DRAFT TERMS OF REFERENCE (TOR) FOR INVESTIGATION

In response to complaint by the Siona of Buenavista and the Perla Amazónica /ADISPA Indigenous Communities, represented by Amazon Watch, Amazon Frontlines, Healing Bridges, regarding the "Private Sector & Agenda 2030" project and its intersection with the "Sustainable Amazon for Peace" project in the Republic of Colombia

Case No. SECU0017
11 October 2021

For more information about SECU and this case, visit www.undp.org/secu.

Basic Data

Case No.	SECU0017
Category of Non-Compliance:	Environmental and Social
Location:	Putumayo Department, Puerto Asis, Republic of Colombia
Date Complaint received:	11 May 2021
Source of Complaint:	Amazon Watch, et al on behalf of the Siona of Buenavista and Perla Amazónica indigenous communities
Eligibility assessment conducted by:	Richard Bissell, Lead Compliance Officer
Compliance Officer assigned:	Korinna Horta, Compliance Officer
Other investigators assigned:	Paul Goodwin, Head of Unit / Compliance Specialist Christine Reddell, Research Specialist Helena Toledo, Case Analyst
Related Case(s):	N/A

I. Overview

1. **The Complaint:** On 11 May 2021 the UNDP Social and Environmental Compliance Unit (SECU) received an email from the civil society organization Amazon Watch. It included a complaint on behalf of Indigenous communities in the Putumayo Department of Colombia concerning UNDP`s recent "project agreement with GeoPark" a Latin American oil and gas company. The communities are recipients of small grants from the UNDP/GEF 'Connectivity and Biodiversity Conservation in the Colombian Amazon' project (more commonly known as the 'Sustainable Amazon Program for Peace' project). The communities believe that UNDP Colombia's 'project agreement with Geopark' conflicted with the Sustainable Amazon for Peace Project, posed threats to the rights of communities, compromised the trust communities had in UNDP Colombia, and otherwise violated UNDP's social and environmental standards.

2. SECU determined that the referenced 'project agreement with Geopark' was the 'UNDP Sector Privado y Agenda 2030' project (translated as the Private Sector and Agenda 2030 project). The Private Sector and Agenda 2030 project document (herein 'prodoc') reflects a strategic alliance of UNDP Colombia Country Office (herein 'UNDP Colombia' or 'CO') with GeoPark, for which GeoPark would provide as much as USD $1.9 million for a series of broadly-defined activities, including the following: Generating capacity building for local actors regarding decision-making in times of pandemic; establishing partnerships for local reactivation; and generating employment and income opportunities through programs of rural and urban development.[1]

3. The Sustainable Amazon for Peace (SAfP) project is a UNDP project with USD $ 9 million in funding provided by GEF, and with an objective to 'improve connectivity and conserve biodiversity through the strengthening of institutions and local organizations to ensure integral low-carbon emission management and peace-building.' The SAfP project document notes that the objective will be achieved 'through a multifocal strategy that includes rural sustainable development with a low-carbon emission, agro-environmental focus to prevent deforestation and land degradation, conserve biodiversity, and improve the quality of life of people living in the region, including women. The project places an important focus on constructing sustainable territories of peace….'

4. The complainants advance several specific claims relating to these projects and their intersection, including relating to these projects and their intersection, including the following: (1) Implementation of the UNDP private sector due diligence process for GeoPark - as part of the preparation for the Private Sector and Agenda 2030 project - was inadequate, given the host of allegations of environmental and

[1] The prodoc provides the following brief description of the project, 'The need to advance the 2030 Agenda and the challenges of the pandemic present us with an opportunity as a society to establish a more resilient, sustainable, and inclusive development model. A coordinated response at the global and local level will be required from all actors in society to develop strategies and programmes under a multi-actor approach that contributes to economic recovery, the protection of achievements achieved, and strong progress towards the achievement of the Sustainable Development Goals (SDGs). In this scenario, the private sector is a critical partner for building a better future (UNDP 2020) through its role as an inclusive economic growth engine, lever to improve human capital schemes under decent work rules, technology provider, and generator of innovative solutions to address development and climate change challenges. Private capital and investments aligned to the opportunities and needs of the 2030 Agenda will help meet the existing funding gap to achieve targets….'

