



Final Investigation Report

Investigating allegations of non-compliance with
UNDP social and environmental commitments
relating to the following UNDP activities:

Integrated and Transboundary Conservation of
Biodiversity in the Basins of the Republic of
Cameroon, TRIDOM II.

Case No. SECU0008

Date: 27 August 2020

Case No.	SECU0008
Category of Non-Compliance	Environmental and Social
Location:	Republic of Cameroon
Date complaint received:	2 August 2018
Source of complaints:	Indigenous community members from the Baka tribe in the village of Zoulabot Ancien, Cameroon.

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List of Acronyms

ASBABUK	Association of Baka communities
AWF	African Wildlife Foundation
CED	Centre for Environment and Development
CO	Country Office
COMIFAC	Central African Forest Commission
CPAP	Country Programme Action Plan
CSO	Civil Society Organization
ESIA	Environmental and Social Impact Assessment
EU	European Union
FPIC	Free, Prior and Informed Consent
FPP	Forest Peoples Programme
GEF	Global Environment Facility
GIC	Guaranteed Investment Contract
ILO	International Labour Organization
IPP	Indigenous Peoples Plan
IUCN	International Union for Conservation of Nature
IWT	Illegal wildlife trafficking
LAP	Livelihood Action Plan
MINFOF	Cameroon Ministry of Forestry and Wildlife
MP	Member of Parliament
NGO	Non-Governmental Organization
NIM	National Implementation Modality
Nki	Nki National Park
NTFP	Non-Timber Forest Products
OAI	Office of Audit and Investigations
OCBB	Observatoire des Cultures Baka et Bantou
PA	Protected Area
PAC	Project Appraisal Committee
PFBC	Partenariat Pour Les Forêts Du Bassin Du Congo / Congo Basin Forest Partnership
PMU	Project Management Unit
POPP	UNDP Programme and Operations Policies and Procedures
Prodoc	Project Document
PSC	Project Steering Committee
PSC	Project Steering Committee
RAP	Resettlement Action Plan
REDD	Reduced Emissions from Deforestation and Forest Degradation
SECU	UNDP Social and Environmental Compliance Unit
SES	UNDP Social and Environmental Standards
SESA	Strategic Environmental and Social Assessment
SESP	UNDP Social and Environmental Screening Procedure
SLM	Sustainable Land Management

TRIDOM	Tri-national Dja Odzala Minkebe
UCC	The Conservation Consultation Unit
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Programme
UNESCO	United Nations Organization for Education, Science and Culture
WB	World Bank
WWF	World Wildlife Fund
ZSL	Zoological Society of London

I. EXECUTIVE SUMMARY

1. On 2 August 2018, complainants¹ from the village of Zoulabot Ancien in Cameroon and complainants from the villages of Seh, Mbaye, Bethel, Dia-Endenge, Namogola and Zouoba in the Republic of Congo (hereinafter referred to as “Congo”), represented by the NGO Survival International, submitted a complaint to UNDP’s Office of Audit and Investigations, claiming that several GEF-funded, UNDP-implemented projects in support of protected areas in Cameroon and Congo are impacting the human rights of complainants and other local community members.
2. The complaint from Zoulabot Ancien in Cameroon focuses on the following two GEF-funded, UNDP-implemented projects:² The ‘Conservation of trans-boundary biodiversity in the Minkebe-Odzala-Dja interzone in Gabon, Congo and Cameroon Project’ (also known as the regional TRIDOM project, and referred to herein as TRIDOM I), initiated in 2006 and completed in 2015³, and the Integrated and Transboundary Conservation of Biodiversity in the Basins of the Republic of Cameroon Project (also known as TRIDOM II for Cameroon, and referred to herein as TRIDOM II), approved in June 2017, and signed by UNDP and Cameroon in October and December 2017, respectively.⁴
3. OAI/SECU can investigate projects approved after 31 December 2014, and, as such, focused its investigation primarily on the TRIDOM II Project in Cameroon, i.e., OAI/SECU focused on compliance of the UNDP Cameroon Country Office (herein UNDP Cameroon) with UNDP environmental and social commitments in the context of TRIDOM II in Cameroon. This project has Atlas Project ID/Award ID number 00095686, and Atlas Output ID/Project ID number 00099740⁵, with a planned start date of October 2017 and planned end date of October 2023. UNDP is administering the USD 3,907,500 GEF Trust Fund portion of the project. The total budget for the project is USD 29,690,281. Parallel co-financing not administered by UNDP is being provided by the Government of Cameroon, Zoological Society of London (ZSL), International Union for Conservation of Nature (IUCN), World Wildlife Fund (WWF), African Wildlife Foundation (AWF), and United Nations Organization for Education, Science and Culture (UNESCO). The UNDP Budget and Workplan in the Prodoc indicates that USD 225,000 of the Trust Fund amount administered by UNDP is ‘ZSL, IUCN, WWF funds for the implementation of activities for the realization of Output 2.1 and Output 2.2 such as training of PA (protected area) managers to the use of data collection tools, introduction of SMART and cyber tracker system to monitor wildlife populations and support antipoaching activities in the PAs.’⁶

¹ Complainants submitted the complaint with the support of the non-government organization Survival International.

² The GEF-funded, UNDP-implemented projects in Congo include Conservation of Cross-Border Biodiversity in the Dja-Minkebe-Odzala-Dja Interzone between Cameroon, Congo and Gabon Project (also known as TRIDOM), Atlas Project ID / Award number: 00051146, and the Integrated and Transboundary Conservation of Biodiversity in the Basins of the Republic of Congo Project (also known as the TRIDOM II Project for Congo), Atlas Project ID/Award ID number: 00092643. Atlas Output ID/Project ID number: 00097266, UNDP-GEF PIMS ID number: 5612, GEF ID number: 9159, Starting date scheduled: April 2017, Expected Closing Date: March 2023.

³ UNDP, ‘Conservation of Cross-Border Biodiversity in the Dja-Minkebe-Odzala-Dja Interzone between Cameroon, Congo and Gabon Project (also known as TRIDOM)’, Atlas Project ID / Award ID number: 00051146, Project Approved for Implementation: May 2006, Project Closed: January 2017.

⁴ According to the GEF website, the project proposal was received by GEF 11 Jun 2015, the Preparation Grant was approved 02 Jul 2015, and the project was approved for implementation 15 Jun 2017.

⁵ The UNDP-GEF PIMS ID is 5610, and the GEF-ID is 9155.

⁶ UNDP Cameroon, ‘Integrated and Transboundary Conservation of Biodiversity in the Basins of the Republic of Cameroon Project Document (Prodoc)’. October 2017. p. 94

4. The project is a National Implementation Modality (NIM) project, implemented by the national Cameroon Ministry of Forestry and Wildlife (herein MINFOF), with UNDP providing operational support, e.g., providing procurement services, as well as monitoring the implementation of the project, reviewing progress in the realization of project outputs, and ensuring the proper use of UNDP/GEF funds.⁷
5. According to the Project Document (Prodoc), the project is focused on protecting biodiversity within the entire portion of the Tri-national Dja-Odzala-Minkebe landscape within Cameroon, including both established protected areas such as Nki National Park (Nki), as well as the 'interzone' territory between protected areas, 'Key project activities will be concentrated in the Tri-national Dja-Odzala-Minkebe portion of Cameroon, including existing PAs and interzone between them.'⁸ Outcome 3.1, for example, describes activities in protected areas, such as Nki, and the interzone, 'Wildlife crime is combated on the ground by strengthening enforcement operations across target PAs, interzones and key trafficking routes/hubs.'⁹ Enumerated project objectives include strengthening protected area governance and management, and reducing 'poaching' and illegal trafficking of threatened species throughout the project site.¹⁰ Nki is one of five protected areas involved in the project.
6. The Prodoc reflects an intention to involve local communities, 'The project will work with local and indigenous communities to involve them in the development of alternative sources of income to poaching, and linking conservation to economic opportunities.'¹¹
7. The protected areas and interzone are highly biodiverse areas in which Illegal Wildlife Trafficking (IWT) has increased significantly over the years.¹²

Project Area Map¹³

⁷ Id. p. 74, 'The UNDP will monitor the implementation of the project, review progress in the realization of project outputs, and ensure the proper use of UNDP/GEF funds. The UNDP Country Office (CO) will provide support services to the project - including procurement, contracting of service providers, human resources management, administration of project grant funding, and financial services - in accordance with a Letter of Agreement (LOA) attached in Annex 5 for the provision of support services concluded between the UNDP and the MINFOF. Costs of the support services will be covered by GEF funds. The UNDP CO will also ensure conformance with UNDP Programme and Operational Policies and Procedures and UNDP Results-Based Management (RBM) guidelines.'

