in the Orin River Basin (ORB) to climate-induced floods."¹ The results to be achieved consist of "(i) Improved climate and risk informed decision-making, availability and use of climate risk information; (ii) Improved institutional arrangements, legislative and policy framework for climate-resilient FRM, and development of CCA and FRM strategy and plans at the basin, sub-basin, national and sub-national levels; (iii) Strengthened community resilience through improved flood management, through implementation of structural and nonstructural measures and enhanced local capacity for CCA and FRM."² The Drin FRM Project is a Direct Implementation Modality (DIM) project with a total budget of 9.15 million USD, provided by the Adaptation Fund (AF).³

¹ Prodoc, page 1.

² Prodoc, page 1.

³ Prodoc, page 1.

4. The output for the North Macedonia project component (Atlas Output ID: 00117018) is described on UNDP's Transparency Portal as "Integrated Climate-Resilient Transboundary Flood RM_North Macedonia component. The project will enhance resilience of the DRB countries and communities to climate-induced flood risks."⁴ The North Macedonia target description includes "Indicator target 3.1: One flood protection structural measure designed (Restoration of the Sateska Riverbed) designed using climate risk information and cost-benefit appraisal methods."⁵ In response to SECU's documentation and information request, the UNDP Regional Bureau for Europe and the Commonwealth of Independent States (RBEC) explained that the Sateska River restoration activities "are currently under implementation, with construction works expected to be completed by March 2023." Specifically, "93% of both, the civil works on clean-up and restoration of the natural (old) riverbed and the works on installation of the new automated diversion facility/sluice gates, have been completed (from the total amount of the two contracts for works of USD 770,114), while the remaining 7% of works (in the amount of USD 55,134) are planned to be finished within the timeframe of the ongoing contracts, by March 2023."

II. Process to Date

5. On 23 December 2022, SECU registered the case on its online case registry.⁶ SECU then made documentation and information requests to RBEC.
6. On 28 February 2023, SECU determined that the complaint met the eligibility criteria for a compliance review: (1) The complaint relates to a project or programme supported by UNDP; (2) raises actual or potential issues relating to compliance with UNDP's social and environmental commitments, and (3) reflects that, as a result of UNDP's noncompliance with its social and environmental commitments, complainants may be or have been harmed.⁷

III. Applicable Social and Environmental Commitments

7. The complaint, as presently understood by SECU, raises potential issues related to compliance with matters related to the following provisions of the 2015 UNDP Social and Environmental Standards (SES)⁸:
 - a. Overarching Policy and Principle 3 related to Environmental Sustainability
 - b. Project-Level Standard 1: Biodiversity Conservation and Sustainable Natural Resource Management
 - c. Policy Delivery Process and Accountability Requirements:
 - i. Screening, Assessment and Management of Social and Environmental Risks and Impacts
 - ii. Stakeholder Engagement and Response Mechanisms

⁴ See: <https://open.undp.org/projects/00120252>

⁵ See: <https://open.undp.org/projects/00120252>

⁶ See: <https://secu.info.undp.org/case/secu0021>

⁷ Section 8.2 of SECU's Investigation Guidelines detail the eligibility criteria for a SECU compliance review.

Available at:

https://www.undp.org/sites/g/files/zskgke326/files/publications/SECU%20Investigation%20Guidelines_4%20August%202017.pdf.

⁸ The project's signature and start dates were before 31 December 2020 and as such the 2015 Social and Environmental Standards (SES) apply.

iii. Access to Information

Other applicable social and environmental commitments may be discovered during the course of the investigation.

IV. Scope of Work

8. The aim of this compliance review is to establish a background factual record through the objective gathering of evidence, make findings based on this record, and, if necessary, make recommendations on how to bring UNDP-supported activity into compliance with the SES and other relevant policies and procedures, mitigate any harm that results from the breach of UNDP's social and environmental commitments and help identify avenues to prevent similar compliance concerns in the future.
9. The scope of this compliance review, like all compliance reviews, is limited to that over which UNDP has reasonable control. It does not focus on the actions of other entities except insofar as they relate to UNDP's commitments to conduct appropriate due diligence and to assess, mitigate and address social and environmental risks that occur in the context of UNDP supported activities.
10. The compliance review carried out by SECU will involve the following key activities:
 - a. An initial desk-based review of accessible documentation, e.g., project documents, including feasibility studies, risk logs, social and environmental screening procedures, environmental and social assessments such as the EIA and the ESIA, documentation relating to stakeholder engagement, relevant procurement documentation, including notices and ToRs and annual workplans. The documentation to be reviewed will also include news articles and publicly available information, relevant documentation related to the management and conservation of Lake Ohrid and the River Sateska, UNDP-generated records, information from national entities, the complainant and other local sources, and other relevant documents. This desk-review will assist SECU in developing a more detailed analysis of compliance issues with UNDP's social and environmental commitments and scoping out the various roles of key stakeholders and decision-makers both within UNDP and outside the organization.
 - b. Identifying initial questions to be addressed to a variety of relevant stakeholders, in-country and otherwise. This will necessarily be an iterative process as more information is secured.
 - c. Identifying individuals and groups to be interviewed. These might include:
 - i. UNDP personnel involved in relevant project activity at the country office, regional bureau, and headquarters levels;
 - ii. Complainant;
 - iii. Representatives of local partners involved in project activity, including government agencies and local institutions;
 - iv. Relevant knowledge-holders with respect to the River Sateska and Lake Ohrid, such as the Hydrometeorology Institute of Macedonia and the Hydrobiological Institute;
 - v. Relevant oversight bodies, such as the Commission for the Management of the Natural and Cultural Heritage of the Ohrid Region;

- vi. Other groups and individuals who can provide evidence regarding UNDP’s compliance with relevant standards and laws, and the existing and potential impacts of relevant UNDP-supported activity.
- d. An assessment of the risks of acts of intimidation or reprisal at various stages of the investigation process and identification of preventative and response measures in consultation with relevant stakeholders as and if necessary.
- e. Establishing contact with individuals and groups identified above to set up interviews.
- f. An investigation mission to North Macedonia and possibly Istanbul to obtain evidence relating to the adherence of UNDP-supported activities with UNDP’s social and environmental commitments.
- g. The preparation of a draft investigation report that assesses compliance of UNDP-supported activities with UNDP’s social and environmental commitments.
- h. Sharing the factual docket with the complainant and relevant UNDP business units for a final fact check.
- i. Publishing the draft report for public commenting, and specifically requesting comments from the complainant, the UNDP Country Office North Macedonia (CO), RBEC, and other relevant stakeholders.
- j. Reviewing and responding to the received comments and finalizing the report.
- k. The submission of the report to the Director of OAI, the UNDP Administrator and other relevant units.
- l. Publishing the report on the SECU registry.
- m. Monitoring the implementation of the Administrator’s decisions once they have been issued.

V. Anticipated Milestones and Timeframes

11. The SECU process expects to achieve the following milestones in terms of developing its report and its component parts:

Milestone	Expected Completion Date
1. Issue Draft Terms of Reference on SECU website for public comment.	March 2023
2. Revise Terms of Reference based on public comments.	April 2023
3. Request additional information and documentation from complainant and RBEC/CO staff knowledgeable about the project. Desk-based document review, and virtual interviews as feasible and necessary.	April – May 2023
4. Field Mission to North Macedonia and possibly Istanbul.	May/June 2023
5. Continue requests for additional information from relevant stakeholders.	June – October 2023

6. Complete and release for public comment the Draft Investigation Report.	October/November 2023
7. Issue final report to the Administrator and relevant units, publish the report and circulate to all stakeholders.	December 2023