

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



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CLOSURE NOTE:

Complaint from M10: MOVIMIENTO 10 DE ABRIL Regarding two UNDP projects: “Fortalecimiento institucional para la gestión basada en resultados del Ministerio de Relaciones Exteriores de la República de Panama” and “Apoyo al Programa de Reformas del MINGOB”

Case No. SECU0004
Date: 22 February 2021

Basic Data

Case No.	SECU0004
Category of Non-Compliance:	Social and Environmental
Location:	Ngäbe Buglé area, Panama
Date Complaint received:	15 August 2017
Source of Complaint:	M10: MOVIMIENTO 10 DE ABRIL
Related Case(s):	N/A

I. Overview

1. On 22 August 2017, the Social and Environmental Compliance Unit (SECU) of the United Nations Development Programme (UNDP) registered a complaint from the Panama-based Ngäbe Bugle area organization M10: MOVIMIENTO 10 DE ABRIL, concerning two UNDP-supported projects: 'Fortalecimiento institucional para la gestión basada en resultados del Ministerio de Relaciones Exteriores de la República de Panamá' (herein 'MIRE' project) and "Apoyo al Programa de Reformas del MINGOB' (herein 'MINGOB' programme). (<https://info.undp.org/sites/registry/secu/SECUPages/CaseDetail.aspx?ItemID=2>). See the final published Investigation Report for details about SECU's findings and recommendations here.
2. Upon completion of its investigation, SECU issued a report included the following: (1) overview; (2) background and concerns that led to the complaint; (3) social and environmental commitments that applied in the context of this project; (4) findings related to application of the commitments; and (5) recommendations.
3. The recommendations included the following:
4. The UNDP CO should explore actions it can take to help ensure respect for the UNDRIP and related finding of the UN Special Rapporteur on indigenous rights that lands of the Ngäbe should not be flooded in the absence 'of agreement from the representative authorities of that people as to the conditions attached thereto.' For example, the UNDP CO may be able to advance the study and discussion of measures already proposed, e.g., lowering the flood level to avoid impacts to territories of complainants and other members of the Ngäbe Bugle community, and ensuring revenues in a trust fund for the Ngäbe Bugle, and could consider securing advice from a UN entity with a mandate to promote and monitor respect for indigenous rights.
5. Prepare a robust stakeholder analysis that guides future UNDP engagements in activities that involve indigenous peoples, to help ensure that UNDP activities respect rights, strengthen indigenous peoples' institutions and their own decision-making structures and processes, ensure attention to the rights, views, and needs of affected communities, and do not increase divisions within and among communities.
6. Ensure application of screening procedures to future projects and programmes, and ensure, for activities not detailed in programmes, that risks associated with a given sector of activities are identified at programme development. When activities are detailed subsequently, ensure that social and environmental risks associated with such activities are avoided and/or mitigated in a manner consistent with the SES.
7. Ensure that UNDP activities are consistent with findings of UN bodies, including, for UNDP engagements related to the Barro Blanco Hydropower Project, findings of the UN Special Rapporteur on indigenous rights. These findings relate to robust consultations and the need for consent free from coercion, and explicit and careful attention to standards and robust procedures when engagements relate to measures in the public interest, e.g., the finding that 'the State should not allow the territorial rights of this people to be prejudiced in any way unless it is necessary to do so for a public purpose that is valid from a human rights perspective

and, in such cases, only to the extent that it is necessary for and proportional to that valid purpose.’

8. Ensure that Stakeholder Engagement Plans and Indigenous Peoples Plans are developed in a manner consistent with SES requirements when UNDP activities involve Indigenous Peoples, and provide notice to the Panamanian government that UNDP must comply with the UNDP SES.
9. Ensure robust application of SES requirements for transparency and inclusivity in UNDP activities, including in the context of dialogue activities.

II. Administrator’s Decision

10. In response to SECU’s report, the UNDP Administrator directed RBLAC and the UNDP Country office in Panama to ‘put in a series of follow up actions, which will be actively followed up on. This includes, for example:
 - Continuing to review our current processes and procedures to ensure robust application of all screening procedures for future projects and programmes to ensure social or environmental risks are avoided or mitigated with the Social and Environmental Standards (SES).
 - Ensuring robust applications of SES requirements in all UNDP activities – but specifically in the context of dialogue activities (a key focus of this report);
 - Ensuring that when UNDP activities involve indigenous peoples, Stakeholder Engagement Plans and Indigenous People’s Plans are developed in line with UNDP SES. Specifically, the Panama Country Office will prepare a robust stakeholder analysis that guides future UNDP engagements in activities that involve indigenous peoples;
 - Developing a sensitization and training programme on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) for country office staff working in relevant programmes and projects;
 - Actively looking to prevent any shortcomings in the application of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the future.’
11. The decision further notes, ‘Actions to implement the recommendations of the report will be formalized through workplan prepared by the Panama Country Office and approved by the Regional Bureau for Latin America and the Caribbean.’

