

**Final Investigation Report:**

Investigating allegations of non-compliance with UNDP social and environmental commitments relating to UNDP activities in the context of the following project:

“Integrated climate-resilient transboundary flood risk management in the Drin River basin in the Western Balkans (Drin FRM Project)”

**Case No. SECU0021  
Date: 14 August 2024**

**Basic Data**

Case No.	SECU0021
Categories of Non-Compliance:	Social and Environmental
Location:	North Macedonia
Date Complaint received:	5 December 2022
Source of Complaint:	Ohrid SOS
Related Case(s):	N/A

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## I. EXECUTIVE SUMMARY

1. The UNDP Social and Environmental Compliance Unit (SECU) received a complaint from Ohrid SOS, a local citizen's initiative, 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 Drin FRM Project is directly implemented by the UNDP with funds channeled through UNDP accounts from the Adaptation Fund. The project is a transboundary river basin project spanning across Albania, North Macedonia, and Montenegro. A sub-project of the Drin FRM Project is the re-diversion of the Sateska River in the Ohrid Region of North Macedonia back to its natural riverbed. A timeline for the sub-project is provided in the body of this report, with a key event being the completion of the physical works in March/April 2023. UNDP issued bids for, contracted, managed, and paid for the physical works, engaging, amongst others, the designers, the environmental impact assessment specialist, a project manager, site engineer, electrical engineer, and a supervising engineer. At the time that SECU visited the site in June 2023, the diversion had not yet been operationalized owing principally to outstanding issues regarding the agreement on maintenance, operations, and monitoring needed with the operating entity of the diversion works, still to be identified.
3. The sub-project only allows for a diverted flow of 15m<sup>3</sup>/s, and there is growing awareness that this capacity of re-diversion is unlikely to deal substantially with the sediment and pollutants that will continue to flow into Lake Ohrid during high water events. A recent *Strategic Recovery Plan for the Natural and Cultural Heritage of the Ohrid Region 2023-2030* issued jointly by the governments of North Macedonia and Albania includes an action plan to increase the capacity of the Sateska diversion to the 100m<sup>3</sup>/second rate expected for major storms. Given the involvement of UNDP to date, it is likely that UNDP would be called upon to support this expansion of works.
4. The complainant supports the re-diversion of the Sateska River and efforts to improve the water quality in Lake Ohrid. However, the substance of the complaint to SECU is that the current rediversion of 15m<sup>3</sup>/s is being conducted "with an extremely substandard environmental impact assessment".
5. UNDP is required to ensure compliance with its social and environmental commitments, including the Social and Environmental Standards (SES), for all activities that are funded through UNDP accounts. In this sub-project, the UNDP North Macedonia Country Office (CO) first produced an Environmental and Social Impact Assessment (ESIA) which appeared to be the tool chosen to meet the SES obligations.

6. Permits for construction are managed under national law. The Municipality of Debrca, under whose municipal jurisdiction the construction works would be carried out and who was responsible for obtaining the necessary permits, was informed by the Ministry of Environment and Physical Planning (MOEPP) that an Environmental Impact Assessment (EIA), complying with national law requirements, was needed in order to obtain a construction permit. Because of this requirement to prepare an EIA under national law, the CO abandoned the ESIA process under the SES, because it did not want to create parallel processes. The CO assumed that the national EIA requirements were more comprehensive than the requirements for an ESIA under the SES, without a formal assessment of the comparability of the requirements.
7. The UNDP contracted the same expert who had prepared the ESIA to prepare the EIA. The content of the ESIA was largely included in the EIA, often verbatim. Since the EIA effectively replaced the ESIA as the only social and environmental assessment which informed decision making and was consulted upon in relation to this UNDP sub-project, SECU's compliance assessment focuses on the EIA.
8. While the EIA followed the national law process, it did not fully meet the requirements of the SES. The SES require the UNDP to ensure compliance with both national and SES requirements, and articulate that even in situations where the Implementing Partner of a UNDP project is a government institution, UNDP remains responsible and accountable for the overall management of the project and compliance with the SES. This project was carried out under the Direct Implementation Modality (DIM), with UNDP actively engaged in implementing and managing delivery of the project activities. Despite the roles played by other project partners, and specifically the municipality's role in applying for and obtaining the relevant authorisations, UNDP remained responsible for ensuring that the requirements of the SES were met throughout project design and implementation.
9. SECU's investigation was supported by an independent EIA expert contracted by SECU to review the EIA for the Sateska River diversion. Based on the findings of this independent EIA expert, and SECU's own analysis, SECU assessed the EIA's compliance with the SES. Key areas where the EIA departed from the SES, both in its content and in the process that led to its finalization, are discussed in the summary findings and recommendations below:

### **Standard 1 on Biodiversity Conservation and Sustainable Natural Resource Management**

10. Under this Standard, UNDP is required to ensure that direct and indirect impacts on natural resources, biodiversity and ecosystem services are identified and addressed. UNDP is also required to ensure that projects will have no adverse impacts on critical habitats. Specifically for water resources, UNDP is required to promote an integrated water resources management approach and to ensure that projects avoid significantly altering flow regimes in ways that prevent water resources from fulfilling their

functions for upstream and downstream ecosystems and their services to local communities.

11. In relation to Standard 1 of the SES, SECU found that the EIA does not provide adequate analyses of the likely impacts on the aquatic biodiversity and water-related habitats, nor does it adequately assess impacts on upstream and downstream ecosystems and their services to local communities. Environmental flow analysis was not included in the EIA and therefore it is not clear whether a minimum ecological flow should be maintained in both the restored section of the Sateska River and the artificial canal, and if so, how that will be achieved.

### ***Recommendation for Standard 1 Compliance***

12. The CO should commission a separate biodiversity study to supplement the EIA and to inform appropriate ongoing environmental management measures, particularly those relating to desired ecological flow minimums.
13. A strong agreement is needed with the operating entity of the diversion works, contracted by the municipality. UNDP is at the center of these negotiations and should ensure robust monitoring of the environmental and social effects of the project, and this monitoring should involve independent scientific institutions.
14. UNDP, working with the appropriate government authorities, should ensure compliance with the SES in carrying out any new follow-on project, which would require a much more complete EIA. This would include any project that facilitates the full diversion of the river (at least 100m<sup>3</sup>/s).
15. Any new project should also draw upon the Lake Ohrid Watershed Management Plan.

### **Standard 2 on Climate Change Mitigation and Adaptation**

16. Under Standard 2, UNDP is required to conduct a climate change risk assessment as part of the social and environmental assessment process, in order to screen and assess proposed activities for climate change-related risks and impacts.
17. SECU found no indication that the specific activities of the Sateska sub-project underwent screening and evaluation for climate change-related risks and their potential impacts on the sub-project. The baseline data used in the EIA to describe climate change scenarios refers to old data from 1996 and 2001.

### ***Recommendation for Standard 2 Compliance***

18. The preparatory design work for any future UNDP project to protect Lake Ohrid should include a climate change risk assessment. Any biodiversity study prepared in response to SECU's first recommendation should also include an analysis of climate change data and considerations.

### **Standard 5 on Displacement and Resettlement**

19. Standard 5 includes requirements to avoid and mitigate "economic displacement", defined as displacement that occurs when people are restricted, partially or fully, in their access to land that is important to their means of livelihood or economic well-being.
20. The current Sateska channel and the old Sateksa riverbed both border agricultural lands utilized by local farmers. SECU found that there is an absence of documented evidence regarding a comprehensive assessment of the risk of economic displacement and corresponding mitigation measures. What the SES required, which was not done, was an identification of potentially affected individuals or communities, an evaluation of their relationships and rights to the land, and an assessment of the risk of economic displacement, the potential impacts, and the corresponding mitigation measures, detailing different options and avoidance measures.

### ***Recommendation for Standard 5 Compliance***

21. Follow up monitoring of the current project's impacts on riparian farmers and residents is needed and will provide useful information for follow on expansion of the riverbed. Any future UNDP project should learn from the current project's inadequate involvement of local residents concerned about potential economic damage.

### **Policy Delivery Category 1 on Screening, Assessment and Management of Social and Environmental Risks and Impacts**

22. While there is no impediment in the SES to using national processes to meet the SES screening, assessment and management requirements, the UNDP is required to ensure alignment with all relevant UNDP standards and remains responsible for ensuring that the SES requirements are met throughout the assessment process.
23. It is important to highlight that meeting national requirements does not inherently imply compliance with UNDP requirements. Assuming alignment between national and UNDP requirements is a complex and context-specific matter and would firstly necessitate a thorough assessment and comprehensive evaluation of comparability and gaps, which was not conducted in this case. This observation applies to Delivery Category 1 in relation to how risks and impacts were assessed, as well as in relation to

other SES requirements, notably Category 2 in relation to how the stakeholder engagement process was carried out.

24. SECU identified a number of shortcomings in the assessment of the EIA with reference to the requirements for screening and assessment set out in the SES, including incomplete and inadequate baseline assessments. These are detailed in the body of this report, but in summary SECU found that the EIA falls short of addressing all relevant impacts on physical, biological, and socioeconomic resources, including direct, indirect, cumulative, and induced impacts in the sub-project's area of influence, and does not provide a fully accurate and complete evaluation of the sub-project, describing all the specific mitigation, monitoring, and capacity development measures in compliance with the UNDP SES. Furthermore, the EIA was not developed through a sufficiently consultative process (dealt with in more detail below).

### ***Recommendation for Policy Delivery Category 1 Compliance***

25. The CO should revisit the requirements for screening, assessment and management of social and environmental risks and impacts to ensure compliance in any follow-on projects. Appropriate analysis should be conducted by the CO in making decisions with regards to relying on country-based EIA processes to comply with the SES.

### **Policy Delivery Category 2 on Stakeholder Engagement and Response Mechanisms**

26. Policy Delivery category 2 requires meaningful, effective and informed stakeholder engagement and participation in an effort to build and maintain constructive relationships with stakeholders and to avoid or timely mitigate any potential risks. The SES Guidance speaks of multiple consultations that should be organized with project-affected stakeholders in order to ensure that potential issues and concerns are adequately responded to and highlights that the draft assessment should thereafter be revised as appropriate per input from project-affected stakeholders.
27. Opportunities for stakeholders to engage on the EIA were limited and fell short of the requirements under the SES. SECU found no documentation evidencing that contributions in the public participation process, such as the comments timely submitted by the complainants, were duly considered by the CO or other sub-project partners. No alterations were made to the EIA after the public commenting period.
28. The processes carried out by different actors involved in the stakeholder engagement were not sufficiently aligned. While the comments on the EIA by the complainants were not submitted to the CO directly, the CO was involved in the government-led public participation process to some extent, through their participation in the public hearing for example. Regardless of the fact that this was a government-led process, UNDP needs to be involved to the degree necessary to ensure SES compliance even when it relies on partners such as the MOEPP and municipality in this context.

