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

Empowered lives.
Resilient nations.

ELIGIBILITY DETERMINATION:

Regarding a complaint received in relation to UNDP's "Transboundary Wastewater Management in Attil/Tulkarem Governorate" Project

Case No. SECU0018

Date: 22 February 2022

Basic Data

Case No.	SECU0018
Category of Non-Compliance:	Social and Environmental
Location:	Programme of Assistance to the Palestinian People – PAPP
Date Complaint received:	5 November 2021
Source of Complaint:	Confidential
Eligibility assessment conducted by:	Richard Bissell, Lead Compliance Officer
Compliance Officer assigned:	N/A
Other investigators assigned:	N/A
Related Case(s):	N/A

Richard E. Bissell

Digitally signed by Richard E. Bissell
DN: cn=Richard E. Bissell, o=OAI/UNDP, ou=SECU, email=richard.bissell@undp.org, c=US
Date: 2022.02.22 16:36:24 -05'00'

Prepared by:

Richard Bissell, Lead Compliance Officer, SECU

Helge Osttveiten 2022.02.23 02:19:03 -05'00'

I. Overview

1. On 5 November 2021 the UNDP Social and Environmental Compliance Unit (SECU) received a complaint regarding the "Transboundary Wastewater Management in Attil/Tulkarem Governorate" project executed under the UNDP's Programme of Assistance to the Palestinian People (PAPP). The Complainant(s) requested confidentiality.

2. The Complainant(s) claim that their and their neighbors' properties will be adversely impacted due to monetary loss as a result of this UNDP project and the planned route of the wastewater pipeline that is to be constructed. In addition, the Complainant(s) claim that the project will adversely impact the environment and deem the impacted land unusable for agricultural or residential use. The Complainant(s) allege that the project is intending to install a wastewater pipeline in their properties without their consent or approval. The Complainant(s) claim that they have notified the local authorities of their objections, but their requests went unanswered. The Complainant(s) believe that it is possible to avoid the adverse impacts if the project engineer routed this wastewater pipeline through an existing road in the area. The Complainant(s) believe an experienced engineering team would be able to achieve this within a reasonable cost. The Complainant(s) allege that the plan to traverse their properties is an attempt to achieve the easiest route for this wastewater pipeline at the cost of adverse impacts to the Complainant(s), their neighbors, and the environment in a country where land is scarce, and their livelihood depends on the ability to use the land for agriculture and housing.

3. According to the Project Document (Prodoc), "the current community practices in Attil of using cesspits to dispose of household wastewater, as well as dumping wastewater into Wadis[1] in the surrounding areas, pose significant public health risks and pollute natural resources, first and foremost the shared water aquifer." Against this backdrop, the Prodoc explains that "there is a critical need to establish a comprehensive wastewater management system to safeguard the environment, strengthen pollution control, enhance public health and reduce tensions across communities. This project will target Attil Municipality as a main beneficiary, building on the progress achieved so far in enhancing transboundary wastewater pollution control in 6 communities in Tulkarem Governorate. It will also contribute to improved cross-border wastewater flow measurements and management mechanism through the installation of measurement flow meters in Attil, Hebron and Beit Jala."[2]

4. On 10 November 2021, SECU registered the case on its online case registry. SECU then made documentation and information requests to the UNDP/PAPP Office and the Complainant(s) in order to inform SECU's determination of eligibility of the complaint. These requests and the information received in response are dealt with in more detail below. UNDP/PAPP has since confirmed that the pipeline in question will be constructed in the main public road. UNDP/PAPP's confirmation includes a site map indicating the approved route. This confirmation from UNDP/PAPP is being published as **Annexure 1** to this eligibility determination.

5. As required by SECU's Investigation Guidelines (http://www.undp.org/content/undp/en/home/librarypage/operations1/secu-investigation-

[1] A valley, ravine, or channel that is dry except in the rainy season.
[2] Prodoc, page 1.

guidelines/), this memorandum provides SECU's assessment of whether the complaint is eligible for a full investigation by SECU.

6. SECU has determined that the complaint is ineligible for a Compliance Review, for the reasons set out below.

II. Project Details

7. The "Transboundary Wastewater Management in Attil/Tulkarem Governorate" project (Atlas Award ID: 99404 and Project No. 123704), had a start date of 4 September 2020 and has an end date of 28 February 2023. The project in Attil is an extension of the scope of work under a project that had been approved in 2018 under the same Atlas Award ID.[3] These efforts are also integrated with the UNDP's work in the region to promote peacebuilding though cross boundary wastewater management under a project approved in 2009 (Atlas Award ID: 50897).[4]

8. The "Transboundary Wastewater Management in Attil/Tulkarem Governorate" project is funded by the Government of the Netherlands and the Government of Poland.

9. The Prodoc explains that "over the years, UNDP/PAPP has contributed to the development of the water sector, while enhancing the capacities of relevant Palestinian institutions at both national and local level" and that "UNDP/PAPP works in partnership with governmental agencies and delivers through the Direct Execution (DEX) modality, which will be the mechanism for the implementation of this project. Under such modality the accountability of the project results and financial management rests with UNDP/PAPP."[5]

III. Summary of Process to Date

10. The Investigation Guidelines for SECU detail the process for responding to complaints: Section 8. The Complaint Review Process – Eligibility and Terms of Reference directs SECU to register complaints within five days of receipt if they are not automatically excluded pursuant to Section 1.1 Policy basis.

