TERMS OF REFERENCE (TOR) FOR INVESTIGATION

In response to allegations of non-compliance with UNDP’s social and environmental standards and other relevant policies in the context of UNDP’s “UN Response to BiH Floods”

Case No. SECU0003
22 August 2017

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

<table>
<thead>
<tr>
<th>Case No.</th>
<th>SECU0003</th>
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</thead>
<tbody>
<tr>
<td>Category of Non-Compliance:</td>
<td>Social and Environmental</td>
</tr>
<tr>
<td>Location:</td>
<td>Sanski Most, Bosnia and Herzegovina</td>
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<tr>
<td>Date Complaint received:</td>
<td>16 June 2017</td>
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<td>Source of Complaint:</td>
<td>Confidential</td>
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<td>Eligibility assessment conducted by:</td>
<td>Richard Bissell, Lead Compliance Officer</td>
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<tr>
<td>Compliance Officer assigned:</td>
<td>Anne Perrault, Compliance Officer</td>
</tr>
<tr>
<td>Other investigators assigned:</td>
<td>Paul Goodwin, Research Analyst</td>
</tr>
<tr>
<td>Related Case(s):</td>
<td>SRM0003</td>
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</tbody>
</table>

### Signatures:

**Prepared by:**

Richard Bissell, Lead Compliance Officer  
SECU, OAI  
Date: 8/23/2017

**Reviewed by:**

Brett Simpson, Deputy Director  
Investigations Section, OAI  
Date: ____________

**Approved by:**

Helge Osttveiten, Director  
Office of Audit and Investigations (OAI)  
Date: ____________
I. Overview

1. On 21 June 2017, the Social and Environmental Compliance Unit (SECU) of the United Nations Development Programme registered a complaint from a farmer in Bosnia concerning the UNDP-supported UN Response to BiH Floods. His name is withheld to respect his request for confidentiality as provided in SECU procedures.

2. The complaint alleges that seedlings distributed to farmers on 24 December 2015, through UNDP’s UN Response to BiH Floods effort, had a bacterial infection that caused not only the death of those seedlings, but also the contamination of the soil within which the seedlings were planted and possibly nearby existing crops. He describes that the contaminated soil cannot be used for agricultural activities for at least three years, and asserts a belief that it will be very difficult to find new land of similar quality. The complainant further indicates that the ‘worst damage’ is bad publicity that reduces purchases of the farm products. He describes that without the income derived from his crops he will not be able to pay farm-related loans. He notes that he cannot afford to disinfect the soil, and he has assumed unexpected costs related to fungicide, insecticide, fertilizers and machinery.

3. The complainant claims UNDP was informed of the contamination on 25 December 2015, but that UNDP did not officially inform the beneficiaries until 7 January 2016. He believes phytosanitary inspection procedures prior to distribution were inadequate and inconsistent with legal requirements. He claims he attempted to contact the UNDP BiH Country Office (BiH CO) but was unable to reach anyone ‘apart from the operator.’

4. In a response to a request from SECU, the BiH CO provided a description of events from their perspective. The BiH CO indicated, ‘the raspberry seedlings from Poland entered BiH on 21 December 2015, after the regular border phytosanitary inspection at the point of entry found the shipment compliant with relevant national safety and quality standards, laws and regulations. The shipment was also accompanied by the necessary documentation, which included the phytosanitary certificate issued in Poland (country of origin) for the shipment and in line with regular Bosnia and Herzegovina import procedures.’

5. The BiH CO further noted, ‘Once the distribution of seedlings to the beneficiaries started (December 23rd and 24th), however, one of the beneficiaries alerted the relevant authorities in the BiH Entity of Republika Srpska, as well as UNDP BiH, to the untypical physical appearance of several distributed seedlings. UNDP BiH promptly contacted the inspection authorities, partner municipalities, and the supplier, immediately suspending distribution and commissioning an analysis with a local accredited laboratory- the analysis ultimately confirmed that the seedlings from Poland were indeed infected.'
Upon receiving lab results, UNDP BiH, the inspection authorities, and partner municipalities collected and destroyed all seedlings from the shipment as a precautionary measure. By the time of suspending the distribution, defective seedlings had been distributed to 186 beneficiaries, or less than 1/3 of the total intended number of recipients.