⁸ Prodoc. October 2017. P.14.

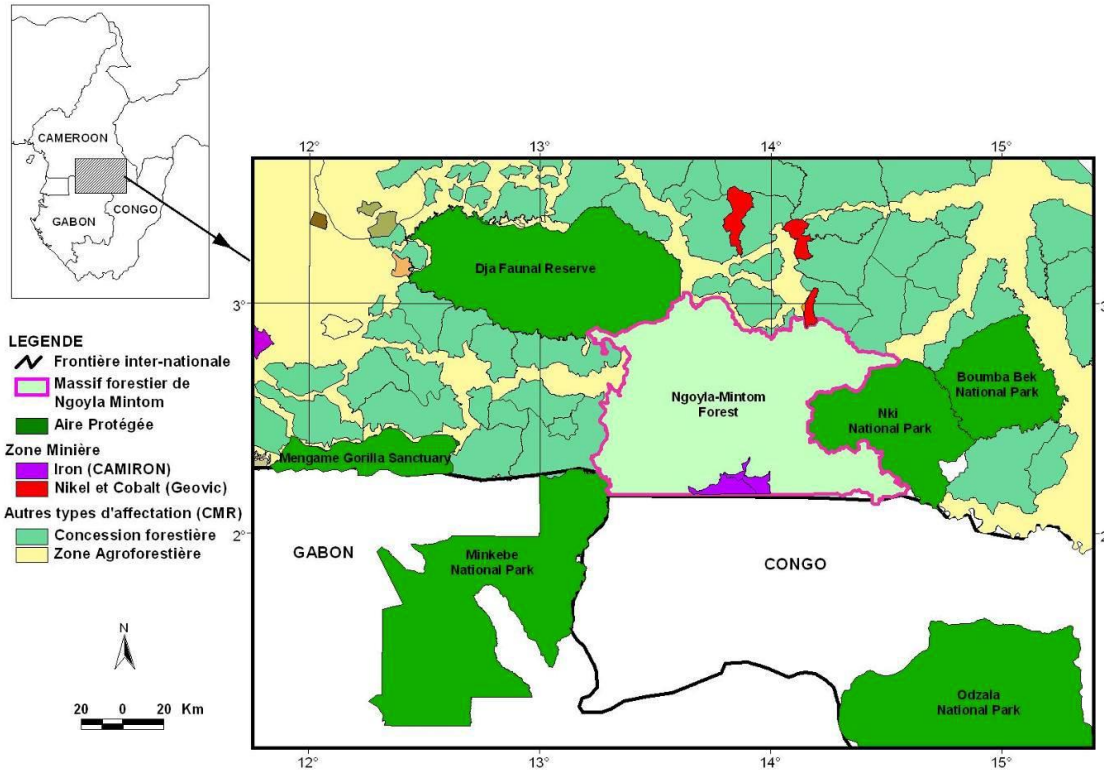
⁹ Prodoc. October 2017. pgs 95-100, Section 3. Budget and Workplan, includes additional descriptions of activities that will occur within Nki and other protected areas: 'Assistance to the PA managers in the development of management plans for ... Nki PAs...', 'training of PA managers to the use of data collection tools, introduction of SMART and cyber tracker system to monitor wildlife populations and support antipoaching activities in the PAs', and 'Provision of initial support for organization of regular anti-poaching patrolling in the targeted PAs...' among others activities. In addition to Nki, the project area other protected areas that are not a subject of this complaint.

¹⁰ Prodoc. October 2017. p. 1

¹¹ Prodoc. October 2017. p. 14.

¹² Prodoc. October 2017. p. 168

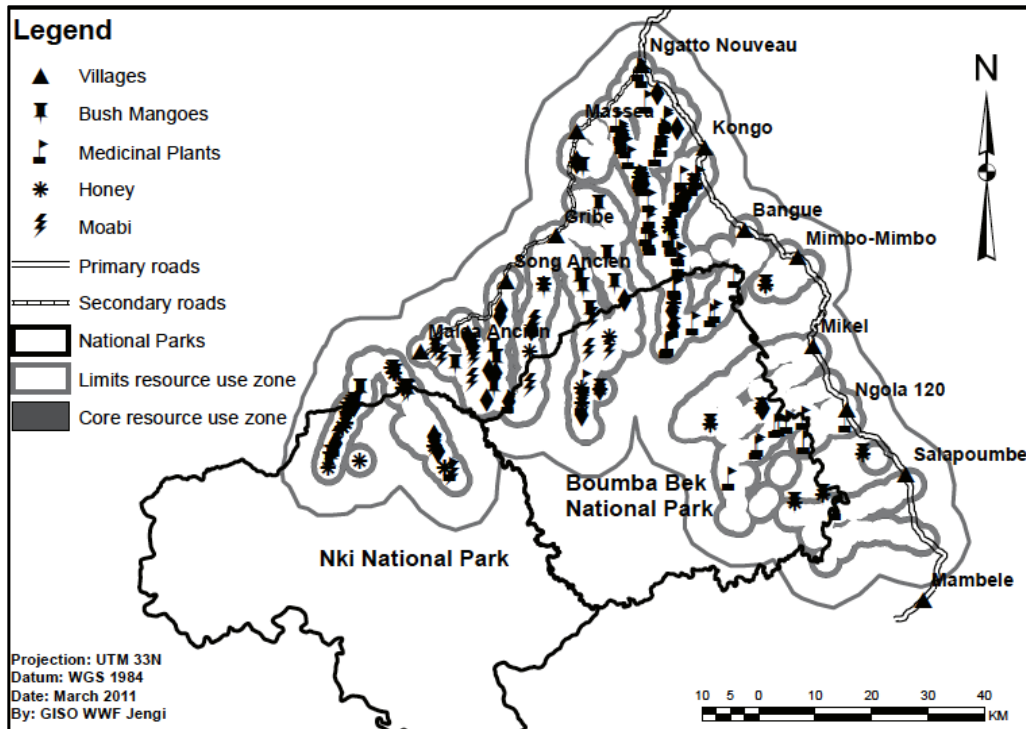
¹³ Prodoc. October 2017. p. 15. Figure 2. Project Area: Cameroon Segment of Tri-national Dja-Odzala-Minkebe transboundary area



8. According to a 2012 peer-reviewed publication written by WWF and IUCN staff (Tegomo et al), portions of the Nki project area include areas traditionally accessed by Indigenous hunter-gatherer communities (including Indigenous Baka communities, and Bantu communities) for natural resources that are critical to their survival, wellbeing and culture.¹⁴ These include communities living in villages outside of, but in close proximity to, Nki, such as Complainants.

Map of traditional resource use in Nki

¹⁴ Tegomo, O.N, Louis Defo, Leonard Usongo, 'Mapping of Resource Use Area by The Baka Pygmies Inside and Around Boumba-Bek National Park in Southeast Cameroon, With Special Reference to Baka's Customary Rights', African Study Monographs, Suppl. 43: 45-59, March 2012.