### ***Recommendation for Policy Delivery Category 2***

29. Future monitoring arrangements should involve public and national experts with an independent perspective. Monitoring data needs to be released publicly.
30. The CO should work with the relevant government departments to organize additional public meetings to update stakeholders about ongoing project activities and to seek meaningful input about their concerns.
31. For future projects, the CO needs to review the SES requirements for public engagement and ensure more extensive and frequent participation opportunities.

### **SES Requirements – Policy Delivery Category 3 on Access to Information**

32. Policy Delivery category 3 seeks to ensure that project information, including on purpose, nature, scale, duration, risks and potential impacts of a project, is made available in a timely and accessible manner, early and on an ongoing basis in the project development process, so that affected persons and other stakeholders, including the general public, can understand it and provide meaningful input into the project design and implementation. Draft social and environmental assessments must be disclosed before the formal beginning of the project appraisal and final social and environmental assessments must be disclosed upon completion.
33. Some information about the EIA was available to stakeholders. However, the documentation reviewed by SECU only showed a limited amount of public information disclosures and no evidence of a publication of a final EIA after the public commenting period. Despite whatever the national requirements might have been for the information disclosure process regarding the EIA, at least the latter should have been ensured by the CO, as per the SES.

### ***Recommendation for Policy Deliver Category 3***

34. For any future UNDP projects to complete the redirection of the Sateska, the CO should engage local and national authorities in planning more expansive disclosures.
35. The project page for the Drin FRM project on UNDP's transparency portal, [open.undp.org](http://open.undp.org), is outdated and only discloses limited information. This platform should be kept up to date and should be more actively used by UNDP as a central repository, even in situations where project information is shared by project partners on other platforms.

## II. DETAILS OF THE COMPLAINT

36. On 5 December 2022, the UNDP Social and Environmental Compliance Unit (SECU) received a complaint from Ohrid SOS, a local citizen’s initiative, 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”).
37. A sub-project of the Drin FRM Project is the re-diversion of the Sateska River in the Ohrid Region of North Macedonia back to its natural riverbed. In 1961, the riverbed of the Sateska River was diverted away from its natural riverbed into Lake Ohrid. However, this diversion resulted in a significant deterioration of the water quality in Lake Ohrid, and the need to redivert the river back to its original riverbed has been recognized and emphasized by many experts in several reports and papers since the 1960s.<sup>1</sup>
38. The complainant’s work centers around the Ohrid Region, with a particular focus on preserving the unique biodiversity of the region and on appropriate management structures locally, nationally and internationally to achieve environmental goals.
39. The complainant supports the re-diversion of the Sateska River and efforts to improve the water quality in Lake Ohrid. However, the substance of the complaint to SECU is that the Environmental Impact Assessment (EIA) prepared for the re-diversion project “falls dramatically below the standards required”, “contains very little context-specific analysis and does not come anywhere close to a satisfactory level of evaluation for water-based flora and fauna, especially during the operational phase of the project.” The full complaint is available on SECU’s Case Registry.<sup>2</sup>
40. SECU registered the complaint on 23 December 2022 after clarifying certain information with the complainant. On 27 February 2023, SECU determined that the complaint was eligible for a compliance review, as it met the eligibility criteria. SECU’s eligibility determination is available on its Case Registry.<sup>3</sup> The SECU case team travelled to North Macedonia in May – June 2023 for the field mission component of SECU’s investigation.

## III. PROJECT INFORMATION

41. The Drin FRM Project (Atlas Award ID: 00120252) had a signing date of 22 October 2019 and has a planned end date of December 2024. The Drin FRM Project is directly

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<sup>1</sup> Feasibility Analysis of the Possibilities for Diversion of Sateska River in its Natural Riverbed, Point Pro Consulting, December 2019, at page 2.

<sup>2</sup> All public documents relating to this complaint are available here: <https://secu.info.undp.org/case-file/secu0021>.

<sup>3</sup> <https://secu.info.undp.org/case-file/secu0021>.

implemented by the UNDP with funds channeled through UNDP accounts from the Adaptation Fund.<sup>4</sup>

42. The Drin River Basin is a transboundary river basin, which extends across Albania, Kosovo,<sup>5</sup> North Macedonia, Montenegro, and Greece. The interconnected watershed bodies and the ecosystems and communities of the Drin Basin deliver a steady stream of benefits to its residents. The Drin River Basin countries are increasingly exposed to the impacts of climate change. The Drin FRM Project was developed to address the barriers to establishing and implementing a fully integrated basin flood risk management approach aimed at supporting the commitment of the Riparian governments to avoid losses of lives and to reduce economic and infrastructure losses caused by climate-induced flooding.<sup>6</sup>
43. According to the UNDP Project Document (Prodoc), the Drin FRM Project's total budget administered by UNDP consists of 9.15 million USD provided by the Adaptation Fund (AF). The project foresees outputs regionally (Atlas Output ID: 00116503), in Albania (Atlas Output ID: 00117016), Montenegro (Atlas Output ID: 00117017), and North Macedonia (Atlas Output ID: 00117018).
44. There are several sub-projects under the regional Drin FRM Project, some of which were preselected during the design phase.<sup>7</sup> The re-diversion of the Sateska River was a pre-selected sub-project and is specifically identified on UNDP's Transparency Portal<sup>8</sup> as the flood protection structural measure under the North Macedonian output of this regional project.<sup>9</sup> It envisions the restoration of the natural riverbed of the Sateska River in order to divert a flow of 15 m<sup>3</sup>/s into its natural riverbed. The sub-project is based on a Feasibility Analysis<sup>10</sup> that considers prior attempts and technical documentation prepared with the same objective. UNDP issued bids for, contracted, managed, and paid for the physical works, engaging, amongst others, the designers, the environmental impact assessment specialist, a project manager, site engineer, electrical engineer, and a supervising engineer.

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<sup>4</sup> UNDP Project Document (Prodoc), p.1.

<sup>5</sup> References to Kosovo shall be understood to be in the context of Security Council Resolution 1244 (1999).

<sup>6</sup> Adaptation Fund Regional Project Proposal, p.42.

<sup>7</sup> According to an interview between SECU and the Regional Project Manager for the Drin FRM project on 9 May 2023, the Sateska River re-diversion was a pre-selected project, whereas in other countries, such as Albania, discussions were still underway regarding the finalization of national project based on the regional outcomes.

<sup>8</sup> See: <https://open.undp.org/projects/00120252>.

<sup>9</sup> The North Macedonia project component is described 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." Its target description includes "Indicator target 3.1: One flood protection structural measure (Restoration of the Sateska Riverbed) designed using climate risk information and cost-benefit appraisal methods.", see UNDP Transparency Portal at <https://open.undp.org/projects/00120252>.

<sup>10</sup> Feasibility Analysis of the Possibilities for Diversion of Sateska River in its Natural Riverbed, Point Pro Consulting, December 2019.

45. The key milestones for the Sateska River diversion sub-project are:

- a) September 2018 – Endorsement of the Adaptation Fund Regional Project Proposal by Government of North Macedonia
- b) January 2019 – Certification of the Adaptation Fund Regional Project Proposal by UNDP as Implementing Entity
- c) May 2019 – Stakeholder Meeting on Sateska with representatives of the UNDP CO, the Municipalities of Debrca, Ohrid and Struga, the Ministry of Environment and Physical Planning (MOEPP) and the Ministry of agriculture, forestry and water, Hydrobiological Institute, ELEM (the state-owned power company), a consultancy firm and the public enterprise for Water economy to discuss the Sateska re-diversion and what could be accomplished under the proposed sub-project
- d) October 2019 – Signing of Prodoc, including the Social and Environmental Screening Procedure (SESP), for regional Drin FRM project
- e) December 2019 – Publication of the Feasibility analysis of the possibilities for diversion of Sateska River into its natural riverbed
- f) April 2021 – Procurement for the preparation of the basic design for the rediversion, including all technical phases of the reconstruction of diversion structures, the Urban Design for Infrastructure for flood protection; the Environmental Impact Assessment Screening Report and Notification Report for the Main design and Environmental and Social Impact Assessment (ESIA) report and Environmental and Social Management Plan (ESMP)
- g) May 2021 – Procurement for the Review of all Technical Documentation for the Sateska River Restoration and Diversion in its Natural Riverbed, including the ESIA and ESMP
- h) August 2021 – Municipality of Debrca notifies the MOEPP of the restoration and rediversion plans for Sateska, as per national law
- i) October 2021 – Preparation of ESIA
- j) December 2021 – MOEPP decides that a comprehensive EIA is needed for the rediversion of Sateska, as per national law
- k) December 2021 – Preparation of EIA
- l) February 2022 – Publication of EIA and beginning of a 30-day public commenting period. A public debate on the project was held in the village of Volino on 25 February 2022, the only community outreach event of the project.
- m) June 2022 – Procurement for the construction works regarding the restoration of Sateska and the diversion into its natural riverbed
- n) June 2022 – MOEPP issues a decision granting consent to the project implementation and approving the EIA as meeting national environmental protection requirements
- o) July 2022 – Procurement for the supervision of the restoration and rediversion construction works
- p) August 2022 – Procurement for construction works on the rehabilitation of Sluice Gates Facility on Sateska river and supervision of the construction works

- q) March/April 2023 – Completion of physical works
- r) December 2024 – Projected Closure of Project for the regional project

#### **IV. INVESTIGATION - SUMMARY OF SES REQUIREMENTS, FACTUAL EVIDENCE AND FINDINGS OF COMPLIANCE/NON-COMPLIANCE**

46. The investigation by SECU flows from the complaint that UNDP failed to comply with its social and environmental standards and procedures in implementing the sub-project to divert the Sateska river. UNDP is required to ensure compliance with the Social and Environmental Standards (SES) for all activities that are funded through UNDP accounts.<sup>11</sup>
47. The substance of this complaint raises issues relating to compliance with several key principles and standards in the UNDP's SES<sup>12</sup>, the requirements of which are dealt with in more detail below. While supporting the overall purpose of the sub-project, the complaint cited lapses in the EIA coverage of a range of ecological aspects of the Lake Ohrid environment.
48. The principal focus for SECU, as specified in its mandate, is to examine the compliance of the river diversion sub-project with relevant UNDP standards, the principal guidance for UNDP management and staff being that found in the SES and derivative guidance. In this case, this framework was complicated by the fact that the Sateska activity was only a sub-project of a vastly larger multi-country project to address issues across the Drin River Basin. The Sateska diversion was not covered specifically by the environmental screening conducted for the project. The Social and Environmental Screening Procedure (SESP) for the overall project indicates that the overall project risk categorization is Moderate Risk.
49. The regional UNDP staff remained involved with the sub-project when it was identified and developed, even though it was implemented as a one-country engineering sub-project carried out by the North Macedonia Country Office in partnership with the central government of North Macedonia, and the investor/owner being the Municipality of Debrca. It should be noted that an additional stakeholder existed in the Adaptation Fund, which is the donor for the regional project, and it has its own set of social and environmental standards that needed to be observed.
50. The CO undertook measures to include environmental considerations at an early stage by including an expert in social and environmental issues on the design team contract. That consultant was also commissioned by the UNDP at this stage to research and write

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<sup>11</sup> UNDP Social and Environmental Standards (hereinafter SES), 2015, p.8, para 8. The 2015 version of the SES applies to this case because the project's signature and start dates were before 31 December 2020. See SECU's Eligibility Determination for further reference.

