

**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 Congo’s  
“Integrated and Transboundary Conservation of Biodiversity in the Basins of the Republic of Congo”  
Project**

**Case No. SECU0009  
Date: 24 January 2019**

**For more information about SECU and this case, visit [www.undp.org/secu](http://www.undp.org/secu).**

**Basic Data**

Case No.	SECU0009
Category of Non-Compliance:	Social and Environmental
Location:	Congo (TRIDOM region)
Date Complaint received:	2 August 2018
Source of Complaint:	Various Baka People, Represented by Survival International
Eligibility assessment conducted by:	Richard Bissell, Lead Compliance Officer
Compliance Officer assigned:	Anne Perrault, Compliance Officer
Other investigators assigned:	Paul Goodwin, Unit Coordinator / Research Analyst
Related Case(s):	SECU0008

Signatures:

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_  
Richard Bissell, Lead Compliance Officer, SECU

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
Brett Simpson, Deputy Director, Head of Investigations

## I. Overview

1. On 2 August 2018, the UNDP Social and Environmental Compliance Unit (SECU) received a forwarded communication from the Investigations Section of UNDP's Office of Audit and Investigations. The communication was from the NGO Survival International, which submitted complaints on behalf of various Baka people living in Congo and Cameroon regarding GEF-funded and UNDP administered protected area projects along the border regions.
2. More specifically, the complaints assert that two such projects – the UNDP/Global Environment Facility (GEF) *Integrated and Transboundary Conservation of Biodiversity in the Basins of the Republic of Cameroon* Project (GEF ID number 9155) in Cameroon (relating to the Nki National Park), and the UNDP/GEF *Integrated and Transboundary Conservation of Biodiversity in the Basins of the Republic of Congo* Project (GEF ID number 9159),<sup>1</sup> in Congo (supporting the creation of a new protected area, Messok Dia), are adversely impacting seven Baka communities in violation of UNDP standards.
3. The Baka communities claim that, through these projects and earlier related activities, they have been, and currently are being, illegally evicted from their forest lands, both inside and outside formally-established protected areas. More specifically, they allege that project implementers are not ensuring proper consultation/FPIC processes and measures to protect the Baka's culture and wellbeing, and, as a result, are violating the Baka's human rights.
4. Several statements by Baka and Bantu individuals are attached to the complaint, including the following excerpted language from individuals living in Congo: 'We Baka are born for the forest. We look for our food in the forest. We look for meat in the forest, honey in the forest. But the ecoguards have come to put an end to all that, and how are we going to live? It's causing us such suffering. Not long ago the ecoguards came to the village and started beating everyone....You must make an effort so that we can stay here in peace. If they want to work in our forest they must come here and seek our consent; that is the law.' And, 'In the past we knew no boundaries in the forest. A Baka knew that the forest belonged to him. Now they have brought boundaries to the forest.... Before they used to say to us that the boundary of the new Messok Dja park was at the Koko river. But now they say that it's four kilometres from here. We tried to explain our difficulties to WWF but they did not accept them. They just came to tell us that we can no longer go there. We are told that according to international law our consent is required for these projects. We ask you to come here to Mbaye to make sure the law is respected. Otherwise, it is the end of our world.'
5. Included in the original submission are complaint letters with signatures from more than 125 Baka and Bantu individuals residing in Congo. Six of the seven communities seeking an investigation live in Congo.
6. According to the UNDP Congo Country Office (UNDP Congo CO), these complaints relate to two projects. The first, "Conservation of cross-border biodiversity in the Dja-Minkébé-Odzala interzone between Cameroon, Congo and Gabon", started in September 2008, and operationally and financially closed in September 2015. The subsequent "Integrated and transboundary conservation of biodiversity in the basins of the

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<sup>1</sup> UNDP Atlas Project ID/Award ID number: 00092643, and Atlas Output ID/Project ID number 00097266.

Republic of Congo”, or “TRIDOM II”, began activities in October 2017, is currently being executed, and runs until March of 2023. Both are GEF projects.<sup>2</sup>

7. The currently active project – the “Integrated and transboundary conservation of biodiversity in the basins of the Republic of Congo”, or “TRIDOM II project – is a National Implementation Modality (NIM) project, implemented by the Congo Ministry of Forest Economy, Sustainable Development and Environment (MEFDDE). It has a total budget of US\$23,807,650, with funding provided by the GEF, UNDP, the Congo Government, the Congo Conservation Company, Eco Oil Energie SA, Wildlife Conservation Society, Forest industry of Ouesso, and WWF/ETIC. UNDP administers only a portion – US\$4,125,250 – of the total budget.
8. According to a submission from the UNDP Congo Country Office to SECU, the Congo project is designed to protect critically-important biodiversity, including a diverse range of rare and endangered mammals, insects and plants. It is in an area inhabited by local communities and indigenous populations and facing high pressure from poaching and bushmeat trafficking, “The Messok Dja forest is one of the almost intact forest blocks of the Congo Segment of the Tri-National Dja-Odzala-Minkébé Landscape (TRIDOM), subject of the Cooperation Agreement signed in January 2005 in Brazzaville by the Member States (Cameroon, Congo and Gabon) to manage in partnership the transboundary complex of protected areas and its interzone in order to promote the conservation, the rational use of natural resources and the sustainable development of local communities, with a view to contributing poverty reduction.... Demographic data indicate a human population consisting of local communities and indigenous populations bordering around 7,447 inhabitants including 497 Bakas scattered on about sixty village lands, mainly located along the Sembé -Gbola roads, while bioecological surveys indicate very low densities of marketable timber species, high pressure from elephant poaching for ivory and bushmeat trafficking. The existence of numerous biotopes for large mammals (clearings and corridors) provides an essential springboard for the elephant migration corridor between the north of the Odzala-Kokoua National Park in Congo and the south of the Nki National Park. Cameroon. It is because of these parameters that forest management plans have been put in place to control logging by the companies.”
9. The project document (prodoc) indicates that the ‘Objective’ is ‘to strengthen the conservation of globally threatened species in the basins of the Republic of Congo by improving biodiversity enforcement.’ Four ‘key interlinked strategies’ to achieve this objective include the following: Expanding the network of globally significant protected areas in the Congo basin; Strengthening capacity for effective PA and Illegal Wildlife Trade governance in Congo; Reducing poaching and illegal trade on threatened species via community-based natural resources management and sustainable livelihood; and Gender mainstreaming, monitoring, evaluation, and knowledge management.’<sup>3</sup>