11. SECU received the complaint on 5 November 2021, registered the complaint on 10 November 2021 and posted it on its case registry, available at www.undp.org/secu. SECU then made a detailed documentation and information request to UNDP/PAPP on 19 November 2021.

12. On 3 December 2021 the Special Representative of the Administrator for PAPP provided a partial response to SECU's requests indicating that UNDP/PAPP had received a request from the Mayor of Attil in October 2021 to relocate the route of the wastewater pipeline, but that owing to an objection from a landowner "the proposed relocation of the sewage pipeline was rejected and the UNDP team requested the Mayor to inform the complainant that there is no change in the originally proposed route and that based on the objection the alternate route will not be pursued." It was not clear from UNDP/PAPP's response who UNDP/PAPP had spoken to and

[3] https://open.undp.org/projects/00099404
[4] https://open.undp.org/projects/00050897
[5] Prodoc, page 19.

whether SECU's Complainant(s) had been consulted or informed of the rejection of the proposed alternate route.

13. SECU responded by seeking clarification and corroborating evidence and by reiterating its 19 November request for various information and documentation, noting that SECU sought to review the evidence provided and obtain additional evidence from stakeholders to further the fact-finding process. SECU also requested an explicit assurance from UNDP/PAPP that the final alignment of the wastewater pipeline under this project will not impose on any private property rights. Multiple follow up requests from SECU to UNDP/PAPP were made prior to obtaining sufficient information to finalize this Eligibility Determination.

14. On 15 February 2022, the Special Representative of the Administrator for PAPP provided written confirmation that the pipeline in question will be constructed along the main public roads as originally planned and approved by the Palestinian Water Authority. The letter from the Special Representative was accompanied by a site map indicating the approved route of the wastewater pipeline. This letter (with the accompanying site map) is attached as **Annexure 1** to this eligibility determination.

15. Section 8.1, Determining Eligibility of a Complaint, indicates that within twenty business days after registering the complaint, SECU will determine if the complaint meets the eligibility criteria specified in Section 8.2. To be eligible a complaint must: (1) Relate to a project or programme supported by UNDP; (2) Raise actual or potential issues relating to compliance with UNDP's social and environmental commitments; and (3) Reflect that, as a result of UNDP's noncompliance with its social and environmental commitments, complainants may be or have been harmed. Due to delays outside of SECU's control, and in particular the delays caused by UNDP/PAPP in responding to documentation and information requests from SECU, SECU was not able to conduct an eligibility determination on this case within the required 20 business days.

IV. Determination of Eligibility

16. ***Criterion 1: Relates to a project or programme supported by UNDP.*** The complaint relates to the UNDP/PAPP "Transboundary Wastewater Management in Attil/Tulkarem Governorate" project.

17. ***Criterion 2: Raises actual or potential issues relating to compliance with UNDP's social and environmental commitments.*** The complaint raises issues related to UNDP's commitments under Standard 5, Displacement and Resettlement, of the Social and Environmental Standards (SES).[6] Pursuing or attempting to pursue a pipeline path through private property in such a way that causes or may cause physical or economic displacement should be avoided, according to the SES, and if it cannot be avoided, strict requirements under the SES must be complied with. The complaint also raises issues relating to UNDP's compliance with the Policy Delivery categories in the SES on Screening, Assessment and Management of Social and Environmental

[6] The project's signature and start date was before 31 December 2020. As such, the 2015 Social and Environmental Standards apply as the revised Social and Environmental Standards only came into effect on 1 January 2021.

Risks and Impacts, Stakeholder Engagement and Response Mechanisms, and Access to Information.

18. ***Criterion 3: Reflect that, as a result of UNDP's noncompliance with its social and environmental commitments, complainants may be or have been harmed.*** The Complainant(s) describe various ways they may have been harmed by UNDP's potential non-compliance with its social and environmental commitments, including the possibility of being prevented from using and enjoying lands and resources to which they have ownership rights, the right to various forms of protection and due process before physical or economic displacement occurs, the right to adequate consultations, and the right to information. However, with the assurance from UNDP/PAPP that the pipeline will be constructed along the main public roads and will not traverse the Complainant(s)' properties, SECU has determined that the risk of harm to the Complainant(s) has been avoided.

19. As the third criterion is not satisfied, SECU has determined that the complaint is ineligible for a social and environmental Compliance Review.

V. Next Steps

20. As this case has been deemed ineligible for a compliance review, the registry will show that SECU has closed the case.

21. The closure of this case is predicated on SECU having confirmed that the contemplated project-related harm to the Complainant(s) will not materialize. The closure of this case does not prejudice the Complainant(s) or any other stakeholder from submitting a subsequent complaint to SECU concerning UNDP activity under this project relating to different issues, the same issues if there is new information available, or if there has been a significant change in circumstances (e.g., if despite the assurance provided, there are indications that harm to the Complainant(s) is or may materialize).

22. For future reference, SECU has also highlighted to UNDP/PAPP that consent from private landowners is not the only consideration under the SES. Regardless of what may be possible under national law and the local context of project activity, Standard 5 of the SES (Displacement and Resettlement)[7] establishes a high threshold justification for any physical or economic displacement (which includes any restriction or impact on land use), mandating that displacement should only occur when "unavoidable". When unavoidable, comprehensive plans for displacement must be developed transparently with the affected individuals detailing, amongst other things, compensation for any loss, opportunities for improving income-earning capacity, and transitional support.

[7] Both the 2015 SES and the revised SES deal with issues of displacement and resettlement under Standard 5 and contain substantially similar requirements for physical and economic displacement. Both versions of the SES mandate that displacement should only occur when "unavoidable".