human rights violations by GeoPark in the Colombian department of Putumayo and in other locations and the long-standing opposition of communities to GeoPark's (and its predecessor Amerisur Resources') prospecting, exploration, and extracting of oil on community lands; (2) UNDP Colombia failed to notify complainant communities about the Private Sector and Agenda 2030 Project, and to ensure that information about the project was available to them prior to project approval; (3) relatedly, UNDP Colombia failed to consult and secure the consent of Indigenous communities for Private Sector and Agenda 2030 Project activities that might impact them; and (4) UNDP's efforts to ally with Geopark were not consistent with the Sustainable Amazon for Peace project for which the complainant communities had partnered with UNDP Colombia, and through which the communities were providing sensitive information concerning their people and territory to the CO.

5. On 11 May 2021 SECU registered the case on its online case registry, and subsequently made document and information requests of UNDP Colombia to assess the eligibility of the complaint.

6. UNDP Colombia responded to this request on 19 May 2021 , indicating that although the activities of the Private Sector and Agenda 2030 Project were to be 'implemented in the urban area of the municipality of Puerto Asis, and potentially in 21 rural localities out of the 152 rural localities within the municipality' in addition to locations in the Departments of Meta and Casanare, 'the project does not include any activities with Siona Buenavista indigenous community or within their territories' … and 'The Asociación de Desarrollo Integral Sostenible de la Perla Amazónica (ADISPA) is not a beneficiary of the project.' UNDP Colombia further noted that the project and alliance with GeoPark had been cancelled on 12 May 2021.

7. Complainants responded to UNDP's announced cancellation of the alliance with Geopark with a Joint Public Statement,[2] stating, 'We reiterate: it is not enough for UNDP to cancel their activities with the oil company. The trust, the legitimacy, and the respect that the civil society organizations had placed in the United Nations System and particularly in the UNDP was deeply fractured. We see it as a clear sign of bad faith that, despite the fact that the leaders of the Buenavista Reservation had been emphatic both in their written statement and in the oral interventions made in the April 29 meeting that they were not going to continue with the execution of the GRANT until UNDP publicly defined its position regarding the Agreements with Geopark, UNDP disbursed two days later resources for $52,000,000.00 COP to the account of the Tribal Government (Cabildo,) pressing to give continuity and execution of activities that include access to privileged information of the territory whose content we no longer trust would not end up in the hands of the company. We insist that it is INCOHERENT of UNDP to both seek effective environmental and territorial protection of the Amazon and at the same time reach agreements with the company that has most threatened this fragile ecosystem and that has tried to fragment the organization of communities, to the extent of legally opposing the process of restitution of territorial rights.' The Complainants further indicated that, given their outstanding concerns related to how UNDP Colombia handled the alliance with Geopark, they were suspending their participation in the Sustainable Amazon for Peace project.

8. The Complainants requested that SECU proceed with its investigation of UNDP Colombia's compliance with UNDP standards in the context of UNDP Colombia's alliance with Geopark - to help resolve outstanding concerns, which also impact the Sustainable Amazon for Peace project, and to shed light on

[2] JOINT PUBLIC STATEMENT, The Buenavista Reservation of the Siona People and civil society human rights organizations celebrate the cancellation of the "Strategic Alliance" between UNDP-Colombia and GeoPark oil company, 17 May 2021

how UNDP handles due diligence in the context of partnerships with organizations that communities believe threaten their human rights.