<sup>12</sup> All further SES references refer to the 2015 version of the SES.

an Environmental and Social Impact Assessment (ESIA) report for the Sateska River diversion.

51. This ESIA appeared to be the tool chosen to meet the SES obligations. The report was reviewed by and approved by a UNDP staff member of the overall Drin River project team. However, the ESIA does not appear to have been used for any other purpose. There is no record of stakeholder consultations on the ESIA. In SECU's interviews across the stakeholder spectrum in North Macedonia, no one had heard of the existence of the ESIA. It was the only document referencing UNDP standards, and it never played a role, identified by the SES, in bidding documents and public consultations. Indeed, the ESIA's Environmental and Social Action Plan itself called for the many steps enumerated in the SES for the ESIA, to play a central role in public outreach, implementation, and monitoring after completion.
52. Through discussions with the CO, it became clear that once the project owner, the Municipality of Debrca, was informed by the MOEPP that it needed to prepare an EIA, a decision was taken by the UNDP CO to meet its SES obligations through the EIA rather than the ESIA. While the need for an EIA and the EIA process is governed by national law and not for UNDP to plan for, manage, or retain full control over, UNDP could have continued to work on the ESIA that it had prepared and could have proceeded with public consultations on it, as per the SES. This did not occur, ostensibly because the CO did not want to create parallel processes. In other words, given the clearly established process for environmental assessment under national law, the UNDP chose to meet its SES obligations through the national EIA process rather than the UNDP ESIA process.
53. The national EIA was commissioned, scoped, and eventually approved by the MOEPP. UNDP provided the funding from the sub-project to pay for an expert and provided the expert who had written the ESIA to also produce the EIA for the MOEPP and Municipality. That EIA was completed in December 2021, and the content of the ESIA is included in the EIA, often verbatim. For all intents and purposes, the ESIA, with some limited added information, became the EIA, and the procedures and content of the EIA became the only available measure of whether the CO complied with the SES and other UNDP standards. There is no intention in this report to assess the role of the MOEPP or other North Macedonian agencies in carrying out their national legislation requirements and regulations. But the steps taken to accomplish the enumerated steps of SES implementation by the CO, via the EIA process, are central to assessing UNDP's compliance with UNDP standards and commitments.
54. The investigation was conducted through a combination of document analysis, on-site visits, interviews with stakeholders, consultations with relevant authorities, Civil Society Organizations and independent experts. SECU also engaged an international expert in EIAs as a short-term consultant to review the assessments carried out in this sub-project according to UNDP standards and best practice. This compliance analysis reflects those findings where relevant.

## SES Requirements – Standard 1 on Biodiversity Conservation and Sustainable Natural Resource Management

55. Standard 1 of the SES commits UNDP to “an ecosystem approach to biodiversity conservation and sustainable management of natural resources.”<sup>13</sup> It also commits to “integrating biodiversity and ecosystem management into development planning and production sector activities, strengthening protected area systems, and managing and rehabilitating ecosystems for adaptation to and mitigation of climate change.”<sup>14</sup>
56. Under this Standard, UNDP ensures that a precautionary approach is applied to the use, development, and management of natural habitats, the ecosystem services of such habitats, and living natural resources. In terms of assessment, UNDP ensures that direct and indirect impacts on natural resources, biodiversity and ecosystem services are identified and addressed.<sup>15</sup>
57. UNDP seeks to ensure that a project will have no adverse impacts on critical habitats. Where the project activities are located within a legally protected area or an internationally recognized area, UNDP will act in a manner consistent with any existing protected area management plans, consult protected area sponsors and managers, local communities, and other key stakeholders on the proposed activities, and promote and enhance the conservation aims and effective management of the area.<sup>16</sup>
58. Specifically for water resources, UNDP promotes an integrated water resources management approach that seeks the coordinated development and management of water, land and related resources. UNDP seeks to ensure that Projects avoid significantly altering flow regimes in ways that prevent water resources from fulfilling their functions for upstream and downstream ecosystems and their services to local communities. Social and environmental risk assessments should address, among other issues, potential effects and impacts related to climate variability, water pollution, sedimentation, water-related disasters, drinking water supply, energy production, agriculture, and fisheries. Environmental flow analysis and management should be carried out to the extent feasible in the context of river basin planning.<sup>17</sup>
59. Finally, for projects that may adversely affect natural habitats, UNDP will ensure that qualified professionals assist in conducting assessments and in the design and implementation of mitigation and monitoring plans.<sup>18</sup>

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<sup>13</sup> SES, p.13, para 3.

<sup>14</sup> SES, p.13, at para 2.

<sup>15</sup> SES, p.14, at para 6.

<sup>16</sup> SES, p.16, at para 14.

<sup>17</sup> SES, p.17, at para 18.

<sup>18</sup> SES, p.14, at para 7.

## Evidence and Findings regarding Standard 1 related issues

60. Standard 1 is important for this compliance review for multiple reasons. Not only does it provide for a safeguard overview of the biological systems that might be affected by the project and therefore need to be considered in detail, but it also deals with water management questions that relate directly to the river control issues central to the project.
61. In 1979, the Lake Ohrid region, encompassing nearly 95,000 hectares, was named a UNESCO World Heritage Site and the government made commitments to its protection via the World Heritage Convention. The UNESCO Register of Sites describes the value of Lake Ohrid as follows: “The distinctive nature conservation values of Lake Ohrid, with a history dating from pre-glacial times, represent a superlative natural phenomenon. As a result of its geographic isolation and uninterrupted biological activity, Lake Ohrid provides a unique refuge for numerous endemic and relict freshwater species of flora and fauna. Its oligotrophic waters contain over 200 endemic species with high levels of endemism for benthic species in particular, including algae, diatoms, turbellarian flatworms, snails, crustaceans and 17 endemic species of fish. The natural birdlife of the Lake also contributes significantly to its conservation value.”<sup>19</sup>
62. The greatest threats to Lake Ohrid have also been identified by UNESCO: “The highly endemic biodiversity and natural beauty of the Lake are particularly vulnerable to changes in water quality, and there is alarming evidence of a growth in nutrients threatening the oligotrophic ecology of the Lake. This oligotrophic state is the basis for its nature conservation value, and action to tackle this threat must be a priority.”<sup>20</sup> UNESCO received no reports on the condition of this Site until 1997, and until 2013, received only minimal reports. Beginning in 2013, the government of North Macedonia provided more substantial and frequent reports on the condition of Lake Ohrid. SECU notes however, that increased reporting does not necessarily signify a corresponding increase in responsible actions and engagement.<sup>21</sup>
63. After the 2020 periodic review of the Lake Ohrid site, the World Heritage Committee drew the following conclusion: “Notes with concern that in spite of recent initiatives,

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<sup>19</sup> <https://whc.unesco.org/en/list/99/>.

<sup>20</sup> Decision 43 COM 8B.9, Natural and Cultural Heritage of the Ohrid region (Albania, North Macedonia). Available at: <https://whc.unesco.org/en/decisions/7366/>.

<sup>21</sup> It is also arguable that it was in fact an increased level of concern that led to intensified oversight over the Ohrid Region by the World Heritage Centre, ICOMOS and the IUCN, which in turn led to more reporting by the North Macedonian government. See for example the multiple World Heritage Committee decisions asking for updated information to be submitted to the World Heritage Centre such as Decision 38 COM 7B.58 (2014), available at: <https://whc.unesco.org/en/decisions/6045/>; 40 COM 7B.68 (2016), available at: <https://whc.unesco.org/en/decisions/6733/>; 41 COM 7B.34 (2017), available at: <https://whc.unesco.org/en/decisions/7036/>; 43 COM 7B.36 (2019), available at: <https://whc.unesco.org/en/decisions/7589/>; and 44 COM 7B.77 (2021), available at: <https://whc.unesco.org/en/decisions/7793/>.

the management system appears still not to be fully mandated to maintain OUV [Outstanding Universal Value] due to conflicting priorities, poor implementation of the legal framework and little involvement of civil society, all of which have combined to fragment the management system. Also considers that halting and reversing the degradation that is now facing the property, which reflects the cumulative impact of inappropriate changes and lack of conservation over many years, will take considerable concerted efforts over a long time span, and that, while the immediate actions to halt certain activities are welcomed, these are insufficient and can only be seen as the beginning of a much longer integrated and strategic process, which remains to be defined.”<sup>22</sup> For the last several years, UNESCO has moved to place Lake Ohrid on its public list of the most threatened Sites globally but was persuaded not to do so by promises from the government to do better, according to several interviewees.

64. At the domestic level, a consensus emerged that a priority approach to dealing with the threats to Lake Ohrid would be the realignment of the Sateska River away from the artificial channel created in the 1960s into the original riverbed that bypassed Lake Ohrid. A growing number of reports were issued, and meetings held to elaborate the approach to shutting down the channeled source of pollutants and sediment that was undermining the environmental integrity of the lake. There was no organized opposition to this approach, and so when the opportunity arose to include that re-diversion in the context of the regional project to manage the Drin river basin, it was prioritized for North Macedonia. A key moment came on 8 May 2019, when a stakeholder meeting of mostly official participants in the re-diversion sub-project was held hosted by the UNDP CO, and included the Municipalities of Debrca, Ohrid and Struga, the MOEPP, a consultancy firm and the public enterprise for Water Economy, to discuss the Sateska re-diversion and possible accomplishments under the proposed sub-project.
65. By October 2019, a SESP required by Standard 1 was completed, as required for the regional Drin FRM project, and attached to the Prodoc. Its risk rating for the overall regional project was “moderate,” which then triggered certain follow-on studies and mitigation plans. According to UNDP/RBEC, the “original SESP was conducted during the development of Project Proposal and Project Document through which the Sateska sub-project had already been pre-identified, thus the SESP applies to it” and that “During the drafting of the Main design, the selected consultancy was required to review the SESP and address the risks identified therein when developing the ESIA. Hence, there is no revised version of the SESP”.<sup>23</sup> The SESP was an opportunity to fulfill the Standard 1 requirement for a substantive precautionary approach to environmental risks associated with what was in the process of being reduced to a flood control project (as described by a UNDP project manager). The barrier to a

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<sup>22</sup> UNESCO World Heritage Committee, Decision 44 COM 7B.77, Natural and Cultural Heritage of the Ohrid region (Albania/North Macedonia) (C/N 99). Available at: <https://whc.unesco.org/en/decisions/7793/>.

<sup>23</sup> CO written responses to questions posed by SECU.

thorough SESP for the sub-project was that the detailed scope of the sub-project had not been defined yet, and so inclusion of the Sateska diversion was only an imprecise plan. Many options for the diversion were still on the table, and the participants would finally address the tradeoffs resulting from different approaches later in 2019.

