



10 December 2021

Dear Rapporteurs,

I have the honor to address you in your capacities as Chair-Rapporteur of the Working Group on the issue of human rights and transitional corporations and other business enterprises; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of indigenous people; Chair-Rapporteur of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 44/15 43/16 42/20, 42/9 and 42/5.

The communication sent by the Working Group on Special Procedures addresses issues of great concern to UNDP. We take these allegations very seriously and welcome the opportunity to learn from past practices. UNDP recognizes the centrality of human rights and indigenous people's rights to sustainability, development, poverty alleviation, sustaining peace and ensuring fair distribution of development opportunities and benefits and is committed to supporting universal respect for, and observance of, human rights and fundamental freedoms for all. Human rights represent a core principle and necessary pre-condition for human development, and we welcome any suggestions that can help us better deliver on this promise.

We have benefitted from the full time allowed for response in this case precisely to review the allegations contained in your letter through an inter-unit group that included our Country Office in Colombia, the Regional Bureau for Latin America and the Caribbean, and relevant Central Units at headquarters in New York. It is our hope that this case will serve to further strengthen our policies and improve their application at country level.

### **UNDP's human rights due diligence policies and processes**

In your letter, you requested information on UNDP's human rights due diligence policies and processes. I am pleased to provide an overview of our social and environmental standards, as well as of our private sector due diligence policy, which collectively cover the area of concern.

At the outset, I would like to emphasize that UNDP's new Strategic Plan (2022-2025) highlights, among other areas, our work to support national human rights systems. Further, UNDP adheres to the United Nations Development Group (UNDG) Statement of Common Understanding of the Human Rights-Based Approach to Development Cooperation and Programming<sup>1</sup> and is committed to ensuring due diligence in our partnerships with the private sector.

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<sup>1</sup> [UNSDG | The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies](#)  
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## UNDP Social and Environmental policy

The key UNDP tool for fulfilling due diligence obligations is the organization's Social and Environmental Standards (SES) and the related screening procedure (SESP). We are proud that UNDP was the first United Nations entity to adopt such standards and that these have been used as a model for the system. However, this is processes of constant learning and improvement.

In an effort to improve our project design and risk management from inception stage, the SES is now a mandatory requirement in the design of all UNDP projects. Specifically, we use the SESP to determine the risk classification, which is essential in establishing the scope of the required assessment. Whereas a moderate environmental and social risk would lead to a targeted assessment, a substantial or high risk would require a comprehensive or full Environmental and Social Assessment (ESIA).

UNDP's SES first came into effect on 1 January 2015. A subsequent update came into effect on 1 January 2021, based on lessons learned through that time. To support the launch and build capacities for the SES throughout the organization, we initiated an implementation plan and an in-depth learning strategy for the organization. Since then, UNDP has made significant efforts to increase SES oversight capacity through a year-long certification programme and the development of comprehensive knowledge products such as guidance notes on specific SES standards. Further, trainings were conducted to increase staff capacities and improve understanding of the application of the environmental and social due diligence procedures.

The SES outlines five programming principles and eight standards on social and environmental issues.<sup>2</sup> Specifically, UNDP SES standard six focuses on promoting and protecting the rights of indigenous peoples, especially concerning their lands, territories, resources, traditional livelihoods as well as tangible and intangible cultural heritage. The standard aims at achieving UNDP's goals of advancing human rights, respecting indigenous people's identities, and improving their well-being. For projects involving or affecting indigenous peoples, an Indigenous Peoples Plan (IPP) or Indigenous Peoples Framework (IPF) is required, and free, prior and informed consent (FPIC) of affected parties is required for all projects. We consider these requirements as necessary to ensure our projects are doing no harm but also as a means to enhance their quality, focus and substantive contribution to the targeted communities.

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<sup>2</sup> For more detail see <https://www.undp.org/accountability/social-and-environmental-responsibility/social-and-environmental-standards>.



## **UNDP Policy on Due Diligence and Partnerships with the Private Sector**

Another due diligence process relevant to this case is that related to the private sector. As part of its support to Agenda 2030, UNDP aims to increase its engagement with the private sector but acknowledges that such engagement can often be fraught with risks and unintended consequences. For this reason, several years ago, UNDP instituted a policy on due diligence to facilitate and inform the assessment of whether to engage with private sector partners and the formulation of partnerships, while seeking to maintain a principled approach that manages risks and ensures the integrity and independence of UNDP.

The UNDP Policy on Due Diligence and Partnerships with the Private Sector sets out criteria for assessing and selecting partners and principles to guide the establishment of partnerships. Specifically, the risk assessment criteria include, among other things, key considerations on respect for human rights and for indigenous peoples' rights, in particular on the principles of self-determination and self-governance, the right to lands and natural resources, and the right to free, prior and informed consent.

This policy was adopted in 2013 and it has helped UNDP to create a robust framework to identify risks and opportunities in engaging with the private sector. As with the social and environmental standards, however, we always seek to learn from implementation and to ensure that our staff is aware of how to apply the policies through trainings, guidelines, and toolkits. Building on the lessons learned, informed by the UN Guiding Principles on Business and Human Rights, as well as the recently updated UNDP Enterprise Risk Management Policy, UNDP has launched a revision process to update the policy in alignment with the UNSDG Common Approach to Due Diligence for Business Sector partnerships.