9. On 7 June 2021 SECU was informed by Amazon Watch that the Siona communities recently returned funds received through the small grant programme of UNDP's Sustainable Amazon for Peace project. According to Amazon Watch, the communities did so due to a lack of trust in UNDP Colombia spurred by the CO's approach to the Private Sector and Agenda 2030 project, and the community's belief that the CO failed to consider how its partnership with Geopark could adversely impact the rights and the well-being of the communities.Amazon Watch reiterated to SECU that the communities are requesting that the investigation proceed into UNDP Colombia's approach to the Private Sector and Agenda 2030 project, to advance understandings of the extent to which UNDP Colombia complied with the UNDP SES and of measures that would be necessary to ensure compliance in the context of similar activities.

10. In August 2021, SECU received a 6 July 2021 letter sent from the Siona communities to UNDP Colombia confirming that it wished to return the funding it had received through the Sustainable Amazon for Peace project. The communities summarized the reason as follows, 'the trust and legitimacy of UNDP were broken… [there is] no interest in continuing with the grant agreement because the pending activities to be carried out would provide privileged information about the territory whose custody we are not sure will be adequately preserved.'

The Project:

11. The Private Sector and Agenda 2030 prodoc was signed by UNDP on 26 January 2021, with a planned start date, according to other project documentation, of December 2020, and a planned end date of December 2022. It was a Direct Implementation Modality (DIM) project, with UNDP Colombia as the Implementing Partner. The Atlas Project number is 132303. Total financing for the project of USD 1,962,967.30 was to be provided by GeoPark and administered by UNDP Colombia.

12. The two main expected results of the Project were to: (1) Generate the conditions to enhance the private sector's contribution to the SDGs; and (2) Develop financing mechanisms and instruments for the SDGs in partnership with the impact financing and investment ecosystem.

SECU/OAI actions thus far:

13. SECU registered the complaint on 11 May 2021 and posted it on its case registry, available at www.undp.org/secu.

14. From the date of registration, SECU/OAI had 20 working days to issue its eligibility determination. Due to Covid 19-related delays, SECU/OAI was unable to issue its eligibility determination within that time frame.

15. On 7 September 2021, SECU/OAI determined that the complaint met the eligibility criteria for a compliance review: (1) The complaint relates to a project or programme supported by UNDP; (2) raises actual or potential issues relating to compliance with UNDP's Social and Environmental Commitments, and (3) reflects that, as a result of UNDP's noncompliance with its Social and Environmental Standards, complainants may be or have been harmed.

16. The complaint, as presently understood by SECU/OAI, raises actual or potential issues related to compliance with matters related to the following provisions of the UNDP Social and Environmental Standards (SES). The "Sector Privado y Agenda 2030" project was signed on 26 January 2021, and therefore UNDP's recently updated Social and Environmental Standards (effective 1 January, 2021) apply:

    a. Programming Principle related to "Leave No One Behind"
    b. Programming Principle related to Human Rights
    c. Programming Principle related to Sustainability and Resilience
    d. Standard 1: Biodiversity Conservation and Sustainable Natural Resource Management
    e. Standard 3: Community Health, Safety and Security
    f. Standard 5: Displacement and Resettlement
    g. Standard 6: Indigenous Peoples
    h. The following Social and Environmental Management System Requirements:
        i. Programming Quality Assurance and Risk Management
        ii. Project-level screening, assessment and management of Social and Environmental Risks and Impacts
        iii. Stakeholder Engagement and Response Mechanisms
        iv. Access to Information

17. The complaint also raises actual or potential issues related to compliance with the UNDP's Policy on Due Diligence and Partnerships with the Private Sector.

II. Scope of Work

1. The aim of this compliance review is to establish a background factual record through the objective gathering of evidence, make findings based on this record, and, if necessary, make recommendations to bring UNDP-supported activity into compliance with the SES and other relevant policies and procedures, mitigate any harm that results from the breach of UNDP's social and environmental commitments and help identify avenues to prevent similar compliance concerns in the future.