9. As described in both the Prodoc and Tegomo et. al, publication, although Baka and Bantu communities have traditionally accessed areas of Nki for resources critically important to their livelihoods and culture, human activities within Nki were forbidden or restricted under national law when Nki was established in 2005. The Prodoc states, ‘The proposed project’s targeted protected areas (Dja, Boumba-Bek, Nki, Ngoyla, and Mengamé) form a conservation area where all human activities are either forbidden or restricted.’ These restrictions, it notes, are enforced by patrol operations and Interpol, but implemented without an approved management plan, ‘Bi-national patrol operations are led with the Republic of Congo, as well as cooperation with Interpol. Nki National Park has no management plan; total staff counts 39 people, with 2 engineers and 37 eco-guardians.’¹⁵ The Tegomo et. al, publication states that the establishment of Nki and other national parks in Cameroon has led to ‘a significant restriction of the rights of people in the space concerned.’¹⁶ Other peer-reviewed articles provide documentation that such restrictions are supported by laws and have been implemented through violence perpetrated by ecoguards against the Baka and others.¹⁷

Complaint assertions

¹⁵ Prodoc. October 2017. p. 30. A management plan was drafted but not approved.

¹⁶ Tegomo, O.N, Louis Defo, Leonard Usongo, ‘Mapping of Resource Use Area by The Baka Pygmies Inside and Around Boumba-Bek National Park in Southeast Cameroon, With Special Reference to Baka’s Customary Rights’, African Study Monographs, Suppl. 43: 45–59, March 2012. Mapping exercises estimated use by the Baka of 260 km² of Nki. The Tegomo et. al, paper notes, ‘These figures clearly show that forest included in national parks ... are very relevant to Baka life in this region.’ And ‘As both game and useful plants become rarer in the nearby agro-forestry areas, the low penetration area could become more important for their hunting and gathering life.’

¹⁷ Tegomo, O.N, Louis Defo, Leonard Usongo, ‘Mapping of Resource Use Area by The Baka Pygmies Inside And Around Boumba-Bek National Park In Southeast Cameroon, With Special Reference To Baka’s Customary Rights’, African Study Monographs, Suppl. 43: 45–59, March 2012, and Pemunta N., Fortress conservation, wildlife legislation and the Baka Pygmies of southeast Cameroon, GeoJournal, July 2018.

10. The Complainants assert that TRIDOM II will continue to support restrictions on their traditional access to natural resources within Nki, restrictions that displace the Baka from their traditional territories, deeply affect their way of life and survival, and violate their rights. They claim that restrictions will occur, for example, through Project plans to support wildlife ecoguard patrols that do not recognize rights of the Baka to access their traditional resources, and that otherwise conflate traditional Baka resource gathering and hunting [within Nki], with resource gathering and hunting that is for, or by, elite poachers for non-traditional uses. They state, ‘The wildlife guards have abused us, beaten us and tortured us for more than 10 years.’¹⁸

UNDP Cameroon Response

11. In response to the complaints raised with OAI/SECU, UNDP Cameroon indicates it does not believe Complainants will be impacted by the project because (1) project activities are not occurring where the complainants’ villages are located,¹⁹ and (2) project activities target the interzone and not protected areas, such as Nki.²⁰ OAI/SECU took note of the UNDP Cameroon view that TRIDOM II will not affect the complainants because project activities will not be focused on protected areas such as Nki and there will be no activity in areas in which the complainants’ villages are located. OAI/SECU determined, however, that (1) Nki is part of the scope of TRIDOM II (for example, Outcome 3.1, in the Prodoc describes activities in protected areas such as Nki), and (2) communities have traditionally relied on access to Nki for their livelihoods, and previous restrictions on such access have violated their human rights.²¹
12. UNDP Cameroon also claims that project activities will not otherwise restrict traditional community access to resources because these activities will be consistent with national law, which recognizes user rights. UNDP Cameroon notes, the project ‘will not support community access restriction to natural resources in line with management plan according to the best

¹⁸ Among statements provided by communities in Cameroon include the following, ‘We, the undersigned Baka from the village of Zoulabot Ancien, would like to explain to you the suffering we are going through because of conservation. Nki National Park was created in 2005 and ever since we have lost the forest that our ancestors left us. We cannot go hunting safely, or climb trees to gather honey, or dig for wild yams or collect our medicinal plants. The wildlife guards have abused us, beaten us and tortured us for more than 10 years. We are told that international law and the OECD guidelines say that our free, prior and informed consent is required for these projects. We have not accepted these projects that are ruining our lives. We ask all those who are funding these projects to come and hear our suffering and seek our consent.’

¹⁹ In a 7 February 2020 document to OAI/SECU, the UNDP CO notes, ‘TRIDOM I activities were not concentrated on site occupied by Baka communities of Zoulabot Ancien. That is the reason why TRIDOM II formulation during 2017 has not taken into consideration Baka communities of Zoulabot Ancien. In the UNDP CO’s initial response to the complaint, it notes, ‘none of the specific geographic areas mentioned in the letters of complaint attached to Survival’s letter are areas where UNDP has implemented or plans to implement its work.’

²⁰ UNDP Cameroon made these statements in in-person interviews with OAI/SECU and in written correspondence. In a 7 February 2020 letter to OAI/SECU, UNDP Cameroon notes ‘the main activities of TRIDOM II will be focused on the connection between the targeted protected areas’ and ‘the activities of project will focus on reducing the key threats to biodiversity in the area between protected areas.’

²¹ Pemunta N., *Fortress conservation, wildlife legislation and the Baka Pygmies of southeast Cameroon*, *GeoJournal*, July 2018, “In Cameroon and most of Africa, the government owns and control forest management activities. Local communities have therefore lost local autonomy and resist incursions of the state (frontier violence), the state in turn attempts “to criminalize” local customary rights over access to, and control over, local forest products” (Peet and Watts 2004:23). Traditional hunting is accordingly equated with “game theft”, or poaching, and the gathering of fuelwood with “forest felling” and “Traditional hunting is strictly prohibited from protected areas—national parks, wildlife reserves, integral ecological reserves, hunting areas, State ranches, and zoological gardens of the State, wildlife sanctuary, and buffer zone (1994 Law, Articles 8 and 81), and, Tegomo, O.N, Louis Defo, Leonard Usongo, ‘Mapping of Resource Use Area By The Baka Pygmies Inside And Around Boumba-Bek National Park In Southeast Cameroon, With Special Reference To Baka’s Customary Rights’, *African Study Monographs*, Suppl. 43: 45–59, March 2012.

practice of national forestry law’ and ‘The national forestry law recognizes user rights for each indigenous peoples and local communities within and around protected area.’²²

13. UNDP Cameroon confirmed that ecoguards can be a source of problems, ‘Yes, indeed some wildlife guards use their power to intimidate communities members’ to prevent traditional hunting and resources gathering, but claims measures have been taken to reverse this situation, ‘including a Manual on Human Rights to train the wildlife guards in an attempt to reverse actions by the eco-guards that violate rights’ and plans to include communities in monitoring of poaching.²³
14. The Prodoc does not acknowledge that free, prior, informed consent (FPIC) is necessary for activities that may adversely affect the existence, value, use or enjoyment of indigenous lands, resources or territories [including untitled territories].²⁴ However, UNDP Cameroon stated in written correspondence with OAI/SECU that project activities ‘will be built on appropriate inclusive FPIC consultation with communities including Baka with other stakeholders’ and UNDP Cameroon ‘will develop a detailed action plan to integrate measures to mitigate the risks.’²⁵ Additionally, UNDP Cameroon indicated that a February 2019 Memorandum of Understanding (MOU) between the Cameroon Ministry of Forests and Wildlife (MINFOF) and ASBABUK, a local NGO representing Baka communities, addresses ‘Baka indigenous peoples concerns in relation to Nki management plan.’ As detailed more below, the effectiveness of this MOU depends on an action plan that has not been developed.
15. UNDP Cameroon notes that the TRIDOM II project was officially launched in December 2018, and field activities paused in March 2019, ‘Initial project activities (discussions with potential Responsible Parties, establishing office space, etc.) took place in early January 2019 before all field activities were paused in March 2019 in response to the SECU investigation.’

OAI/SECU Investigation Timeline

16. On 24 October 2018, OAI/SECU determined the complaint met the criteria necessary for OAI/SECU to investigate UNDP's compliance with its social and environmental commitments and posted the signed Eligibility Determination on its public registry available at www.undp.org/secu.

²² In a 7 February 2020 letter to OAI/SECU, UNDP Cameroon claimed that studies from 2006 – 2008 support the idea that restrictions on community access have not led to displacement and eviction, noting that measures to avoid restrictions on community access within and adjacent to Nki ‘have been taken into consideration’ and that, as a result, eviction and displacement has ‘not increasingly occurred.’