66. The UNDP-commissioned report on the Feasibility Analysis of the possibilities for diversion of Sateska River in its natural riverbed was completed in December 2019. The results were briefed to the various official stakeholders, covering the range of possibilities from a full re-diversion of flows year-round into the traditional riverbed, which became the public perception of what would ensue, to a much less ambitious project to divert only a base level year-round into the narrow riverbed that then existed. Opposition to the full re-diversion option quickly emerged from riverbank landowners who did not want to lose any land, leading local authorities to walk away from the more ambitious alternatives. To fully divert all river flows into the original riverbed would have required land taking and engineering works to accommodate estimated flood flows of the river (up to 100-150 cubic meters/second). The engineering works would have been upstream to control sediment levels in the river. Interviews of those outside official entities following such issues in late 2019 indicated a general lack of awareness that the project was shrinking rapidly. When environmental groups in civil society realized what was happening, some gradually accepted the political decision, but only as a first step in the cleanup of Lake Ohrid.<sup>24</sup>
67. One engineer consulted by SECU noted that “Unfortunately, the condition of the Sateska riverbed is very poor and with the current repairs it will only allow for a flow of 15m<sup>3</sup>/s. It would have been better to repair it completely, so it can take up to 50m<sup>3</sup> or more, and I’m embarrassed that the government does not see this necessity. It still is a problem. The Sateska brings a lot of sediment into the lake. We need to have cascades, several sedimentation tanks on the river course, to completely stop sediment flow into the lake.”
68. In April 2021, the UNDP CO initiated a procurement process for a number of the design elements. Most importantly for Standard 1, it included requirements for an Environmental Impact Assessment Screening report, an Environmental and Social Impact Assessment (ESIA) report and an Environmental and Social Management Plan (ESMP). The procurement was awarded in May 2021.

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<sup>24</sup> This statement does not apply to the complainant. The initial complaint stated that “although rediverting the river to its original path is well-conceived and necessary, it is being conducted with an extremely substandard environmental impact assessment”. In later correspondence regarding this draft report, the complainant clarified that “At no point did we, as an organization, accept the political decision as a kind of stepping stone” and explained that “we did consider that some action to prevent pollution entering Lake Ohrid via an unnatural inflow ought to be better than no action and therefore did not seek to block the work outright, but this position was always accompanied by unease, partly because, in the absence of proper environmental assessments, we were guessing at impacts.”

69. On 3 September 2021, the Council of the Hydrobiological Institute held a meeting at the request of the MOEPP to provide input as to the need for a full EIA for this sub-project. The Council immediately sent a message to the MOEPP that the Institute's view was that a full EIA was required.<sup>25</sup>
70. In October 2021 the ESIA commissioned by UNDP with an attached ESMP was completed and submitted to the UNDP CO. The sub-project was described as having a limited purpose, focused on flood control, and not on conservation or biodiversity. Such a limited scope for an ESIA is problematic, given the language in Standard 1 about the sensitivity of water projects and the need for a full analysis of potential threats to endemic biodiversity. The document was also shared with the MOEPP by the Municipality of Debrca (the owner of the project) as an attachment to its request to the MOEPP to determine the scale of environmental assessment required in order to proceed with the approval process for construction works of the river re-diversion.
71. In reviewing this documentation, the MOEPP decided that a full EIA under North Macedonian law was needed for the re-diversion of the Sateska River, thus ruling out the possibility of a truncated assessment process, which is allowed under national law for projects with a smaller scale of impacts.<sup>26</sup> The MOEPP conveyed this decision formally on 2 December 2021, with a detailed list of specifications for the EIA.
72. The author of the ESIA was then commissioned to develop an EIA, paid for by UNDP, to meet national requirements. This UNDP-contracted expert was licensed in compliance with national requirements<sup>27</sup> and the scope of the EIA adhered to the national requirements. Next to the financial element, the UNDP Regional Hub and CO also remained involved in the EIA process on a substantive level. The EIA was duly completed in December 2021.
73. This EIA is the focus of the complaint submitted to SECU, with a concern that the project could not be considered compliant with Standard 1 of UNDP's SES if the data and analysis in the EIA were technically deficient. This is thus an area of inquiry that featured in interviews by SECU with local and international experts.

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<sup>25</sup> The complainants advised SECU that they had also submitted comments to MOEPP emphasizing the importance of conducting a full, thorough EIA.

<sup>26</sup> Law on Environment (OG of RNM No. 53/05, 81/05 24/07, 159/08 и 83/09; 124/10, 51/11, 123/12, 93/13, 163/13, 42/14, 44/15, 129/15, 192/15, 39/16, 99/18) Chapter III/Article 24. This truncated assessment process is referred to as an "environmental assessment of small scale projects" in official documentation. It was also referred to as an "environment elaboration" by many stakeholders in the interviews conducted by SECU. This report therefore also contains the term "environment elaboration" further below, when in reference to information that was provided in interviews, but both terminologies refer to the same process.

<sup>27</sup> National requirements hereinafter refer to the relevant requirements under the North Macedonian legal framework, such as environmental laws and regulations including around the EIA process.

74. The draft EIA was submitted to the MOEPP on 18 January 2022. The Minister, in an interview with the SECU investigation team, described the submission process as one of ensuring that the specific issues of concern identified by the MOEPP in its EIA authorization are included in the draft, but the MOEPP does not review the technical content of the specific sections. According to the Minister, if an expert has been hired to write the EIA, the MOEPP does not “ask for a second opinion or expert to look at it once it’s prepared.” This procedure was confirmed by interviews with various North Macedonian project developers who have authored EIAs and experienced first-hand the MOEPP system.
75. As provided for in North Macedonian law, in February 2022 the EIA was released for public comment, to be closed in 30 days. The only public presentation of the EIA was held in the village of Volino on 25 February 2022 for 3.5 hours, at which the UNDP CO participated in addressing community concerns. The short minutes of that meeting, recorded by a representative of the MOEPP, indicate that most of the time was taken by the presentations, and that the public provided a limited number of comments. Almost all comments dealt with concerns about possible flooding of agricultural land along the re-diverted riverbed. One comment from a representative of the Hydrobiological Institute and Ohrid SOS stated that substantive comments would be submitted in writing, within the 30-day comment period. Those comments were sent to [infoeko@moepp.gov.mk](mailto:infoeko@moepp.gov.mk) within the comment deadline on 17 March 2022. Several interviewees suggested that the Ohrid SOS comments arrived after the deadline, and for that reason, the comments were not considered, though the complainants themselves were told by the MOEPP that the latter had received no comments at all. SECU’s review of the evidence was that the comments arrived within the deadline at the appropriate e-mail address. In any case, the MOEPP had no intention of reviewing the quality of the EIA’s technical content, per Ministry policy. As a result, none of the comments were reflected in the final EIA nor was a response sent to Ohrid SOS.
76. A process in which the substantive quality of a draft EIA is not assessed and feedback from stakeholders is not carefully considered does not meet the requirements of the SES. In interviews with experts who authored an EIA in other projects in North Macedonia, it appeared to be the responsibility of the project owner to make any edits in the EIA to reflect new information that came from public consultations. The owner of the project is the Municipality of Debrca. As the implementer of the project, UNDP could have made suggestions for improvements in the EIA. Nevertheless, the SECU investigative team received no information regarding any advice from the UNDP CO or the Municipality to strengthen the EIA’s content. While SECU acknowledges that the comments from the complainant were not sent to the CO directly (as no MOEPP instructions were provided to the complainant to do so), the CO was nevertheless involved in the public participation process, as evidenced by the extensive participation of CO representatives in the public hearing in Volino.

77. The MOEPP issued a decision on 21 June 2022 granting their consent to the project implementation and approving the EIA as meeting national environmental protection requirements. The MOEPP, however, does not play a role in monitoring the implementation of the Social and Environmental Action Plan attached to the EIA. As made clear by the Minister, each element of the Action Plan has an entity responsible for implementation, generally at the local level. The role of the Municipality is central to accomplishment of any needed mitigation to protect the environment. Local capacity to do so has historically been limited.
78. In the Action Plan for the ESIA, several items of implementation responsibilities were assigned to the MOEPP, but in the EIA, those items were instead assigned to the Investor (Municipality of Debrca or to the yet-to-be-identified entity responsible for operations and maintenance). Nevertheless, interviews with various local entities, including the municipalities and industry, reaffirmed the informal role of UNDP in follow-up steps that need to be taken. This role for UNDP reflects the SES requirement in paragraph 7 of Standard 1: “Finally, for projects that may adversely affect natural habitats, UNDP will ensure that qualified professionals assist in conducting assessments and in the design and implementation of mitigation and monitoring plans.” Most interviewees conveyed great concern that follow-up monitoring would not be adequate to the situation. This aligned with a general concern expressed to SECU, that while UNDP would invest a lot of money in North Macedonia, the focus would most often be limited to the implementation phase when construction was underway, but not enough attention would be paid by UNDP to the final stages of the project cycles, specifically regarding the monitoring after a completed project implementation.
79. At the time of SECU’s field interviews, no document had yet been signed for an entity to assure the sustainable operation of the diversion. Given the judgment allowed for dividing waters between the river channel and the canal to the lake, such an allocation of responsibility is integral to meeting Standard 1. Discussions are underway, and frameworks appear to be in draft for an entity to take over operations. But the decision-making process appears to be diffuse. Several interviewees stressed the importance of UNDP being the catalyst to bring about a solution. As noted by one interviewee, “The necessity to change (open/close gates) will probably just arise twice a year, if even that. It’s only necessary when there is high water or it rains and in the last 4-5 years we didn’t have a situation like that. The last one was in 2018. So the gates would just be open in the meantime, and the whole river would go down the old riverbed. If the riverbed were expanded, the 4 new gates can accommodate up to 60m<sup>3</sup>/s. But the management will also have to respond to the needs of the villagers in the area. From March-May is the key period when you need to pay attention, after that, there is not a lot of water that would cause flood risks. But now since we have the sedimentation tank, it should be used to prevent further sedimentation going into the lake. In order to do it properly, there should be a management regime document, imposed by the government on an entity to implement it. We need to ensure this continues in the future. There could be a foreign investor buying the company e.g.,

who might not care about villagers/doing this, but if there is a document obliging the entity, they would be forced to do it.” Until that agreement for operations and maintenance is concluded, compliance with Standard 1 will be problematical.

80. Expert analysis of the EIA has confirmed that the documents did not meet international standards for such products. Information on the hydrology in Sateska River (including the artificial canal) and Crn Drin River is insufficient and data on impacted species such as fish are missing. Therefore, the EIA does not provide adequate analyses of the likely impacts on the aquatic biodiversity and water-related habitats, as required by Standard 1. The baseline should have at least included descriptions of the annual river flow patterns (e.g., in the form of histogram with monthly average flows) and information about fish to enable the assessment of the likely impacts on biodiversity. In addition to not meeting UNDP’s Standard 1 requirements, there are well-established standards for European countries that were not adequately reflected in these documents.<sup>28</sup>
81. Environmental flow analysis is not included in the reports, and therefore it is not clear whether a minimum ecological flow should be maintained both in the restored section of Sateska River and the artificial canal, and whether measures such as “Maintaining a constant water level in the canal” and “Provision of a biological minimum in the canal of Sateska River” included in the ESMP can be ensured. The EIA report points out, at page 84, that “Field research conducted during the summer of 2021 and conversations with the local population showed that in the summer months of June, July and August there is almost no water in the river channel that leads from the diversion structure to the Lake Ohrid.” There is inadequate analysis in the EIA as to what is needed and how to do it.
82. Standard 1 refers to the importance of both upstream and downstream data and analysis when it comes to water resource projects, and this was not adequately considered in the EIA. Interviewees identified historical and ongoing problems with the Drin river into which the Sateska river will drain. They also identified the importance of the upriver sources of the Sateska, in particular the wetlands located approximately 15 km above the location of the subproject. Those wetlands have been shown to provide 40% (2.5 m<sup>3</sup>/s) of the normal water levels (about 6.0 m<sup>3</sup>/s), and thus will need more protection than at present.