6. The BiH CO indicated the following remedial measures in response to findings of an infection: ‘As an immediate mitigation measure, in January 2016, UNDP BiH informed all affected beneficiaries, as well as local authorities, of its intention to substitute the destroyed raspberry seedlings with new ones. Also, UNDP BiH started providing training and technical assistance to all beneficiaries in order to enable them to carry out regular agri-technical activities over spring and summer. Over April and May 2016, alternative suppliers were identified and 400,000 seedlings were ordered for distribution to all 439 beneficiaries affected.... A discussion of alternatives for affected beneficiaries was held with representatives of the EU Delegation in BiH and it was decided to either immediately purchase agricultural equipment in the value of the seedlings per beneficiary, or delay delivery of seedlings until the autumn of 2016.... BiH held face-to-face meetings with all affected farmers and representatives of their municipalities to present the two solutions....’

7. On 24 July 2017, SECU determined the complaint met the criteria necessary for SECU to investigate UNDP’s compliance with its social and environmental commitments; the complaint alleges potential harm that may have occurred through a UNDP-supported project or programme and as a result of noncompliance with UNDP’s social and environmental commitments. The Officer-in-Charge of the Office of Audit and Investigations (UNDP/OAI) approved the Eligibility Determination.

8. These Terms of Reference (TOR) describe the approach to the investigation, including the following: (1) the social and environmental commitments that apply in the context of this project; (2) the scope of work and SECU’s proposed approach to reviewing whether these commitments were met; and (3) the proposed milestones for the review.

II. UNDP’s Social and Environmental Commitments in the Context of the UN Response to BiH Floods

9. The provision of raspberry seedlings to Bosnian farmers is one of many activities coordinated by UNDP under the ‘UN Response to BiH Floods’ umbrella effort. Of the four identified ‘outputs’ to this umbrella effort, the European Union Flood Recovery Programme output provided funding for the raspberry seedling activities.1 EU and other funding support for the umbrella effort was channelled through UNDP in several ways, including through the “Floods Response and Recovery in Bosnia and Herzegovina” project, which was

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1 Procurement documents for the raspberry seedlings reference the ‘EU Recovery Programme.’
signed by the UNDP BiH Resident Representative June 2014 and revised December 2014, with a start date of May 2014 and an end date of November 2015, as well as the United Nations Development Assistance Framework (UNDAF) Bi-annual Joint Workplan 2015-2016 (2015-2016 BWP).

10. Social and environmental commitments that apply to any given UNDP activity are determined based on the date the relevant project or programme is approved. The Social and Environmental Standards (SES) apply to all UNDP Programmes or Projects approved after 31 December 2014. Additionally, any social and environmental commitments in UNDP’s Programme and Operations Policies and Procedures (POPP) promulgated at the time of the relevant UNDP activity would apply. Because the activities referenced in this complaint occur in time frames associated with different projects/programmes, the application of policy standards may include the SES and/or the POPP with regard to different activities.

11. The initial “Invitation to Bid” for raspberry seedlings was published in August 2015, before the expiration of the original Floods Response and Recovery Project and before the project was substantially revised in September of 2015. The raspberry seedlings were delivered in December 2015, after the expiration of the original 2014 Floods Recovery and Response Project and after the project was revised in September 2015. The response to the contaminated raspberry seedlings, including offers and deliveries of replacement goods and relevant consultations, took place in January 2016 and beyond, also under the revised project and the BWP + CPD. According to the BiH CO, support for the

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2 The approval date of a “substantive revision” to a project, as defined by the POPP’s Project Management Policy, is equivalent to a project approval date, for purposes of determining the appropriate application of policies and standards. These substantive revisions should be reflected in revised project documentation, even though in practice that step is sometimes omitted by project staff.