²³ Response from UNDP Cameroon to OAI/SECU request for additional information. 7 February 2020. UNDP Cameroon also claims that at Zoulabot Ancien (where Complainants’ villages are located) communities confuse guards hired by a private French company to manage a hunting zone with ecoguards protecting Nki.

²⁴ SES Standard 6 states that FPIC is required for, among other reasons, ‘any matters that may affect the rights and interests, lands, resources, territories (whether titled or untitled to the people in question) and traditional livelihoods of the indigenous peoples concerned. Project activities that may adversely affect the existence, value, use or enjoyment of indigenous lands, resources or territories shall not be conducted unless agreement has been achieved through the FPIC process.’

²⁵ Response from UNDP Cameroon to OAI/SECU request for additional information. 7 February 2020.

17. OAI/SECU undertook a document review and, from 12 February 2019 to 1 March 2019, traveled to Cameroon to interview complainants, UNDP staff, relevant government officials, relevant civil society organizations, technical experts and others. OAI/SECU wishes to express its appreciation for the assistance provided by UNDP Cameroon, the Complainants, and all other interviewees - all of whom sought to better understand the compliance issues in the project as well as possible solutions.
18. Upon completion of the review, OAI/SECU prepared the following findings and recommendations.

Finding 1 - Screening

19. UNDP Cameroon did not screen project activities in TRIDOM II in a manner consistent with SES requirements. The screening procedure is designed to help UNDP Country Offices identify risks posed to human rights and the environment, the significance of those risks, and the types of measures necessary to respond to them. The procedure is useful, however, only to the extent it: (1) accurately identifies communities that might be impacted and how they might be impacted; (2) is based on an accurate definition of risk – ‘risk’ must be defined as risk that exists in the absence of any risk mitigation measures (avoiding assumptions that risks mitigation measures will work); and (3) includes responses to Screening Checklist Questions that reflect an accurate understanding of the SES and all facts. The screening procedure did not satisfy these requirements.
20. In this instance, UNDP Cameroon did not accurately identify all communities that might be impacted and how they might be impacted. This appears to stem from the following misconceptions: (1) project activities in Nki and other national parks in Cameroon are not significant relative to activities in the interzone; and (2) communities living in the ‘far east zone’ outside of Nki (including complainants who have villages in Zoulabot Ancien) will not be impacted by project activities in Nki. The project document, including budget itemizations, confirm that important project activities will occur in Nki and other protected areas, including activities that will continue restrictions on access to natural resources. Additionally, experts have documented that hunter-gatherer communities, including communities with villages in Zoulabot Ancien, have (1) traditionally relied on access to Nki for natural resources; (2) been significantly adversely impacted by access restrictions advanced by national law and policy; and (3) have been subjected to violence as a means of enforcing such restrictions.²⁶
21. UNDP Cameroon also did not define ‘risk’ to communities as risk that exists prior to mitigation measures, as required. Responses to several screening questions instead assume that mitigation measures will avoid important risks. For example, the SESP described that risks to the rights of Indigenous peoples were low because ‘continuous consultation’ and ‘effective participation’ will ensure respect for rights, and ‘special arrangements for their use of natural resources and activities even within protected areas will enable them to maintain their subsistence and traditional livelihoods.’ Because risks to rights were deemed ‘low’ UNDP Cameroon created an inaccurate perception that it did not need to meet SES and SESP

²⁶ Tegomo, O.N, Louis Defo, Leonard Usongo, ‘Mapping of Resource Use Area By The Baka Pygmies Inside And Around Boumba-Bek National Park In Southeast Cameroon, With Special Reference To Baka’s Customary Rights’, African Study Monographs, Suppl. 43: 45–59, March 2012., and Pemunta N., Fortress conservation, wildlife legislation and the Baka Pygmies of southeast Cameroon, GeoJournal, July 2018.

requirements for moderate or high risk projects, and, in turn, avoided requirements to describe when and how additional full assessments would be pursued and to budget for these.

22. UNDP Cameroon has since acknowledged to OAI/SECU that it failed to accurately categorize project risks, and 'with regards to the updated information available, the level of risk will be reviewed and re-rated.'²⁷
23. UNDP Cameroon did not provide, in response to all screening questions, answers that reflect an accurate understanding of the SES and documented facts. UNDP Cameroon, indicated, for example, that activities that are (1) consistent with national law, and (2) continue existing restrictions in protected areas, could not violate rights. The SES requires project activities to be consistent with 'Applicable Law', which includes not only national law, but also International Law. The 'higher' standard must be met. If project activities will continue current restrictions that are not consistent with International Law, these activities will not ensure respect for rights.

Recommendation 1

24. Screen final drafts of the Prodoc in a manner consistent with SES requirements, properly identifying potentially affected communities, categorizing project risks on the basis of all available information and analyzing these risks as if no mitigation measures have been put in place, identifying additional required assessments and how they will be implemented, and identifying SES standards that will apply to the project.

Finding 2 - Indigenous Peoples Plan/Management Plan

25. The Prodoc does not include or reference a required 'management plan' to address risks identified during the screening and assessment process. The SES prescribes that when Indigenous Peoples might be impacted (as here), this plan takes the form of an Indigenous Peoples Plan. It further notes, however, that if a full Indigenous Peoples Plan cannot be developed prior to project approval due to budget limitations, an initial management plan containing as many IPP components as possible must be provided.
26. The Prodoc includes one component of an IPP – a Stakeholder Engagement Plan – that provides the following single mention of the Baka, 'villages and camps in the Baka massif' but does not provide a location or any description of the Baka communities. It relatedly acknowledges a need for 'continuous consultation' with Indigenous communities, and for the project to benefit these communities.²⁸ The Prodoc reflects a commitment to later develop

²⁷ Response from UNDP Cameroon to OAI/SECU request for additional information. 7 February 2020.

²⁸ As noted in the Stakeholder Engagement Guidance Note, "The stakeholder engagement plan guides stakeholders and project implementers as to when, how and with whom consultations and exchanges should be undertaken throughout the life of the project' and 'A key objective at this stage is to properly identify key stakeholders who may have a strong interest in or ability to influence what is being planned, including potential groups who may benefit from the project, those who may also be adversely impacted, and groups potentially opposed to the planned interventions.' The Stakeholder Engagement plan is based on the project's stakeholder analysis, and, as such, when this analysis is not complete, the stakeholder engagement plan will be incomplete. The 'stakeholder analysis' in the Prodoc provides no description of communities potentially impacted, providing only descriptions such as the following, 'Key beneficiaries of the project. Implication of local populations contributes to an inclusive project management in the project area. During this project, communities will be involved in PA management plan development, and community forestry development

additional robust stakeholder engagement plans, 'the involvement of stakeholders in project activities will be guided by robust stakeholder engagement plans. These stakeholder engagement plans will also make provision for conflict management with different categories of user groups.'²⁹

27. In a request from OAI/SECU for additional information, UNDP Cameroon stated it 'will support characterization and mapping of indigenous people communities in the project area' and integrate this information in the project document, develop 'a detailed action plan to integrate measures to mitigate the risks' and ensure that 'project activities will be built on appropriate, inclusive FPIC consultation with communities including Baka with other stakeholders.'³⁰
28. Moreover, UNDP Cameroon indicated that a February 2019 Memorandum of Understanding (MOU) between the Cameroon Ministry of Forests and Wildlife (MINFOF) and ASBABUK, a local NGO representing Baka communities, addresses 'Baka indigenous peoples concerns in relation to Nki management plan.'
29. SECU observes that while the MOU acknowledges a need to respect the rights of the Baka and the importance of Baka access to resources, it does not include a description of these rights or areas to which communities have access. According to the MOU, details such as these are to be included in an 'action plan'³¹ – a plan that has not yet been developed, and for which the MOU does not specify a process for development. Additionally, the MOU does not clearly have the consent of all relevant parties.