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<sup>28</sup> The general approach to the analysis of the likely impacts on biodiversity outlined in the EU’s Guidance on Integrating Climate Change and Biodiversity into Environmental Impact Assessment (European Union, 2013) can be recommended. Although focusing on the Natura 2000 sites, certain sections of the European Commission’s ‘Assessment of plans and projects in relation to Natura 2000 sites – Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC’ (European Commission, 2021) and ‘Guidance document on the requirements for hydropower in relation to EU nature legislation’ (European Commission, 2018) can be considered as relevant. Also, a ‘Biodiversity and Environmental Impact Assessment: A Good Practice Guide for Road Schemes’ (Byron, H., 2000) provides valuable practical tips, e.g., regarding the field surveys.

83. The identification of non-compliance with Standard 1 pertains to the construction work already completed, and corrective measures are therefore limited at this stage in the current project. Monitoring of ongoing environmental impacts of the diversion is inadequately addressed in terms of scale and scope, and decisions have not been made about the relationship between operations and maintenance, on the one hand, and independent expert monitoring on the other hand.
84. Because it is clear that the current diversion project does not address the environmental issues motivating public concern about the future of Lake Ohrid, much attention should have been given to the long-term plan for a full cleanup. Even if the scale of the diversion at this stage was restricted for various reasons, the EIA should have met the goals of Standard 1 in terms of the overall watershed, the long-term sustainability, and plans for subsequent projects. The SES stresses the importance of taking an overall, systems approach, in the context of river basin planning.<sup>29</sup> This guidance should have led the CO to consult a thorough report issued in 2020 - the Lake Ohrid Watershed Management Plan - which is the current blueprint for river basin and regional water strategies for Ohrid.
85. Experts interviewed by SECU were deeply concerned about the ongoing changes in the Ohrid ecosystem, both from a global level of changing climate as well as from the local decisions taken on land use issues. The impacts and relationships with the diversion project were cited as both direct and indirect. There is strong evidence of diminishing annual precipitation, such that there may be only rare instances of overflow into the lake channel. But on the other hand, such episodes may, as a result of increased storm intensity, cause a massive overflow of 100+m<sup>3</sup>/sec that would sweep accumulated sediment and pollutants into the lake.
86. Now that there is growing awareness that the re-diversion is unlikely to deal substantially with the sediment and pollutants that will continue to flow into Lake Ohrid, there are official statements supporting a solution that may finally widen the riverbed to carry all waters away from the lake. In September 2023, at the UNESCO World Heritage Committee meeting in Riyadh, the Ministers representing the North Macedonian government announced: "Working side by side with Albania, we are committed to making the region's management an example of cooperation, thus ensuring the integrity and authenticity of the Ohrid region and passing them on to future generations. Protection of nature and biodiversity remains to be our goal, such as adoption of the law on declaring Studenchishko Blato a category IV protected area - Nature Park, and a new law on declaring Lake Ohrid a category III protected area - Natural Monument."<sup>30</sup> They announced that teams of experts from North Macedonia and Albania completed a *Strategic Recovery Plan for the Natural and Cultural Heritage*

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<sup>29</sup> SES, p.18, at para 18.

<sup>30</sup> [Ministry of Environment and Physical Planning website, September 15, 2023, Statement.](#)

of the Ohrid Region 2023-2030<sup>31</sup> which includes an action plan to increase the capacity of the Sateska diversion to the aforementioned 100m<sup>3</sup>/second.

## **SES Requirements – Standard 2 on Climate Change Mitigation and Adaptation**

87. Standard 2 of the SES aims to ensure that all UNDP projects are sensitive to climate change risks and do not contribute to increased vulnerability to climate change.<sup>32</sup> It applies to projects that, among other things, “may contribute to increased exposure and/or vulnerability to climate change.”<sup>33</sup>
88. Under this standard, UNDP is required to conduct a climate change risk assessment as part of the social and environmental assessment process, in order to screen and assess proposed activities for climate change-related risks and impacts.<sup>34</sup> The climate change risk assessment shall include an examination of “the viability or longer-term sustainability of Project outcomes due to potential climate change”, specifically identifying components that are sensitive or vulnerable to emerging or anticipated manifestations of climate change<sup>35</sup>, and of “risks that a Project may increase exposure to climate change”, specifically assessing Project components “for potential unintended or unforeseen increases in vulnerability to climate change.”<sup>36</sup>

## **Evidence and Findings regarding Standard 2 related issues**

89. The restoration of the natural riverbed and the redirection of the Sateska river into it carries the potential to amplify exposure and vulnerability to climate change impacts. This concern arises from the fact that alterations to the riverbed and river flow, if not properly assessed and executed, could potentially heighten flood risks and increase susceptibility to changing precipitation patterns. However, there is no documented, comprehensive climate change risk assessment for this sub-project, as mandated by the SES requirements.<sup>37</sup>

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<sup>31</sup> Available at: <https://www.moepp.gov.mk/wp-content/uploads/2014/12/ANNEX-Strategic-Recovery-Plan-for-the-Natural-and-Cultural-Heritage-of-the-Ohrid-region-2023-2030.pdf>.

<sup>32</sup> See SES, p.20, para 3 with further reference to OECD, Integrating Climate Change Adaptation into Development Co-operation: Policy Guidance 2009, available at <http://www.oecd.org/dac/43652123.pdf>.), explaining “At times referred to as maladaptation, defined as “business-as-usual development which, by overlooking climate change impacts, inadvertently increases exposure and/or vulnerability to climate change. Maladaptation could also include actions undertaken to adapt to climate impacts that do not succeed in reducing vulnerability but increase it instead.”

<sup>33</sup> SES, p.20, para 5.

<sup>34</sup> See SES, p.21, para 6.

<sup>35</sup> See SES, p.21, para 6. lit. b.

<sup>36</sup> See SES, p.21, para 6. lit. c.

<sup>37</sup> See SES, p.20, para 5 for the applicability of this standard and p.21, para 6 for specification of this requirement.

90. While the SESP for the regional Drin FRM project<sup>38</sup> broadly identified vulnerability to climate change, noting that physical structures could exacerbate bank erosion processes,<sup>39</sup> SECU found no indication that the proposed specific activities of the Sateska sub-project underwent screening and evaluation for these climate change-related risks and their potential impacts on the sub-project and its long-term viability. As discussed above, the detailed scope of the Sateska sub-project had not been defined at the time that the SESP was completed, and so inclusion of the Sateska diversion was only a rough estimate.
91. The EIA contains baseline information on climate change and provides likely scenarios concerning changes in temperature and precipitation, but it does not go into any detail when assessing likely climate change risks. The baseline section also does not mention extreme weather events and floods in relation to climate change scenarios. The expected decline of precipitation as described in section 5.2 of the EIA report refers to old models from 1996 and 2001<sup>40</sup>. Moreover, the effects of the decline of precipitation on water flow are not addressed at all in the EIA. Additionally, the risk of emergency situations and mobilization of sediment from the sediment deposition pond during high or extreme flow episodes with potential impacts on aquatic ecosystems downstream in the Sateska River, the Crn Drim River, and Lake Ohrid are also not addressed. The EIA is accordingly non-compliant with Standard 2.

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<sup>38</sup> Annex 6 (of the Drin FRM Prodoc): UNDP SESP and ESMF for the “Integrated climate-resilient transboundary flood risk management in the Drin River basin in the Western Balkans”, signed in October 2019.

<sup>39</sup> The SESP elaborates that “particular infrastructure or structural measures for flood control, including ongoing activities of dredging of riverbeds, or the creation of new channels as part of flood control measures have serious ecological consequences (degradation of water quality, exacerbation of riverbed erosion processes, disturbance of fish spawning etc.) affecting critical habitats and offer only temporary solutions to ongoing erosion and siltation processes. They also may accelerate erosion by increasing the speed and volume of channel flow and influence river hydraulics in unpredictable ways, including the increase of bank erosion. Project interventions are also planned within or in proximity to sensitive wetland environment that act as important bird breeding grounds. If water requirements are not taken into considerations in modeling and integrated flood management measures, wetlands may not receive adequate water to fulfill ecosystems functions.” In terms of assessment and mitigation of these aspects, the SESP explains that “As part of the project design, all proposed structural measures with significantly adverse environmental and social impacts were eliminated. Special attention will be given in the transboundary basin-wide hydrological modeling to understand and subsequent prioritize adequate hydrological flows to wetlands to maintain ecosystem functions. Furthermore, the location of all structural measures will avoid environmentally sensitive areas and all green infrastructures will use a diversity of native species for planting. An integrated landscape management approach will be emphasized for flood control without a narrow emphasis on structural measures that may decrease erosion in own areas while increasing erosion in another. Furthermore, all construction activities will be carried out with respect to national regulations, including Environmental and Social Impact Assessment (ESIA) as required.”

<sup>40</sup> The expected drier climate in the country by 2050, together with an increase in extreme precipitation events, is mentioned in the 4<sup>th</sup> National Climate Change Communication to the United Nations Framework Convention on Climate Change (Ministry of Environment and Physical Planning, Skopje, 2023, see <https://unfccc.int/documents/627667>).

## SES Requirements – Standard 5 on Displacement and Resettlement

92. Standard 5 applies to all UNDP activities that may involve, among other things, "economic and occupational displacement (i.e., loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of Project-related land or resource acquisition or restrictions on land use or access to resources (including through Project externalities such as pollution and impacts to biodiversity or ecosystem services) that people depend on for physical, economic, social, cultural, or spiritual well-being."<sup>41</sup> The Guidance Note to Standard 5 defines economic displacement as "displacement that occurs when individuals or communities are restricted, partially or fully, in their access to land or resources that are important to their means of livelihood or economic well-being and, as a result, more limited in their ability to reside or work in a given location."<sup>42</sup>
93. Under this standard, UNDP is required "to avoid physical and economic displacement, and mitigate displacement impacts and inherent risks when displacement cannot be avoided."<sup>43</sup> Projects that may involve displacement shall therefore, among other things, identify as part of the social and environmental assessment, "Project options (including 'no action' and 'in situ' options), their potential impacts, and avoidance measures", including a survey of potentially affected individuals and communities and an evaluation of their relationship and rights to lands and resources used and occupied."<sup>44</sup> Further measures that such projects shall take include "effective and informed consultations with affected populations and good faith efforts to secure negotiated settlements, even when expropriation options are available"<sup>45</sup> as well as "ex-post evaluation of livelihood levels to examine if objectives of this Standard were met."<sup>46</sup> Standard 5 specifies "while not responsible for implementation of these measures, UNDP will verify and document that these measures have been addressed."<sup>47</sup>

### Evidence and Findings regarding Standard 5 related issues

94. The current Sateska channel and the old Sateksa riverbed both border agricultural lands utilized by local farmers. These lands are vital resources for the local communities and are subject to various influences from both the state and the flow of the Sateska river. According to interviews conducted by SECU and the minutes from the public debate in Volino, farmers around the Sateska channel rely on water for irrigation, while

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<sup>41</sup> SES, p.30, para 3.