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<sup>2</sup> The GEF Project 2008-2015 TRIDOM I project had a US\$10,117,500 budget, and was implemented by UNDP. According to a submission by the UNDP Congo Office, “The project focused on Transboundary PoA Protocol and Memorandum of Understanding on the Integration of Large Mammalian Migration Corridors into National Land Use Plans, and resulted in the new GEF project 2017-2022, called Integrated and Transboundary Conservation of Biodiversity in the Basins of the Republic of Congo, for which the Republic of Congo’s donation amounts to 3,125,250 US, with a strong focus on a participatory management approach of local communities and indigenous peoples to prevent poaching and IWT, the operation of a ranger training center, and strengthening the justice chain to prevent wildlife crime....”

<sup>3</sup> Prodoc, pgs. 11 -17.

10. The UNDP Congo CO confirmed that indigenous communities are in the project area, 'The UNDP project covers 18 village lands...', and acknowledged 'potential conflicts' with local communities, 'The area is insecure due to poaching and ivory trafficking. Potential conflicts between local communities (hunting for bushmeat) and ecoguards are possible. Most cases the issue relates to hunting game. UNDP helped to Ecoguards to acquire dogs to prevent bushmeat poaching and sale.'<sup>4</sup>
11. The CO noted, however, that it is still in the process of preparing a stakeholder analysis and ensuring that consent exists for local communities, 'Regarding the TRIDOM 2 project...Plans to conduct further analysis of socioeconomic impacts on indigenous peoples is planned for this year. In phase 2 and formulation process with PPG, an analysis with stakeholders to identify their interests and concerns... The process of obtaining consent of the affected population is currently underway and is made by WWF through the FPIC approach (known as CLIP) as part of TRIDOM 2 project. This process started in October 2017 as part of the process to create Messok Dja Park.'<sup>5</sup>
12. On 10 August 2018, SECU registered the case on its online case registry, and requested documents and information from the UNDP Congo CO to assess the eligibility of the complaint for investigation.
13. On 13 August 2018, SECU responded (on behalf of the UNDP Accountability Mechanism) to Survival International, acknowledging receipt of the complaints and requesting confirmation that the complainants wished to pursue a SECU compliance review only and not a Stakeholder Response Mechanism mediation process.
14. On 15 August 2018, Survival International responded, confirming that complainants wished to pursue only a SECU compliance review and requesting confidentiality of the individual complainants.
15. On 24 October 2018, SECU determined that the complaint met the eligibility criteria for an investigation: The complaint relates to a project or programme supported by UNDP, raises actual or potential issues relating to compliance with UNDP's social and environmental commitments, and reflects that, as a result of UNDP's noncompliance with its social and environmental commitments, complainants may be or have been harmed.

## **II. Applicable Social and Environmental Commitments in the Context of UNDP-supported Activity**

16. The complaint raises issues related to the following UNDP Social and Environmental Standards (SES) topics: Indigenous Peoples' rights (and related Indigenous Peoples' Plans); access to information; stakeholder analyses; consultation; risk assessment; free, prior, informed consent; human rights; economic and physical displacement, and related land and resources rights.

## **III. Scope of Work**

17. The aim of this investigation is to establish a background factual record through 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.

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<sup>4</sup> 21 September 2018 UNDP Congo CO response to SECU questions about project activities.

<sup>5</sup> Id.

18. 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, UNDP Congo programme documentation, relevant evaluation and quality assurance reports, Indigenous Peoples' plans, stakeholder analyses, Social and Environmental Screening Procedure (SESP), news articles, UNDP-generated records, government-generated documents, and other relevant documents, develop a more detailed analysis of issues in light of the SES and other 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 project activity,
  - ii. Complainants and representatives in Congo and elsewhere
  - iii. Relevant government officials.
  - iv. Other groups and individuals who can provide evidence regarding the existing and potential impacts of relevant UNDP-supported activity.
- d. Establish contact with those identified above, to set up interviews.
- e. Travel to Congo to obtain evidence relating to UNDP adherence to the SES and other relevant policies.
- f. Prepare a draft investigation report that assesses compliance of project activities with the SES and other relevant social and environmental commitments.
- g. Make publicly available for comment the draft report, and specifically request comments from complainants, the Congo CO, relevant Government officials, 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

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

Milestones	ESTIMATED COMPLETION DATE
1. Issue draft Terms of Reference on SECU website for public comment	7 January 2019
2. Revise Terms of Reference based on public comment	24 January 2019
3. Desk based document review and UNDP/HQ interviews	September 2018 - February 2019

4. Field Mission (Congo)	February 2019
5. Complete and release for public comment the Draft Investigation Report	April/May 2019
6. Closure of public comment period	May 2019
7. Issue final report to the Administrator and relevant units, publish the report publicly, and circulate to all stakeholders	June/July 2019
8. Monitor recommendations (if any)	End of 2019/beginning of 2020