Recommendation 2

30. Consistent with the SES, create an Indigenous Peoples Plan in consultation with potentially affected Indigenous communities and include the following components: (1) a description of potentially-impacted Indigenous Peoples and their locations, customary lands and resources; (2) a summary of their substantive rights; (3) a plan for engaging communities, and for securing free, prior, informed consent (FPIC) of Indigenous peoples for activities that might impact their rights and/or traditional livelihoods; and (4) a plan for monitoring activities – including 'participatory joint monitoring of Project implementation with indigenous peoples.'³² Ensure that the plan is created transparently, in a manner consistent with local community decision-making processes - including through community-chosen representatives - and through a process that communities trust and have the financial and technical capacity to participate in effectively and free from undue influence.

(Component 3).' As a result, the provided Stakeholder Engagement Plan does not identify or substantively describe potentially-impacted Baka (or other Indigenous) communities – particularly those communities traditionally accessing but not living in Nki - the significant challenges that exist to effective engagements with the Baka, and measures to address these challenges. Most significantly, it does not acknowledge a need for free, prior, informed consent (FPIC), and that FPIC is necessary to ensure the substantive rights of the Baka. Relatedly, although the TRIDOM II Prodoc identified a need to include communities in 'anti-poaching' and Illegal Wildlife Trafficking (IWT) efforts, support community conservation areas, and provide community benefits, the Prodoc does not describe how or when these efforts would occur.

²⁹ Prodoc, October 2017, p.64.

³⁰ Response from UNDP Cameroon to OAI/SECU request for additional information. 7 February 2020.

³¹ Id. para. 2. 'The Parties hereby undertake to draw up an action plan each year that shall specify all activities to be undertaken in the targeted Protected Areas and their vicinities in accordance with the terms hereof.'

³² Guidance Note, UNDP Social and Environmental Standards, Standard 6: Indigenous Peoples'. January 2017. p. 4

Finding 3 – Grievance Mechanism

31. The Prodoc does not describe a project-level grievance mechanism that meets SES requirements to, ‘address concerns promptly through dialogue and engagement, using an understandable and transparent process that is culturally appropriate, rights-compatible, and readily accessible to all stakeholders at no cost and without retribution.’ The local communities were not aware of such a mechanism, nor did OAI/SECU find evidence a UNDP-supported one existed.

Recommendation 3

32. Consistent with the SES, create a grievance mechanism that effectively responds to community concerns regarding this project.

II. COMPLETE FINDINGS AND RECOMMENDATIONS

FINDINGS

Finding 1: Requirement to Adequately Screen for Risks

33. OAI/SECU finds that UNDP Cameroon did not screen project activities in a manner consistent with SES requirements. The SES requires screening of all proposed activities to ensure that risks to local communities and the environment are identified and addressed.
34. Although UNDP Cameroon applied UNDP’s Social and Environmental Screening Procedure (SESP) to the TRIDOM II project, a positive sign that the Country Office recognizes the need for adherence to the SES, the application was not rigorous enough and led to an incorrect identification and characterization of risks.
35. The application was not rigorous enough in at least three ways. First, screening did accurately identify communities that might be impacted and how they might be impacted. Second, responses to Screening Checklist Questions relied on an inaccurate definition of risk. Third, responses to Screening Checklist Questions did not reflect an accurate understanding of the SES and all facts.
36. Ultimately, UNDP Cameroon concluded that the Project faced only two social risks: ‘the presence of Indigenous peoples in the project area’ and ‘claims by the Indigenous peoples to lands and territories within this area.’³³ As detailed below, UNDP Cameroon inaccurately characterized the impact and probability of these risks as ‘low.’

Incomplete identification of communities potentially impacted

37. UNDP Cameroon did not accurately identify communities that might be impacted and how. This appears to stem from the following misconceptions: (1) project activities in Nki and other national parks are not significant - only activities in the interzone should be considered in the context of this complaint; and (2) communities (such as complainants) living to the northeast of Nki, and outside the project area, cannot be impacted by project activities.

³³ Prodoc. October 2017. p. 133

38. UNDP Cameroon described to OAI/SECU in in-person interviews and in written documents that the project was not focused on protected areas, 'The activities of project will focus on reducing the key threats to biodiversity in the area between the protected area.'³⁴ And the screening document reflected a perception that impacts to Indigenous communities would occur only through project activities in the interzone, particularly 'new wildlife and NTFP [Non-timber forest products] use management practices in the interzone.'³⁵
39. However, the Prodoc (including budget itemizations), describes important and significant project activities in Nki and other protected areas, including measures to restrict access to natural resources. Outcome 3.1, for example, describes activities in protected areas (including Nki), and the interzone, 'Wildlife crime is combated on the ground by strengthening enforcement operations across target PAs, interzones and key trafficking routes/hubs.'³⁶ Enumerated project objectives include strengthening protected area governance and management, and reducing 'poaching' and illegal trafficking of threatened species throughout the project site. Correspondence from UNDP Cameroon to OAI/SECU similarly states, 'The project intends to provide support to update Nki National Park Management Plan....'³⁷
40. UNDP Cameroon also shared with OAI/SECU a belief that Complainants and other Indigenous communities living to the 'far east zone of Tridom', outside of Nki, cannot be impacted by project activities within Nki. This belief is not consistent with information reflected in publicly-available peer-reviewed documents: That Baka communities living within this zone have traditionally relied on access to resources within Nki for their culture and wellbeing, and restrictions on access to Nki will, as a result, significantly impact their rights.³⁸

Incorrect definition of risk

41. UNDP Cameroon did not apply the correct definition of risk. The SESP requires that risks must be 'be identified and quantified as if no mitigation or management measures were to be put in place' because proposed mitigation measures do not always provide expected results. UNDP Cameroon incorrectly characterized several important risks as 'low' based on assumptions that mitigation measures would successfully avoid or mitigate these risks.
42. For example, the following chart includes questions to which UNDP Cameroon provided a 'no' response based on *assumptions* that identified mitigation measures *would successfully avoid or minimize risks*.

Chart 1. Risk Mitigation Measures Upon Which Several 'No' Responses to Screening Checklist Questions Were Built

³⁴ Response from UNDP Cameroon to OAI/SECU request for additional information. 7 February 2020. p. 9. This correspondence also states, 'The main activities of TRIDOM II will be focused on the connection between the targeted protected areas....'

³⁵ Tegomo, O.N, Louis Defo, Leonard Usongo, 'Mapping of Resource Use Area by The Baka Pygmies Inside and Around Boumba-Bek National Park in Southeast Cameroon, With Special Reference to Baka's Customary Rights', African Study Monographs, Suppl. 43: 45-59, March 2012. The publicly-available Tegomo et. al article describes one such effort.

³⁶ Prodoc. October 2017. p. 39

³⁷ Response from UNDP Cameroon to OAI/SECU request for additional information. 7 February 2020.

³⁸ Tegomo, O.N, Louis Defo, Leonard Usongo, 'Mapping of Resource Use Area by The Baka Pygmies Inside and Around Boumba-Bek National Park in Southeast Cameroon, With Special Reference to Baka's Customary Rights', African Study Monographs, Suppl. 43: 45-59, March 2012.