<sup>42</sup> UNDP SES Guidance Note Standard 5: Displacement and Resettlement, 2016, p.7.

<sup>43</sup> SES, p.31, para 7.

<sup>44</sup> SES, p.32, para 7, lit. a.

<sup>45</sup> SES, p.32, para 7, lit. d.

<sup>46</sup> SES, p.32, para 7, lit. f.

<sup>47</sup> SES, p.31, para 7.

those situated along the old Sateska riverbed frequently need to cross it to access their agricultural lands.

95. The EIA states that there are no significant negative impacts on the socio-economic situation of the local inhabitants. It acknowledges that access to farmlands by crossing the old natural Sateska riverbed will be impaired, but the assessment anticipates this impact to be mitigated by the construction of “access frames” which will enable access during normal water levels in the river. However, the EIA does not contain documented assessments of the extent of the potential impact on access to agricultural land along the old Sateska riverbed and the potential impact on irrigation along the artificial channel, if any. It also does not detail different options and avoidance measures in this regard or provide information on the extent of their respective potential impacts.
96. Furthermore, the EIA does not include an identification or survey of potentially affected individuals or communities, nor does it evaluate their relationships and rights to the lands and resources they use and occupy. It lacks details about the locations of existing crossings, their significance for affected people, or proposed locations and specifications for the new access frames.
97. Additionally, the EIA does not document considerations regarding any potential impact on agricultural production and livelihoods along the current channel, from which the water will be diverted to the old riverbed. The baseline analysis does not establish the extent to which water from the channel is currently used for irrigation, how that water usage is currently regulated and managed, and whether the diversion and subsequent loss of water in the channel may affect irrigation availability. This is despite the fact that the potential improvement for irrigation of the farmland along the old natural Sateska riverbed is listed as a likely positive impact in terms of socio-economic benefits of the sub-project and that diminished irrigation options along the current channel were a voiced concern of the local population in the public hearing about the EIA.<sup>48</sup>
98. A detailed assessment for planning and executing mitigation measures was required to ensure compliance with SES requirements<sup>49</sup> to assess, avoid and mitigate any unavoidable economic displacement impacts and inherent risks. This would have required an identification of potentially affected individuals or communities, an evaluation of their relationships and rights to the land, and an assessment of the risk of economic displacement, the potential impacts, and the corresponding mitigation measures, detailing different options and avoidance measures. In the absence of this information, the EIA failed to comply with Standard 2 requirements.

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<sup>48</sup> See minutes of the Public Discussion held on the EIA Study on the Implementation of the Project: "Restoration of the Sateska River and its Diversion into its Natural Riverbed," held on February 25, 2022, in Volino.

<sup>49</sup> SES, p.31, para 7.

## SES Requirements – Policy Delivery Category 1 on Screening, Assessment and Management of Social and Environmental Risks and Impacts

99. The Guidance Note on Assessment and Management stipulates that for Moderate Risk projects, targeted, focused analysis, and an assessment specific to the adverse risks and impacts identified through the screening process is required and that this need not necessarily be achieved through an ESIA, though an ESIA can be developed as a recognized form of targeted assessment.<sup>50</sup>
100. The SES recognize that most countries have adopted environmental laws and regulations that require assessment and management for proposed projects, but that these national requirements vary significantly in terms of scope and process. The SES Guidance accordingly cautions and reiterates that where national environmental regulations may not require fully integrated assessments that encompass the full range of not only potential environmental risks and impacts but social dimensions as well, “UNDP needs to ensure that the ESIA meets all requirements of the SES, and may need to support additional social analysis.”<sup>51</sup> Accordingly, while there is no impediment in the SES to using national processes to meet the SES assessment requirements, the UNDP is required to ensure alignment with all relevant UNDP standards and remains responsible for ensuring that the SES requirements are met throughout the assessment process, including stakeholder engagement and disclosure of information.<sup>52</sup>
101. Whenever a SESA/ESIA is conducted, the Project manager shall ensure that it “address[es] impacts on physical, biological, socioeconomic, and cultural resources, including direct, indirect, cumulative, and induced impacts in the Project’s area of influence, including associated facilities” and “utilize[s] strategic, sectoral or regional environmental assessment where appropriate”<sup>53</sup>. Overall, the ESIA should provide an accurate and complete evaluation of the proposed project, describe specific mitigation, monitoring and capacity development measures that comply with applicable law, regulations, and UNDP SES,<sup>54</sup> and assess the capacity of the institutions responsible for implementing social and environmental management.<sup>55</sup>

### Evidence and Findings regarding Policy Delivery Category 1 related issues

102. As the project was categorized as a “moderate” risk project under the SESP, targeted assessments were required, but not necessarily through an ESIA. The SES Guidance on Assessment and Management of Risks notes that ESIA’s are an applicable

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<sup>50</sup> Guidance Note, UNDP SES, Social and Environmental Assessment and Management, 2016, p.4.

<sup>51</sup> Guidance Note, UNDP SES, Social and Environmental Assessment and Management, 2016, p.15, para 4.4.1.

<sup>52</sup> See Guidance Note, UNDP SES, Social and Environmental Assessment and Management, 2016, p.21.

<sup>53</sup> SES, p.49, para 10.

<sup>54</sup> Guidance Note, UNDP SES, Social and Environmental Assessment and Management, 2016, p.22, p.32.

<sup>55</sup> Guidance Note, UNDP SES, Social and Environmental Assessment and Management, 2016, p.31, p.32.

form of assessment in moderate risk projects “where warranted”, including in situations where there is a “diverse range of moderate risks and impacts that could lead to cumulative adverse impacts, or where analysis indicates greater complexity and uncertainty of potential risks and/or impacts”.<sup>56</sup>

103. The sub-project team chose to conduct an ESIA as part of a detailed design process, thereby triggering the relevant SES provisions that apply whenever an ESIA is carried out.
104. In April 2021, the CO initiated the procurement process for an expert to conduct the ESIA and other reports.<sup>57</sup> The selected expert, registered in accordance with national licensing requirements, subsequently conducted the ESIA for the project and prepared the notification to the MOEPP of the restoration and rediversion plans for Sateska which was sent on behalf of the Municipality of Debrca in August 2021. This notification, under national law, initiated the decision-making process by the MOEPP to determine whether a comprehensive EIA was warranted for the activity or whether a so-called “environment elaboration”, which is a simpler process, would suffice. As discussed above, the MOEPP issued its decision in December 2021 mandating a comprehensive EIA for the Sateska rediversion project. Within this timeline, the ESIA was completed in October 2021, while the EIA is dated December 2021. Since the EIA effectively replaced the ESIA as the only social and environmental assessment, SECU’s compliance assessment focuses on the deficiencies in the EIA.
105. A review of the EIA to assess its completeness, accuracy, and adequacy in addressing potential environmental impacts, showed that it exhibited several deficiencies, including incomplete data, inadequate baseline studies, and limited consideration of potential impacts on aquatic ecosystems. Key environmental indicators were not thoroughly addressed, leading to a lack of understanding of potential consequences. The major deficiencies in the assessment encompass the absence of a hydrological analysis, the failure to analyze likely impacts on the Crn Drim River and Lake Ohrid, the neglect of impacts related to associated facilities and construction-related activities, the omission of a climate risk assessment, and limitations in the completeness of the Environmental and Social Management Plan (ESMP).

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<sup>56</sup> UNDP SES Guidance Note on the Assessment and Management of Risks, Dec 2016, at page 8.

<sup>57</sup> The scope of work for this assignment entailed the preparation of a “basic design for restoration of Sateska river into the natural riverbed” and required “review, comments and design improvements to all existing technical documentation, field work, site investigations and development of: 1. Basic Designs (including all technical Phases) for reconstruction of diversion structures, and other objects (River sediment settling basin, culvert crossings, river embankments, thresholds, etc.); 2. Urban Design for Infrastructure for flood protection, reconstruction of diversion structures and sedimentation settling basin; 3. Environmental Impact Assessment Screening Report and Notification Report for the Main design according to the National Legislation and ESIA report and ESM plan according to the UNDP Social and Environmental Standards.”

106. Specifically, the following key shortcomings have been identified in the assessment of the EIA, with reference to the requirements for ESIA set out in the SES<sup>58</sup>:
- a. **Incomplete Description of Sub-Project:** The sub-project description lacks sufficient information on various critical aspects, including associated facilities (access roads, landfills, workers camps, etc.), estimated concrete volumes, waste generation, transport intensity during construction, and details about the organization, duration, and timing of the construction phase.
  - b. **Lack of Clarity in Descriptions:** The desired effects of the project on river hydrological conditions are not clearly articulated. Varying figures of expected water flow to be diverted to the natural riverbed are found throughout the report, leaving the situation in the artificial channel post-project implementation unclear.
  - c. **Inadequate Evaluation of Alternatives:** While project alternatives for Sections 2 and 3 are outlined, the ESIA fails to evaluate and compare these alternatives or provide a clear explanation of which alternative(s) is preferable in terms of potential impacts.
  - d. **Unaddressed Measures from Lake Ohrid Watershed Management Plan:** The report lists several projected measures specified by the Lake Ohrid Watershed Management Plan but does not explain their current implementation status or the potential for cumulative effects.
  - e. **Outdated Baseline Data and Missing Information:** The baseline analysis relies on outdated data for certain important aspects. It also lacks relevant data, including information on impacted species such as fish populations and clear descriptions of hydrological conditions, which are crucial for assessing impacts on various environmental issues, including biodiversity and sediment transport.
  - f. **Lack of Clarity on Flow Diversion:** The reports do not clearly explain how much flow will be diverted to the old natural riverbed, how much will remain in the artificial channel, or whether any permanent/seasonal flow will be maintained. Additionally, the consideration of a minimum ecological flow in the artificial channel is not adequately addressed.
  - g. **Missing Baseline Conditions:** The description of baseline conditions, including biodiversity and hydrological characteristics of the Crn Drim river downstream, where impacts may also occur, is absent.

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<sup>58</sup> SES, p.49, para. 10.