III. UNDP Actions in Response to Administrator’s Decision

12. The UNDP Panama Country Office prepared an Action Plan that identified the following high-level responses to SECU’s Recommendations, as well as ‘Key Actions’ (identified in the attached December 2019 Action Plan):
 - *SECU Recommendation:* Prepare a robust stakeholder analysis that guides future UNDP engagements in activities that involve indigenous peoples to help ensure that UNDP activities respect rights, strengthen indigenous peoples’ institutions and their own decision-making structures and processes, ensure attention to the rights, views and needs of affected communities and do not increase divisions within and among communities
 - *Management Response:* A robust stakeholder analysis will be prepared that guides future UNDP engagements in activities involving indigenous peoples. In addition, Stakeholder Engagement Plans will be developed when UNDP activities involve

indigenous peoples and, if it is determined that indigenous peoples' rights, lands, resources or territories are affected, an Indigenous Peoples' Plan will be drawn up, in a manner consistent with SES requirements.

- *SECU Recommendation:* Ensure application of screening procedures to future projects and programmes and ensure, for activities not detailed in programmes, that risks associated with a given sector of activity are identified at programme development. When the activities are detailed subsequently, ensure that social or environmental risks associated with such activities are avoided and/or mitigated in a manner consistent with the SES

Management Response: Strict compliance with the UNDP's social and environmental safeguarding policies and mechanisms will be ensured through the SES.

- *SECU Recommendation:* The UNDP CO should explore actions it can take to help ensure respect for the UNDRIP and related finding of the UN Special Rapporteur on indigenous rights that lands of the Ngäbe should not be flooded in the absence of "agreement with the representative authorities of that people as to the conditions attached thereto".

Management Response: Filling of the reservoir had already been completed by the date SECU published the Final Compliance Report (2018-09-18).

- *SECU Recommendation:* Ensure that UNDP's activities are consistent with the findings of UN bodies, including for UNDP engagements

Management Response: It will be ensured that all UNDP projects, actions or initiatives with indigenous peoples (particularly those involving dialogue) are carried out in strict compliance with the provisions of the UNDRIP, SES requirements and the reports of UN rapporteurs with regard to indigenous issues in Panama.

- *SECU Recommendation:* Ensure that the Stakeholder Engagement Plans and Indigenous Peoples' Plans are developed in a manner consistent with SES requirements when UNDP activities involve indigenous peoples and provide notice to the Panamanian government that UNDP must comply with the UNDP SES.

Management Response: It will be ensured that all UNDP projects, actions or initiatives with indigenous peoples (particularly those involving dialogue) are carried out in strict compliance with the provisions of the UNDRIP, SES requirements and the reports of UN rapporteurs with regard to indigenous issues in Panama.

- *SECU Recommendation:* Ensure robust application of SES requirements for transparency and inclusivity in UNDP activities, including in the context of dialogue activities.

Management Response: It will be ensured that all UNDP projects, actions or initiatives (particularly those involving dialogue), especially with indigenous peoples, are carried out in strict compliance with the provisions and requirements of the SES.

- *SECU Recommendation:* Develop a sensitization and training programme on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) for country office staff working in relevant programmes and projects and actively seek to prevent any shortcomings in the application of the UNDRIP in the future.

Management Response: Priority will be given to including sensitization and training on UNDRIP in the Country Office's mandatory training courses at Programme and Project level.

IV. Monitoring Process and Outcomes

13. SECU requested information, as necessary, from the UNDP Panama CO, complainants and other stakeholders to monitor the process and outcomes of the implementation of the Administrator's decision as reflected in UNDP Panama's Action Plan.

V. Reasons for Closure

14. Based on information provided by UNDP Panama, SECU determined that activities in response to the UNDP Administrator's decision and the UNDP Panama Action Plan have been completed as much as possible. SECU notes that the UN OHCHR office in Panama has indicated an awareness of concerns and a willingness to continue to monitor issues related to the complaint.