SESP Questions About Risks	CO Response	Risk Mitigation Measures upon which 'no' responses were based
Could the Project lead to adverse impacts on enjoyment of the human rights ... of the affected population and particularly of marginalized groups?	No - 'The project has no negative impact on rights'	The 'project will strengthen the concept of fairness and justice.... areas of high cultural conservation value will be protected.'
Is there likelihood that the Project would have inequitable or discriminatory adverse impacts on affected populations, particularly people living in poverty or marginalized or excluded individuals or groups?	No - 'The project has no inequitable ...impacts'	'the poorest... will benefit'
Is there a likelihood that the Project would exclude any potentially affected stakeholders, in particular marginalized groups, from fully participating in decisions that may affect them?	No - No likelihood project would exclude potentially affected stakeholders	'Several consultative frameworks will be set up...to guarantee the participation of the communities'
Is there a risk that duty-bearers do not have the capacity to meet their obligations?	No - 'There is no risk' duty-bearers cannot meet obligations	'a capacity building program will be implemented'
Is there a risk that rights-holders do not have the capacity to claim their rights?	No - No risk rights-holders do not have capacity to claim rights	'The capacity building program will also involve rights-holders'
Is there a risk the Project would exacerbate conflicts or risks of violence to communities?	No - 'There are no risks'	'the project's actions will take place in close collaboration with all the stakeholders and in strict compliance with legislation.'
Would the project potentially affect the human rights, lands, natural resources, territories, and traditional livelihoods of indigenous peoples (regardless of whether they possess the	No - 'The proposed Project will not affect the human rights, lands, natural resources, territories, and traditional livelihoods'	This 'no' response was explained by the response to the first question relating to whether the project could impact human rights, 'this project

SESP Questions About Risks	CO Response	Risk Mitigation Measures upon which 'no' responses were based
legal title or the Project is located outside of the lands and territories inhabited by affected peoples.		will strengthen the exercise of human rights by strengthening the concept of fairness and justice among the beneficiaries.'
8. Would the Project adversely affect the development priorities of indigenous peoples as defined by them?	No – 'Not at all'	'The project rather supports projects, initiatives and interests of the Baka.'
9. Would the Project potentially affect the physical and cultural survival of indigenous peoples?	No	'The project rather supports projects, initiatives and interests of the Baka.'

43. According to evidence secured by OAI/SECU, in the absence of an assumption that mitigation measures would succeed, each of the identified risks would be at least moderate, and very likely high. The Chart below provides examples of evidence reflecting that these risks are moderate or high in the absence of mitigation measures.

Chart 2. Examples of Evidence that Risks are at least Moderate and Likely High Without Mitigation Measures

SESP Questions About Risks <i>(for which responses indicated 'no' risk based on assumption that mitigation measures would succeed)</i>	Examples of Evidence <i>(that risks are at least moderate, and likely high, before mitigation measures are applied)</i>
1. Could the Project lead to adverse impacts on enjoyment of the human rights ... of the affected population and particularly of marginalized groups?	An article published in 2012 by individuals working for WWF and IUCN (Tegomo et. al.) reflects that Baka communities have traditionally accessed Nki, and that Nki (as well as adjacent Boumba Bek National Park) represented a 'significant restriction' on rights, 'Indeed, as previously stated, the creation of national parks implies a significant restriction of the rights of people in the space concerned.' ³⁹ Government officials confirmed to OAI/SECU that Cameroon law restricts Baka activities in Nki. Other peer-reviewed publications document that such restrictions

³⁹ Tegomo, O.N, Louis Defo, Leonard Usongo, 'Mapping of Resource Use Area by The Baka Pygmies Inside and Around Boumba-Bek National Park in Southeast Cameroon, With Special Reference to Baka's Customary Rights', African Study Monographs, Suppl. 43: 45-59, March 2012.

SESP Questions About Risks <i>(for which responses indicated ‘no’ risk based on assumption that mitigation measures would succeed)</i>	Examples of Evidence <i>(that risks are at least moderate, and likely high, before mitigation measures are applied)</i>
	<p>have been advanced through violence against the Baka by ecoguards.⁴⁰ Project activities, as described in the Prodoc, will continue to support access restrictions and ecoguard patrols, but with no explicit commitment to (1) identify substantive rights of the communities to access resources within Nki; (2) analyze whether existing law/policy is consistent with international human rights standards; and (3) identify and implement measures to secure the rights of communities to traditional access. A 2018 article (Pemunta et. al) describes that restrictions in protected areas in Cameroon, such as Nki, do not acknowledge and respect customary rights, and significantly adversely impact the Baka and other Indigenous communities.</p>
<p>2. Is there likelihood that the Project would have inequitable or discriminatory adverse impacts on affected populations, particularly people living in poverty or marginalized or excluded individuals or groups?</p>	<p>See above.</p>
<p>3. Is there a likelihood that the Project would exclude any potentially affected stakeholders, in particular marginalized groups, from fully participating in decisions that may affect them?</p>	<p>To date, the exclusion of Baka communities from decision-making process that have impacted them has been well documented. For example, the WWF/IUCN paper describes that consultations to establish Nki (and other protected areas) were based on an inadequate identification and understanding of the Baka and their customary rights, ‘Even though we appreciate efforts made by different actors, from the technocrats who designed the zoning plan to the authorities that created the regulatory framework specifically for this exercise, it is important to raise concerns on the unsatisfactory involvement of the Baka hunter-gatherers in the zoning process.’⁴¹ “In</p>

⁴⁰ Pemunta N., Fortress conservation, wildlife legislation and the Baka Pygmies of southeast Cameroon, GeoJournal, July 2018

⁴¹ Id. The paper also notes, ‘During the process, the recognition of “human occupation of territory” was limited only to clear indicators of human inhabitation such as settlements, farming fields and fallows that can be identified by aerial photographs and satellite images (Côté, 1993) ...this procedure can only take into account the land used by sedentary farmers, and the mode of occupation and exploitation by the semi-nomadic hunter-gatherers were largely invisible and ignored.’

SESP Questions About Risks <i>(for which responses indicated ‘no’ risk based on assumption that mitigation measures would succeed)</i>	Examples of Evidence <i>(that risks are at least moderate, and likely high, before mitigation measures are applied)</i>
	<p>addition ... we realize that the zoning process did not guarantee an optimal involvement of the Baka in the process.... given the above procedure of regulatory framework, the participation of Baka in the zoning process was very small.’⁴² The UNDP CO additionally confirmed that consultations with the Baka under TRIDOM I were limited.</p> <p>UNDP Cameroon’s failure to acknowledge that existing restrictions in Nki were based on inadequate consultation and consent processes, and that Baka communities living near Zoulabot Ancien Nki could be impacted by project activities in Nki, creates new risks that not all communities will be appropriately involved in current decision-making processes.</p>
<p>4. Is there a risk that duty-bearers do not have the capacity to meet their obligations?</p>	<p>The Prodoc includes several observations challenging the idea that duty-bearers currently have the capacity to meet their obligations, including the observation, ‘Forestry agents do not always know or understand forestry code properly and often get into conflicts with local communities regarding forest resources use.’⁴³</p>
<p>5. Is there a risk that rights-holders do not have the capacity to claim their rights?</p>	<p>Communities interviewed by OAI/SECU did not understand their rights or how to claim them.</p>
<p>6. Is there a risk the Project would exacerbate conflicts or risks of violence to communities?</p>	<p>As noted in response to 4., the Prodoc recognizes violence that has occurred through restrictions on access to resources. ⁴⁴ Several peer-reviewed papers additionally corroborate that violence against Indigenous communities has occurred.⁴⁵ First-hand accounts from community members that conflicts among the Baka and Bantu communities have increased as restrictions on access has led to decreased resource availability reflect a risk that the</p>

⁴² Id. p. 50.

⁴³ Prodoc, October 2017. p. 16

⁴⁴ Id.

⁴⁵ See review of Pemunta N., Fortress conservation, wildlife legislation and the Baka Pygmies of Southeast Cameroon, GeoJournal, July 2018

SESP Questions About Risks <i>(for which responses indicated ‘no’ risk based on assumption that mitigation measures would succeed)</i>	Examples of Evidence <i>(that risks are at least moderate, and likely high, before mitigation measures are applied)</i>
	Project could exacerbate conflicts and violence to and among communities.
7. Would the project potentially affect the human rights, lands, natural resources, territories, and traditional livelihoods of indigenous peoples (regardless of whether they possess the legal title or the Project is located outside of the lands and territories inhabited by affected peoples.	See response to 1., above. Note also that the SESP specifies that a ‘yes’ answer to this question means ‘the potential risk impacts are considered potentially severe and/or critical and the Project would be categorized as either Moderate or High Risk.’
8. Would the Project adversely affect the development priorities of indigenous peoples as defined by them?	See responses to 1., and 3., above.

44. Despite the inaccurate responses to screening questions, UNDP Cameroon recently acknowledged some previously overlooked risks, including, for example, risks related to violence against the Baka. It stated it would prepare ‘a detailed action plan to integrate measures to mitigate the risks.’⁴⁶

45. It also noted that a ‘Manual on Human Rights’ has been developed to provide guidance to ecoguards. OAI/SECU observes that while the manual provides a useful description of procedures ecoguards should use to avoid violating procedural rights of the communities, e.g., due process-related procedures, it does not describe all relevant substantive rights of communities to access traditional resources. As a result, ecoguards could still be preventing access in violation of community rights, albeit in potentially less aggressive ways.