3 According to the SES, “A “UNDP Programme” is a cooperation framework for effectively achieving development results through a set of Projects. Programmes outline priorities and outcomes that UNDP seeks to achieve together with other development partners. UNDP’s Programme management cycle in the POPP is specific to the management of: Country Programmes, Regional Programmes, and Global Programmes.”

4 According to the SES, “A “UNDP Project” is a time-bound set of planned activities with defined resources which may be defined in a Project Document or other relevant formats, such as a UN Joint Programme document or Country Programme Action Plan (CPAP) together with Annual Work Plan. Where Projects are undertaken as part of a Joint UN Programme, the UNDP Project is the portion of the Joint Programme for which UNDP is in charge. Most UNDP Projects are programmatic in nature but are managed as Projects per UNDP’s Project Management Cycle.”

5 “…original Floods Recovery and Response Project Document” refers to the ProDoc that was signed in June 2014. It does not refer to any “substantive revisions” to the ProDoc, as defined by the POPP. Three substantial revisions were made to the project in September of 2015, February 2016, and January 2017.
raspberry seedling and other flood recovery activities was included in the Country Programme Document (CPD) 2015-2019, as well as in the 2015-2016 BWP.

12. For any UNDP-supported activity that took place under the original 2014 Floods Recovery and Response Project Document, the Social and Environmental Standards would not apply as this project was approved in 2014, prior to the SES’s adoption. However, applicable social and environmental standards found in the POPP, relevant procurement policies, distribution procedures, and inspection requirements relevant to the social and environmental issues raised in the context of this activity would apply. For any UNDP-supported activity that took place after the original Floods Recovery and Response Project was revised in September 2015, including activity that took place under the 2015-2016 BWP, the Social and Environmental Standards apply.

13. Both sets of standards (POPP and SES) require SECU to specifically examine issues related to consultations with communities, transparency, and human rights, e.g., as related to impacts to livelihoods.

III. Scope of Work

14. The investigation 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, BiH programme documentation, relevant evaluation and quality assurance reports, procurement-related documents, news articles, photographs, UNDP-generated records, government-generated documents, and other relevant documents, develop a more detailed analysis of issues in light of relevant UNDP commitments.

   b. Using the analysis, 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).

   c. Given the initial list of questions, identify individuals and groups to be interviewed. These include:

      i. UNDP staff members involved in the design and implementation of relevant projects/programmes/activity
      ii. Complainants and their representatives, located in the project area (Sanski Most, Bosnia).
      iii. Other groups and individuals who can provide evidence regarding the existing and potential impacts of the UNDP-supported activity.

   d. Establish contact with those identified above, to set up interviews.

   e. Travel to Bosnia to obtain evidence relating to UNDP adherence to commitments.

   f. Prepare a draft investigation report that assesses compliance of project
activities with relevant UNDP environmental and social commitments.
g. Make publicly available for comment the draft report, and specifically request comments from complainants, the BiH CO, and other relevant stakeholders.
h. Finalize the report, and submit it to the Director of OAI and the UNDP Administrator and relevant units.
i. Post the final report on the SECU registry.
IV. Anticipated Milestones and Timeframes

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

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<tr>
<th>Milestones</th>
<th>ESTIMATED COMPLETION DATE</th>
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<tbody>
<tr>
<td>1. Issue draft Terms of Reference on SECU website</td>
<td>27 July 2017</td>
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<td>2. Revise Terms of Reference based on public comment</td>
<td>15 August 2017 or sooner</td>
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<td>3. Desk based document review and UNDP/HQ interviews</td>
<td>August-September 2017</td>
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<td>4. Field Mission (Bosnia)</td>
<td>September 2017</td>
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<td>5. Complete and release for public comment the Draft Investigation Report</td>
<td>October 2017</td>
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<td>6. Closure of Public Comment</td>
<td>November/December 2017</td>
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<tr>
<td>7. Issue Final Report to the Administrator and relevant units.</td>
<td>December 2017 / January 2018</td>
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