- h. Quantitative Impact Assessment: The assessment of likely impacts relies largely on qualitative assessment, lacking quantification, especially for environmental issues related to the construction phase, such as concrete volume and transport intensity.
  - i. Absence of Cumulative Impact Assessment: The assessment does not include an evaluation of likely cumulative impacts, particularly in relation to measures outlined in the Lake Ohrid Watershed Management Plan.
  - j. Incomplete Environmental and Social Action Plan (ESMP): The ESMP includes various measures but lacks certain essential elements, such as detailed specification of measures and comprehensive monitoring plans. As described above, there is insufficient consideration of the scale and scope of monitoring of the environmental impacts to take place post the river diversion, including specific parameters/indicators, frequency, and monitoring locations, and crucial determinations regarding operational, maintenance and monitoring activities have not yet been made.
107. SECU also notes that the complainants have thoroughly reviewed the EIA and have identified numerous instances where passages have been copied from other project documents, of which they have submitted evidence that SECU finds convincing.
108. The EIA therefore falls short of addressing all relevant impacts on physical, biological, and socioeconomic resources, including direct, indirect, cumulative, and induced impacts in the sub-project's area of influence<sup>59</sup>, and does not provide a fully accurate and complete evaluation of the sub-project, describing all the specific mitigation, monitoring, and capacity development measures in compliance with the UNDP SES.<sup>60</sup>
109. While the CO expressed the view that the EIA process was driven by the local partners such as the Municipality of Debrca and the MOEPP, as it was conducted because of and in line with the national requirements, and therefore that UNDP had little control over the process, this conflicts with the CO's choice to meet its SES obligations through the EIA process instead of conducting a distinct social and environmental assessment process tailored entirely to UNDP's own requirements. In a situation like this, UNDP is still required to ensure the application of its own social and environmental policies. The SES clearly set out that "when the Implementing Partner is a government institution... it is responsible and accountable to UNDP for overall management of the Project. UNDP remains ultimately accountable to its Executive Board and respective cost-sharing donor(s) for the sound use of financial resources channeled through UNDP accounts and must ensure the quality of its support.

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<sup>59</sup> SES, p.49, para 10.

<sup>60</sup> Guidance Note, UNDP SES, Social and Environmental Assessment and Management, 2016, p.22, p.32.

Implementation of the SES is therefore integral to UNDP's quality assurance responsibilities."<sup>61</sup>

110. It is important to highlight that meeting national requirements does not inherently imply compliance with UNDP requirements. SECU noted during its interviews that several UNDP personnel emphasized how rigorous the national requirements are, with the implication being that national requirements are stricter than UNDP's requirements. Assuming alignment between national and UNDP requirements is a complex and context-specific matter and would firstly necessitate a thorough assessment and comprehensive evaluation of gaps and comparability, which was not conducted in this case. It is also worth noting that in the context of the EU accession process for North Macedonia, the EU Commission noted several shortcomings with North Macedonia's environmental impact assessment legislation.<sup>62</sup>

### **SES Requirements – Policy Delivery Category 2 on Stakeholder Engagement and Response Mechanisms**

111. Policy Delivery category 2 requires meaningful, effective and informed stakeholder engagement and participation in an effort to build and maintain constructive relationships with stakeholders and to avoid or timely mitigate any potential risks.<sup>63</sup> An effective stakeholder engagement is described as a cornerstone of sustainable development and civil society actors and organizations are highlighted as key stakeholders and crucial partners.<sup>64</sup> Particularly in the social and environmental assessment process, it is a key objective to promote public participation in crucial decisions regarding projects that may present adverse social and environmental impacts.<sup>65</sup>

112. Consultations as per these requirements are, among other things, "based on prior and timely disclosure of accessible, understandable, relevant and adequate information, including draft documents and plans, initiated early in the Project design process, continued iteratively throughout the Project life cycle, and adjusted as risks

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<sup>61</sup> See SES, p.8, para 10.

<sup>62</sup> The EU Commission's 2022 Report on North Macedonia states: "On horizontal issues, administrative capacity at all levels remains weak, with insufficient human and financial resources to implement and enforce legislation. The inspections performed have little impact. There is no improvement in implementation of Environmental Impact Assessments, with shortcomings especially in the public consultation processes and in the quality of the reports. Lack of transparency and access to information continues to be an issue.", see p. 95, Chapter 27 on environment and climate change, European Commission Staff Working Document, North Macedonia 2022 Report, Accompanying the document 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions', 2022 Communication on EU Enlargement policy, 12.10.2022, SWD(2022) 337 final, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/North%20Macedonia%20Report%202022.pdf>.

<sup>63</sup> See SES, p.51, para 13.

<sup>64</sup> See Guidance Note, UNDP SES, Stakeholder Engagement, 2017, p.3.

<sup>65</sup> See Guidance Note, UNDP SES, Stakeholder Engagement, 2017, p.16.

and impacts arise, and address[es] social and environmental risks and adverse impacts, and the proposed measures and actions to address these.”<sup>66</sup> In the context of social and environmental assessments, the project team “should inform stakeholders of the assessment process and ask them how they would like to be consulted, including types of information and formats, frequencies, and appropriate locations and venues. The applicable regulatory requirements (e.g., national environmental impact regulations, public notice and hearing requirements) as well as UNDP’s stakeholder engagement requirements should be clearly explained.”<sup>67</sup>

113. The SES further require consultation processes to provide stakeholders with opportunities to express their views at all points in the project decision-making process on matters that affect them and to allow the project team to consider and respond to them.<sup>68</sup> Topics that stakeholders shall be able to express their views on include for example social and environmental risks and impacts, proposed mitigation measures, and implementation issues.<sup>69</sup> Once draft assessments are developed, organized consultations with project-affected stakeholders should be undertaken in order to ensure that they adequately respond to potential issues and concerns.<sup>70</sup> The draft assessment shall be disclosed and at least a summary of the draft assessment should be made accessible with appropriate lead-time before consultation meetings, after which the draft assessment should be revised as appropriate per input from project-affected stakeholders.<sup>71</sup>

114. Stakeholders who may be adversely affected by a UNDP Project must be able to communicate their concerns about the social and environmental performance of the Project through various entry points, scaled appropriately to the nature and potential risks and impacts of the activity, and must be informed about the available entry points for submitting such concerns as part of the stakeholder engagement process.<sup>72</sup>

### **Evidence and Findings regarding Policy Delivery Category 2 related issues**

115. As mentioned above, an important stakeholder meeting on the Sateska sub-project was organized early on in the project cycle in May 2019 by the CO and included several stakeholders like representatives of the potentially implicated Municipalities of Debrca, Ohrid and Struga, the MOEPP, a consultancy firm, the public enterprise for Water Economy, the Hydrobiological Institute from Ohrid, the state-owned electricity producing company ESM (former ELEM) and the Ministry of Agriculture, Forestry and Water Economy. The collaboration, especially with the Municipalities, remained close

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<sup>66</sup> See SES, p.52, para 14.

<sup>67</sup> See Guidance Note, UNDP SES, Stakeholder Engagement, 2017, p.16.

<sup>68</sup> See SES, p.51, para 14.

<sup>69</sup> See SES, p.51, para 14.

<sup>70</sup> See Guidance Note, UNDP SES, Stakeholder Engagement, 2017, p.17.

<sup>71</sup> See Guidance Note, UNDP SES, Stakeholder Engagement, 2017, p.17.

<sup>72</sup> See SES, p.52, para 17.

throughout the process. The engagement of representatives of expert institutions and civil society, however, was less collaborative and consistent.

116. SECU found no evidence that issues regarding the design of the Sateska sub-project that were raised by some experts in this field, with affiliation to the Hydrometeorological Institute, the Hydrobiological Institute, and the Commission for the Management of the Natural and Cultural Heritage of the Ohrid Region, for example, were dealt with on a substantive level. In several interviews, these stakeholders voiced their frustration about the lack of engagement and the inability to contribute their expertise on the matter. A former representative of the Hydrobiological Institute stated that the Institute was only contacted by the CO towards the end of December 2021, when the EIA had already been completed. A representative of the Hydrometeorological Institute noted that they felt that the limited engagement was not necessarily because of the UNDP but rather because of other partners taking the lead in the sub-project design and implementation whereas UNDP's role was perceived as being limited to the financial support for related activities.
117. In February 2022, the EIA was published and made available on the MOEPP's website. Announcements about the availability of the EIA, that it would be open to public comments for 30 days after publication, and that there would be a public debate on the Sateska project on 25 February 2022 in Volino were made on several platforms. Documentation shows that these announcements were made on 15 February 2022 in two different local newspapers, in Macedonian and Albanian language, and on the MOEPP's website as well, though dating 17 February 2022.
118. It is worth highlighting that the public debate was scheduled early on into the public commenting period. For anyone wanting to discuss the EIA in particular, this would have, at best, given them 10 days between a 15 February publication date and the 25 February debate, to read the 174-page long EIA. This was also expressed to SECU in an interview with an expert stakeholder and member of Ohrid SOS, that the publishing of the EIA shortly before the public debate left little time to read the document and to prepare comments, and it was pointed out that many people from the potentially affected villages work in agriculture and don't have the technical knowledge to comment on it. The participant list of the public debate shows 24 participants, including representatives of UNDP, the municipalities, and official institutions.
119. Both the presentation that was given at the public debate and the meeting minutes indicate that the conversation was focused on more general aspects of the sub-project, rather than the details of the EIA. The main concerns of members of the local population who attended related to their lands near the old riverbed, and how the rediversion of the river into this riverbed might affect their ability to use the land in certain ways as well as possible floodings around the old riverbed. A representative of the Hydrobiological Institute and Ohrid SOS did have an EIA specific comment however,

emphasizing that he had several remarks regarding certain aspects of the study but that he would, in the interests of time, submit them officially to the MOEPP. In an interview with SECU, this member of Ohrid SOS explained that in response, he was thanked for his oral comments and told that the written comments would be reviewed but that despite subsequently submitting these written comments, nothing related to these comments was taken into account or integrated in any way. As far as Ohrid SOS could see, no changes were made to the EIA at all.

120. As described above, the complainants' comment submission at the end of the public commenting period was deemed to have arrived too late and was thus disregarded on a formal level, but the documentation submitted to SECU shows that the comments were submitted on 17 March 2022 to MOEPP via email which, even with a 15 February starting date, would have been within the 30-day timeframe.

121. The documentation reviewed by SECU supports the claim that no alterations were made after the public commenting period, as there appears to only be one version of the EIA, dating December 2021, which was not explicitly labeled as a draft during this process and there is no documentation indicating that the EIA was in any way amended or finalized at any point after December 2021.

122. Thus, there is no documentation demonstrating that the EIA, which represented the core social and environmental assessment process of the sub-project, was conducted in a way that ensured meaningful, effective, and informed stakeholder engagement and participation by all relevant stakeholder, specifically members and representatives of civil society, even though these assessments are a key entry point for public participation. The processes carried out by different actors involved in the stakeholder engagement were not sufficiently aligned. While the comments on the EIA by the complainants were not submitted to the CO directly, the CO was involved in the government-led public participation process to some extent, through their participation in the public hearing for example. Regardless of the fact that this was a government-led process, UNDP needs to be involved to the degree necessary to ensure SES compliance even when it relies on partners such as the MOEPP and municipality in this context.