Incomplete Understanding of SES Requirements and Facts

46. UNDP Cameroon did not provide, in response to all screening questions, answers that reflect an accurate understanding of the SES and documented facts. UNDP Cameroon indicated, for example, that if activities in protected areas are only continuing existing restrictions that are consistent with national law, they could not violate rights.

47. As depicted in the following chart, UNDP Cameroon’s ‘No’ responses to several Screening Checklist Questions are explicitly predicated on an assumption that National Law adequately protects the rights of the Baka to access natural resources in Nki.

Chart Indicating That Several ‘No’ Responses to Screening Checklist Questions Were Built on an Assumption that National Law Adequately Protected Rights

⁴⁶ Response from UNDP Cameroon to OAI/SECU request for additional information. 7 February 2020.

SESP Questions About Risk	CO Response	National Law reference
Could the project potentially restrict availability, quality of and access to resources, in particular to marginalized groups	No – ‘The project does not restrict availability, quality of, and access to resources.’	‘In protected areas and in the interzone, resource management is just regulated for all communities. Baka populations have a particular regime of access to resources in protected areas that takes into account their vital and cultural needs.
Would the Project possibly result in economic displacement (e.g., loss of assets or access to resources due to land acquisition or access restrictions)?	No	Project activities ‘will be implemented on sites already settled as protected areas. There will be no new protected areas created.’
Would the proposed Project possibly affect land tenure arrangements and/or community-based property rights/customary rights to land, territories and/or resources?	No	Same reason as above.
Is there a potential for economic displacement of indigenous peoples, including through access restrictions to lands, territories, and resources?	No – ‘there is no potential for...economic displacement...including through access restrictions.’	Same reason as above.

48. The Prodoc acknowledges that in protected areas, such as Nki, all human activities are forbidden or restricted, ‘The proposed project’s targeted protected areas ... Nki, ... form a conservation area where all human activities are either forbidden or restricted’ including by ‘patrol operations and Interpol and without an approved management plan.’⁴⁷ The Prodoc further describes that project activities will continue to support patrol operations and other measures that restrict access to Nki.

49. However, as reflected by the responses to the Screening Checklist Questions, above, UNDP Cameroon believes that risks related to such restrictions are not relevant because (1) the Baka have ‘a particular regime of access to resources in protected areas that takes into account their vital and cultural needs;’ and (2) project activities ‘will be implemented on sites already settled as protected areas. There will be no new protected areas created.’⁴⁸More

⁴⁷ Prodoc, October 2017. p. 29-30

⁴⁸ In response to the question for Principle 1: Human Rights is, ‘Could the Project potentially restrict availability, quality of and access to resources or basic services, in particular to marginalized individuals or groups?’ and the similar question

recently, UNDP Cameroon suggested that restrictions on Baka access were no longer a significant issue because the government 'proposed to develop a management plan that recognizes the customary rights.' The Prodoc, however, reflects that this plan has not been approved.⁴⁹

50. The perspective that Cameroon law effectively protects the Baka's rights to access natural resources, however, does not match nearly all other accounts of the law, including as provided by government representatives. Nor does it reflect past or current practice. Although Cameroon law provides some acknowledgement of user rights - it recognizes that local people have the 'right of use' including use of forest products, wildlife and fisheries'⁵⁰ – OAI/SECU determined that the law does not clearly protect Baka access to natural resources in Nki or the interzone. This perspective was shared in peer-reviewed articles published before TRIDOM II was approved. For example, the 2012 Tegomo et. al article confirmed that Nki (as well as adjacent Boumba Bek National Park) represented a '*significant restriction*' on rights, 'Indeed, as previously stated, the creation of national parks implies a significant restriction of the rights of people in the space concerned.'⁵¹ Restrictions in Nki were also reflected in an 'anti-poaching' protocol adopted during TRIDOM I. This protocol incentivizes ecoguards to act against any individual with a 'wildlife product' in protected areas. A consultant to the TRIDOM II project recommended that the protocol be revamped due to the heavy-handed approach of anti-poaching squads against local communities, stating, 'They (communities) can also be very negatively affected by heavy-handed, militarized responses to wildlife crime, that frequently make little distinction between the illegal activities driven by large scale profits (crimes of greed) versus those driven by poverty (crimes of need).'⁵² Most recently, representatives of the Ministry of Environment shared with OAI/SECU a

for Standard 5: Displacement and Resettlement is 'Would the Project possibly result in economic displacement (e.g., loss of assets or access to resources due to land acquisition or access restrictions...?', the UNDP CO responded, 'Project activities will not involve relocation or displacement because they will be implemented on sites already settled as protected areas. There will be no new protected areas created.' UNDP Cameroon provided the same response to a question relating to Standard 1: Biodiversity Conservation and Sustainable Natural Resource Management, about whether the Project would involve changes to the use of lands that may have adverse impacts on livelihoods. Note that the SES requires that the UNDP CO ensure consistency with 'Applicable Law' including not only national law, but also international law, including the UN Declaration on the Rights of Indigenous Peoples' whichever provides the higher standard.

⁴⁹ The Prodoc states, 'The proposed project's targeted protected areas ... Nki, ... form a conservation area where all human activities are either forbidden or restricted' including by 'patrol operations and Interpol and *without an approved management plan.*' (italics added), Prodoc. p. 29-30.

⁵⁰ The Annex to the Prodoc implies that these rights are limited, describing that current proposed revisions to the law would incorporate 'concerns beyond use rights'

⁵¹ Tegomo, O.N, Louis Defo, Leonard Usongo, 'Mapping of Resource Use Area by The Baka Pygmies Inside and Around Boumba-Bek National Park in Southeast Cameroon, With Special Reference to Baka's Customary Rights', African Study Monographs, Suppl. 43: 45-59, March 2012. This article was based on research and mapping efforts that began prior to 2008 (described in this report) in collaboration with FPP and other entities to map use in Boumba Bek and Nki. p. 5, 'During 2006 in conjunction with WWF, FPP supported local partners to initiate more mapping processes with forest communities from around Nki and Boumba-Bek National Parks, and this is supporting 2008 discussions concerning the development of management plans for both parks. These processes are targeting the establishment of specific protections for community forest rights in and around both of these new national parks, which are part of the TRIDOM conservation landscape established through the Congo Basin Forest Partnership.'

⁵² Ajonina, Gordon. Integrated and Transboundary Conservation of Biodiversity in the Basins of the Republic of Cameroon – Final Consultancy Report. Sustainable Landscape Management Expert. p. 43

The consultant observed that the International Wildlife Trade (IWT) adversely impacted indigenous communities, and, rather than lump communities with elite poachers, projects must make an effort to include communities in efforts to address IWT.

perspective that Cameroon law does not allow the Baka to hunt at all – any class of animals – in protected areas.⁵³

51. OAI/SECU heard directly from the Baka communities in Zoulabot Ancien that ecoguards have for many years restricted their access to resources traditionally accessed in Nki and the adjacent interzone. Each community described incidents – some first-hand, others hearsay – of harassment and harsh physical treatment by the ecoguards when ecoguards either found Baka in Nki, or when they perceived the Baka had been in Nki. The communities described that such treatment instilled fear, and, as a result, restricted their access to Nki. One Baka representative who met with OAI/SECU in Yaounde described the situation as follows: “TRIDOM II is meant to stop poaching. But we must define what is poaching? Small hunting? Fishing? It’s confusing how different actors define poaching.... it’s important these actors understand the difference. It’s really something else about hunting – the people [ecoguards/conservationists] don’t distinguish between poaching and subsistence hunting. They mix it all up.’
52. UNDP Cameroon’s categorization of the project as posing low risks, based on these assumptions, created an inaccurate understanding that UNDP Cameroon did not need to meet SES and SESP requirements for moderate or high risk projects, particularly requirements for additional robust social and environmental assessments and a management plan to respond to these risks.
53. The Prodoc does indicate that a social assessment should be undertaken for activities in the interzone, ‘A careful social assessment should be undertaken before implementing specific wildlife use and NTFP activities affecting indigenous people’s livelihoods’ but it does not otherwise reference a need for an assessment of risks related to activities in Nki⁵⁴, and does not include ‘an initial management plan and budget to conduct appropriate assessment during project implementation’ as required by the SES.⁵⁵
54. UNDP Cameroon recently acknowledged to OAI/SECU that it failed to accurately categorize project risks, and ‘with regards to the update information available, the level of risk will be reviewed and re-rated.’⁵⁶

Finding 2: Requirements to Prepare a Management Plan

55. SECU finds that UNDP Cameroon did not prepare an Indigenous Peoples Plan or an adequate initial management plan as required by the SES. Additionally, SECU finds that the MOU is not

⁵³ Although other individuals interviewed by OAI/SECU shared their perception that ecoguards generally (at least informally) allow Baka to hunt small animals traditionally hunted.