2. The compliance review carried out by SECU will involve the following key activities:

    a. Based on an initial desk-based examination of accessible documents, (e.g., project document(s), country programme documents and related workplans, UNDP Colombia programme documentation, relevant evaluation and quality assurance reports, private sector due diligence documentation, indigenous peoples plans, stakeholder engagement plans, news articles, screening procedures, UNDP-generated records, government-generated documents, documentation provided by the complainants and other stakeholders, and other relevant documents) develop a more detailed analysis of issues in light of the SES and other relevant UNDP commitments.
    b. SECU will analyze the information obtained from these sources and determine the best way to hear directly from the complainants and others involved in these projects about perceptions of harm, actions undertaken, and solutions to the

identified problems.

c. Using these analyses, identify initial questions for which answers need to be secured in country and otherwise (identifying questions will necessarily be an iterative process as more information is secured).
d. Interviews are conducted on a willing basis, and interviewees are given multiple opportunities to answer questions and provide requested documentation. Targeted interviewees include:
    i. Current and former UNDP staff members and consultants involved in the design and implementation of relevant project activity,
    ii. Complainants, their representatives, and other affected community members in Colombia,
    iii. Representatives of any relevant private sector actors.
    iv. Relevant government officials in Colombia, and,
    v. Other groups and individuals who are able to provide evidence regarding the existing and potential impacts of relevant UNDP-supported activities.
e. Considering Covid 19 -related restrictions, assess various approaches to performing the fact-gathering process and securing additional information that would allow SECU to complete the investigation and issue a final report in line with its mandate. In addition to assessing safe and effective travel to Colombia, SECU will examine the feasibility of online interviews and use of in-country consultants. Additionally, due care will be taken with regard to potential threats of reprisals against stakeholders engaging in SECU activity.
f. Consideration of alternatives to in-country field work is exceptional and a result of the Covid-19 pandemic's limitation on international travel. If a field mission is feasible the preference is for SECU to conduct such a mission as in-person meetings with local communities is essential to the compliance reviews SECU conducts.
g. When establishing interviews, interviewees will be informed of the general topics so the most relevant individuals can join the meeting and SECU can answer any questions potential interviewees have about the topics to be covered. Individuals' names are not included in SECU's public reports.
h. After all necessary information has been secured through any possible means, prepare a Draft Compliance Review Report as foreseen by the SECU procedures, make it formally available for public comment, and request comments from complainants, the Colombia Country Office, relevant Government officials at national, regional, and local levels, and other relevant stakeholders.
i. Finalize the report and submit it to the Director of OAI and the UNDP Administrator and relevant units.
j. Post the final report on the SECU registry.
k. Monitor the implementation of the Administrator's decisions.

III. Anticipated Milestones and Timeframes

In summary, the SECU process expects to achieve the following milestones in terms of developing its report and its component steps. Because of the unpredictability of the Covid19 situation throughout the upcoming months, this timetable is indicative. Changes and adaptations are possible.

Milestones	ESTIMATED COMPLETION DATE
1. Issue Draft Terms of Reference on SECU website for public comment	October 2021
2. Revise Terms of Reference based on public comments	November 2021
3. Request additional information and documentation from Complainants and CO staff knowledgeable about the Project. Desk-based document review, and virtual interviews as feasible and necessary.	November - December 2021
4. Establish the feasibility of a Field Mission to Colombia by SECU personnel given Covid-19 considerations and local context. Travel to Colombia would include visiting complainant communities.	December 2021 / January 2022
5. Field Mission Date Ranges	Priority Target Date Range: February – April, 2022 Backup Target Date Range: May – October, 2022
6. If field mission to Colombia not possible by October 2022, determine the extent to which a draft report can be published for public comments, including necessary caveats as to its limitations if travel not possible.	Q3 2022
7. Complete and formally release for public comment the Draft Compliance Review Report	Q4, 2022 but TBD dependent on SECU's ability to progress case during Covid-19 pandemic.
8. Closure of public comment period	Q4, 2022
9. Issue final report to the Administrator and relevant units, publish the report publicly, and circulate to all stakeholders	Q1, 2023