123. The CO should have therefore ensured that all relevant stakeholders were consistently and timely informed about the assessment process. The public consultation processes, which are required to provide stakeholders with opportunities to express their views at all points in the project decision-making process,<sup>73</sup> were limited to the public commenting period on the EIA and one public debate. The SES Guidance in contrast, speaks of multiple consultations that should be organized with project-affected stakeholders in order to ensure that potential issues and concerns are adequately responded to and highlights that the draft assessment should afterwards be

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<sup>73</sup> See SES, p.51, para 14.

revised as appropriate per input from project-affected stakeholders.<sup>74</sup> There is no documentation evidencing that contributions in the public participation process were duly considered by the CO or other sub-project partners.

124. There is also no documentation that stakeholders who may be adversely affected by the sub-project were informed about the available entry points for submitting concerns about the social and environmental performance of the Project as part of the stakeholder engagement process, as per the SES requirements.<sup>75</sup>

### **SES Requirements – Policy Delivery Category 3 on Access to Information**

125. Policy Delivery category 3 seeks to ensure that project information, including on purpose, nature, scale, duration, risks and potential impacts of a project, is made available in a timely and accessible manner, early and on an ongoing basis in the project development process, so that affected persons and other stakeholders, including the general public, can understand it and provide meaningful input into the project design and implementation.<sup>76</sup> Draft social and environmental assessments must be disclosed before the formal beginning of the project appraisal and final social and environmental assessments must be disclosed upon completion.<sup>77</sup>

126. Stakeholders need to be able to readily access information regarding assessments. The Guidance thus emphasizes that local regulatory requirements which might mandate availability of environmental assessments in government offices may not be sufficient and that other means of dissemination may need to be considered in these cases, “such as posting on websites, public meetings, local councils or organizations, newsprint, television and radio reporting, flyers, local displays, direct mail.”<sup>78</sup>

### **Evidence and Findings regarding Policy Delivery Category 3 related issues**

127. After the Prodoc signature in October 2019, the documentation of public announcements regarding information about the sub-project begins in November 2021 and spans until June 2022, with the construction works taking place from October 2022 to March/April 2023.
128. The first documentation of a public announcement regarding sub-project activities stems from 12 November 2021 and informs about the notification submitted to the MOEPP about the intention to implement the “Restoration of the Sateska River

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<sup>74</sup> See Guidance Note, UNDP SES, Stakeholder Engagement, 2017, p.17.

<sup>75</sup> See SES, p.52, para 17.

<sup>76</sup> See SES, p.53, para 21.

<sup>77</sup> See SES, p.54, para 21.

<sup>78</sup> Supplemental Guidance: Disclosure of Project-related Social and Environmental Screenings, Assessments, and Management Plans, 2020, p.2.

and its Diversion into its Natural Riverbed, Municipality of Debrca.” In early February 2022, public announcements were made about the MOEPP’s decision to require an EIA for this sub-project, followed by the mentioned announcements regarding the EIA availability, public commenting period and public debate. In early June 2022, public announcements were made about the MOEPP having prepared a report on the suitability for an EIA, before the MOEPP adopted the EIA<sup>79</sup> and granted consent for the implementation of the sub-project to the Municipality of Debrca in late June 2022.

129. As stated above, in addition to the publication of the EIA on the MOEPP’s website, announcements were made in two different local newspapers which is in line with some of the suggested methods of ensuring access in the SES Guidance.<sup>80</sup>

130. Accordingly, whilst information about the project was available to stakeholders, the documentation disclosed was limited, and there is no evidence of a publication of a final EIA after the public commenting period. Despite whatever the national requirements might have been for the information disclosure process regarding the EIA, at least the latter should have been ensured by the CO, as per the SES.

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<sup>79</sup> The decision states that “The Environmental Impact Assessment Study for the Project: Restoration of the Sateska River and its Diversion into its Natural Riverbed for the Needs of the Municipality of Debrca meets environmental protection requirements, with the application of measures to prevent and reduce harmful impacts on the environment, with an obligation for the investor to decisively implement its environmental management plan and monitoring program.” The decision’s rationale further elaborates “The Committee for Preparing the Report on the Suitability for an Environmental Impact Assessment Study for the project: “Restoration of the Sateska River and its Diversion into its Natural Riverbed,” formed by the Director of the Environmental Administration after the public discussion that was conducted, in accordance with the Rules on the Content of Announcements of Notification of Intention to Conduct Projects, on the Decision for the Need for a Project Environmental Impact Assessment, on the Project Environmental Impact Assessment Study, on the Report on the Adequacy of the Environmental Impact Assessment Study, and the Decision that Grants Approval for or Rejects the Implementation of the Project, as well as the Manner of Consultation with the Public (“Official Gazette of the Republic of Macedonia” No. 33/06), prepared the Report and submitted it to the Director of the Environmental Administration. The Committee for Preparing the Report on the Suitability for an Environmental Impact Assessment Study for the project: “Restoration of the Sateska River and its Diversion into its Natural Riverbed,” considered the sources and types of possible degradations and pollution, based on which the measures for the protection of the primary environmental media have been dimensioned and defined.”

<sup>80</sup> Supplemental Guidance: Disclosure of Project-related Social and Environmental Screenings, Assessments, and Management Plans, 2020, p.2.

## VI. RECOMMENDATIONS

### 131. **Standard 1 on Biodiversity Conservation and Sustainable Natural Resource Management:**

- 131.1. SECU recommends that the inadequate analysis of likely impacts on aquatic biodiversity and water related habitats be brought into compliance by the CO commissioning a separate, supplementary biodiversity study by a dedicated biodiversity expert (not the author of the current EIA). This study should be used to determine appropriate environmental management measures, particularly relating to desired ecological flow minimums, to ensure that the ongoing operation of the project proceeds in a manner where impacts to biodiversity are avoided and minimized.
- 131.2. SECU also recommends that the present inadequate compliance with the elements of Standard 1 should be partially addressed with the urgent development of a strong agreement with the operating entity of the diversion works, contracted by the project owner. UNDP has been at the center of these negotiations, and should ensure that robust monitoring of the environmental and social effects of the current project is put in place. This monitoring needs to involve independent scientific institutions. SECU emphasizes that appropriate monitoring within the current project is required for SES compliance, beyond Standard 1. Comprehensive, independent, transparent, and participatory monitoring arrangements form an essential element of UNDP's social and environmental safeguards and feature throughout many of the SES principles, standards and policy delivery categories. SECU recommends that the CO carefully consider the requirements under the SES for monitoring and highlights that such monitoring can help inform any follow-on projects with observed data that was not available to the designers of the current project.
- 131.3. As discussed in this report, a joint Strategic Recovery Plan for the Natural and Cultural Heritage of the Ohrid Region (2023 – 2030) issued by the governments of the Republic of North Macedonia and the Republic of Albania includes an action plan to increase the capacity of the Sateska diversion to the aforementioned 100m<sup>3</sup>/s. Insofar as UNDP, working with the appropriate government authorities, may facilitate the full diversion through a new follow-on project, it should ensure compliance with the SES, which would require a much more complete EIA than provided for in the current project, given that the social and environmental impacts will be substantially larger.
- 131.4. Any future project should draw upon the Lake Ohrid Watershed Management Plan recently issued as a blueprint to guide the region's government authorities

with an impact on the ecological future of the Lake Ohrid in particular but also the related Drin River watershed.

**132. Standard 2 on Climate Change Mitigation and Adaptation:**

SECU recommends that the preparatory design work for any future UNDP project to protect Lake Ohrid include a climate change risk assessment, absent in the current project. Any biodiversity study prepared in response to SECU's first recommendation should also include an analysis of climate change data and considerations.

**133. Standard 5 on Displacement and Resettlement:**

SECU recommends that any future UNDP project to expand the flow capacity of the Sateska River learn from the current project's inadequate involvement of local residents concerned about potential economic damage. Follow-up monitoring of the current project's impacts on riparian farmers and residents will provide useful information for follow-on expansion of the riverbed and the upstream engineering ponds for sediment removal.

**134. Policy Delivery Category 1 on Screening, Assessment and Management of Social and Environmental Risks and Impacts:**

SECU recommends that the Country Office revisit the requirements in the SES for the screening, assessment and management of social and environmental risks and impacts to ensure compliance in any future follow-on projects. Particular care will need to be taken by the CO in making decisions with regard to relying upon country-based EIA processes to meet the SES requirements.

**135. Policy Delivery Category 2 on Stakeholder Engagement and Response Mechanisms:**

135.1. SECU recommends that the future monitoring arrangements involve the public and national experts with an independent perspective. Data from monitoring the operation of the facilities in the current project needs to be released publicly.

135.2. SECU also recommends that the CO should work with the relevant government departments to organize additional public meetings to update stakeholders on the status of the project and ongoing operation and monitoring concerns. Stakeholders should be provided with a meaningful opportunity to share or update their concerns about the project, and the CO should foster an informed discussion and engagement with affected stakeholders.

135.3. The social and environmental concerns (and in particular, the implications for displacement) will be far greater in any future UNDP project to complete the redirection of the Sateska River. The CO will need to carefully review the SES requirements for public engagement, so that the opportunities for feedback and discussion are more extensive and frequent than in the current project and meaningful participation is ensured.

**136. Policy Delivery Category 3 on Access to Information:**

136.1. For any future UNDP projects to complete the redirection of the Sateska River, the social and environmental implications will be far more impactful than the current project. In such a situation, SECU recommends that the CO engages local and national authorities in planning much more expansive disclosures of information in order to mitigate concerns that public needs may be ignored. Such disclosures, combined with greater opportunities for consultation with all affected sectors, will ensure greater success in the project and compliance with the UNDP SES.

136.2. The UNDP's transparency portal, [open.undp.org](http://open.undp.org), is an important platform for public access to project information. Currently, the project page for the Drin FRM project only discloses copies of the Prodoc and Annual Work Plans for 2019/20 and 2021/22. This platform should be kept up to date, and should be more actively used by UNDP as a central repository, even in situations where project information is shared by project partners on other platforms.

## **ANNEX 1: INDICATIVE LIST OF INTERVIEWEES**

### **Complainants**

1. Members of Ohrid SOS

### **UNDP Personnel**

2. UN Resident Coordinator North Macedonia
3. UNDP North Macedonia Resident Representative
4. UNDP Istanbul Regional Hub Regional Project Manager
5. UNDP North Macedonia Project Manager as well as Project Team Leader, Environment
6. Other project team members
  - a. EIA and ESIA consultant
  - b. Engineers
  - c. Supervising Engineers

### **National and Local Government**

7. Representatives of the Ministry of Environment and Physical Planning
8. Representatives of the Municipality of Debrca
9. Representative of the Municipality of Struga

### **Other Experts and Stakeholders**

10. Representative of the Hydrometeorology Institute of North Macedonia
11. Representatives of the Hydrobiological Institute of North Macedonia
12. Former member of the Commission for the Management of the Natural and Cultural Heritage of the Ohrid Region
13. Representative of state-owned electricity producing company ESM (former ELEM)
14. Representatives of the consulting firm that conducted the Feasibility Study
15. Representatives of different Civil Society Organisations