## **UNDP Social and Environmental Compliance Unit**

In addition, the Social and Environmental Compliance Unit (SECU) mechanism is another important part of UNDP's accountability structure. It aligns strongly with Principle 31 of the Guiding Principles on Business and Human Rights. This mechanism is accessible to all and by various means and provides an option for the complainant to remain anonymous to promote greater trust from stakeholders. Through its website and outreach material, SECU disseminates information about how and in which timeframe incoming grievances are processed, thereby providing a high level of disclosure and transparency. Aggrieved parties have access to sources of information and are kept up to date on the status of their complaints throughout the process. SECU ensures that outcomes and remedies adhere to internationally recognized human rights standards and build on lessons learned from past cases to continuously improve its own processes.



This specific case regarding Geopark has in fact been brought to UNDP's attention through the SECU channel as well, which I will address below.

### **Specifics of the Geopark case**

The elements of the Geopark case contained in your letter are extremely concerning and UNDP wishes to express its solidarity with the Siona People and their quest to protect the human rights of their people and the environmental integrity of their territories. To provide some background on the project which you cite in your letter, the initiative "Sector Privado and Agenda 2030" (Private Sector and 2030 Agenda), was designed at the end of 2020 with a multi-stakeholder approach, aimed at facilitating private sector contributions to Agenda 2030 and to economic reactivation, which was much needed due to the Covid-19 pandemic.

The first company to enter into a cost-sharing agreement under this project was Geopark, with the objective of implementing a strategy for the economic reactivation of municipalities in Meta, Casanare and Putumayo. These territories were selected because they have been historically impacted by the conflict in Colombia and, more recently, other socioeconomic challenges were exacerbated by the Covid-19 pandemic. Over the years, UNDP Colombia has worked on different peace, environment, and development initiatives in these territories.

As per the architecture I outlined above, when conceptualizing this project, UNDP took the following steps:

- First, UNDP conducted an SESP during the design of the project Sector Privado and 2030 Agenda, using the corporate tool devised for this purpose. This SESP identified the importance of informing and consulting with potential beneficiaries on the project's objectives and scope.
- Second, UNDP Country Office conducted a due diligence on Geopark, using a Risk Assessment Tool (RAT) and inputs from other sources (Sustainalytics, Business & Human Rights Resource Centre, S&P Global Ranking, media). The due diligence exercise did not identify any exclusionary criterion and indicated a manageable risk level, based on which the UNDP Country Office did not escalate the case to the Private Sector Due Diligence Committee at UNDP headquarters. The Country Office used the information gathered in the RAT to inform conversations with key partners during the Local Project Appraisal Committee (LPAC), which is the step to discuss the project among the stakeholders of the project and approve its design. After discussing the issues identified in the due diligence and assessing the associated potential risks, the agreement with Geopark was approved in the LPAC on 1 December 2020.

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Based on the above, the UNDP Country Office followed existing policies. However, the due diligence review did not include in its scope the history of the company Amerisur, which Geopark had recently acquired. This may be a potential area to review in our standards to ensure that they are as comprehensive as possible.

- Next, in an effort to ensure free, prior and informed consent of intended beneficiaries and other relevant actors in the project target intervention areas, UNDP conducted a series of consultations. During March and April 2021, field missions were carried out in the project target areas of the departments of Casanare and Putumayo. These field missions aimed to validate the project's scope with institutional actors, community leaders, chambers of commerce, rural productive associations and social organizations. As highlighted in the minutes of the meetings and the mission reports, stakeholders provided positive feedback and validated the relevance of the project objectives and activities and expressed their interest in supporting the initiative.

Please allow me at this stage to directly address the issue of consultation with the Siona Peoples and other indigenous groups. It is accurate that in the design phase of this project these groups were not consulted. The reason for this was that the project's target intervention area and planned activities did not include the territories (Resguardos) of the Siona or other indigenous peoples. This being said, UNDP does take note of the position of the Siona People that the partnership with Geopark per se, given their experience with the company and that of Amerisur, could generate adverse impact for their community, regardless of the geographic or beneficiary focus of the UNDP project. This perhaps is another lesson that UNDP can review in its policies: namely, how to ensure widest appropriate consultation with actors that may have been affected in other contexts by potential private sector partners.

When UNDP analyzed the concerns expressed by indigenous peoples and civil society organizations on the project, and reviewed additional information including on the track record of Amerisur, we decided to cancel the project before implementation began. No activity was implemented.

In terms of future actions and measures that UNDP will take, as mentioned briefly above, UNDP's Social and Environmental Compliance Unit (SECU) received a letter of complaint regarding this project. As a result, and as a part of the suite of UNDP policies and procedures, the project is currently under investigation. We anticipate, therefore, that upon conclusion of the investigation, UNDP will receive a final report that examines whether the project was designed in compliance with applicable provisions of the SES and the UNDP Policy on Due Diligence and Partnerships with the Private Sector, and that UNDP will receive recommendations to improve its processes going forward (as previously mentioned UNDP has already launched a revision process for its Due Diligence Procedures, in line with the UNSDG Common Approach). I look forward to receiving the findings and recommendations of what I expect to be a rigorous, inclusive SECU process.



This will aid UNDP in taking proactive measures to address remaining concerns, including around any potential loss of trust between the Siona Peoples and the United Nations.

Please allow me to thank you again for your letter and for your commitment to upholding human rights principles and practice. We remain at your disposal should you require any additional information.

Please accept the assurance of our highest consideration.

Yours sincerely,

A handwritten signature in black ink that reads 'Achim Steiner'. The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Achim Steiner

**TO:**

Surya Deva, Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Mary Lawlor, Special Rapporteur on the situation of human rights defenders

José Francisco Cali Tzay, Special Rapporteur on the rights of indigenous peoples

Jelena Aparac, Chair-Rapporteur on the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Pedro Arrojo-Agudo, Special Rapporteur on the human rights to safe drinking water and sanitation