⁵⁴ The Prodoc does not acknowledge and describe how assessments will meet the following SES requirements that apply when Indigenous peoples might be impacted: (1) Examine the short-and long-term, direct and indirect, and positive and negative impacts ; (2) analyze gender dimensions and impacts on marginalized groups; (3) examine ownership and usage rights to lands, territories, resources; (4) analyze potential impacts on Cultural Heritage; (5) analyze potential relocation and displacement risks and impacts; and (6) include an assessment of Indigenous peoples’ substantive rights, as affirmed in Applicable Law.

⁵⁵ The SESP and the Guidance Note on Social and Environmental Assessment (published in December 2016) recognize that in certain circumstances completion of a social and environmental assessment (and the scoping process) may need to be financed through the Project budget (hence, conducted during Project implementation). ‘In such cases, the Project Document needs to incorporate *an initial management plan and budget* to conduct appropriate assessment during project implementation.’ p. 10

⁵⁶ Response from UNDP Cameroon to OAI/SECU request for additional information. 7 February 2020.

sufficient to show consent by the communities for UNDP project activities in Nki. The MOU was signed by one local NGO representing a subsection of impacted communities, and was not finalized in a manner consistent with FPIC best practices.

56. The SES state that a Management Plan must be prepared, with measures to avoid and/or mitigate moderate and high risks. When Indigenous Peoples might be impacted (as here) this plan takes the form of an Indigenous Peoples Plan that includes the following required components: (1) a description of potentially-impacted Indigenous Peoples and their locations, customary lands and resources, (2) a summary of Indigenous Peoples' substantive rights, (3) a stakeholder engagement plan, including a plan for securing free, prior, informed consent (FPIC) when activities might impact the rights and/or adversely traditional livelihoods of Indigenous peoples, and (4) a plan for monitoring activities – including joint participatory monitoring with Indigenous peoples.
57. The SES further note, however, that if a full Indigenous Peoples Plan cannot be developed prior to project approval due to budget limitations, an initial management plan containing as many IPP components as possible must be provided.⁵⁷
58. The Prodoc does include one component of an IPP – a Stakeholder Engagement Plan – and also briefly acknowledges a need for 'continuous consultation' with Indigenous communities, and for the project to benefit these communities.⁵⁸
59. However, the provided Stakeholder Engagement Plan⁵⁹ does not identify or substantively describe potentially-impacted Baka (or other Indigenous) communities – particularly those communities traditionally accessing but not living in Nki - the significant challenges that exist to effective engagements with the Baka, and measures to address these challenges. Most significantly, it does not acknowledge a need for free, prior, informed consent (FPIC), and that FPIC is necessary to ensure the substantive rights of the Baka.⁶⁰

⁵⁷ Guidance for this Standard was published in January 2017, one month after the initial submission to the GEF and a few years after project development, but several months before resubmission in March and again in May of 2017, and before project approval in June 2017. It details, 'The initial management plan must address as many aspects of the required IPP as possible ... and needs to clearly state when and how the full IPP will be developed and reflect the findings and recommendations of the social and environmental assessment, consultation and any required FPIC processes once undertaken. A subsequent PAC meeting or the Project Board needs to review the completed IPP and ensure all required measures are incorporated into the Project plan, budget, and monitoring indicators.'

⁵⁸ Prodoc, October 2017. p. 56

⁵⁹ 'Guidance Note, UNDP Social and Environmental Standards, Standard 6: Indigenous Peoples'. January 2017. p. 9.

⁶⁰ The Prodoc proposes only a broad, vague approach to engaging the Baka (and other indigenous communities), and one that fails to consider important constraints that were identified by a project consultant. The consultant, Gordon Ajonina, indicated, for example, that the Baka face 'particular constraints ... to ensuring that their rights and needs are reflected in decision-making due to social and political marginalization' and, as such, 'engaging them in meaningful ways *needs to go well beyond consultation or co-management 'on paper (italics added).*' Ajonina, Gordon. 'Final Consultancy Report, Sustainable Landscape Management Expert'. November 2016. pgs. 59, 48. He describes several important measures for doing this, including developing an understanding of decision-making processes of local communities, providing appropriate capacity-building activities, and supporting institutional mechanisms, e.g., community-based institutions such as community associations, that enable communities to define and represent their interests to external actors. Relatedly, although the TRIDOM II Prodoc identified a need to include communities in 'anti-poaching' and Illegal Wildlife Trafficking (IWT) efforts, support community conservation areas, and provide community benefits, the Prodoc does not describe how or when these efforts would occur. Local NGO Okani, working with Forest Peoples Programme (FPP), prepared a report describing FPIC requirements in Cameroon, and detailing their perceptions of how these have not yet been met for projects such as TRIDOM. Nounah, Stephen and Anouka Perram, De la coupe aux lèvres le CLIP dans la Réserve de faune de Ngoyla au Cameroun https://www.forestpeoples.org/sites/default/files/documents/FPP%20Cameroun2019_spread_compressed.pdf.

60. The Prodoc asserts that ‘a stakeholder analysis was undertaken to identify key stakeholders and assess their prospective roles and responsibilities in the context of the proposed project,’ but provides no substantive description of the Baka and Bantu. It provides only descriptions such as the following, ‘Key beneficiaries of the project. Implication of local populations contributes to an inclusive project management in the project area. During this project, communities will be involved in PA management plan development, and community forestry development (Component 3).’⁶¹
61. The Prodoc indicates that communities will be represented through existing municipal structures, ‘The stakeholder involvement strategy will be based on the municipalities of the project area in order to be in line with the decentralization and transfer of competencies process of sectoral ministries to municipalities.’⁶² Baka representatives strongly challenged this approach, stressing the need for Baka-created and Baka-led decision-making structures, ‘The municipal government will ruin the project....The municipal governments, for example, get funding for education for the Baka people, but it never happens. At each village there should be a place for education but it’s never done. You must involve the Baka themselves. They should choose their own representation. They have the knowledge and need seats at the table.’ This suggestion is in line with suggestions of the Consultant to the project, who recommended, ‘community-based institutions such as community associations, that enable communities to define and represent their interests to external actors.’⁶³
62. In a request from OAI/SECU for additional information, UNDP Cameroon recognized some project shortcomings and indicated that it ‘will support characterization and mapping of indigenous people communities in the project area’ and integrate this information in the project document, develop ‘a detailed action plan to integrate measures to mitigate the risks’ and ensure that ‘project activities will be built on appropriate, inclusive FPIC consultation with communities including Baka with other communities.’⁶⁴
63. More recently, UNDP Cameroon indicated that a February 2019 Memorandum of Understanding (MOU) between the Cameroon Ministry of Forests and Wildlife (MINFOF) and ASBABUK, a local NGO representing Baka communities, addresses ‘Baka indigenous peoples concerns in relation to Nki management plan.’ The MOU references Baka access to resources in Nki (as well as Lobeke and Boumba Bek National Parks).
64. SECU notes that the MOU acknowledges a need to respect the rights of the Baka and the importance of Baka access to resources. However, it does not include a description of these rights or areas to which communities have access. According to the MOU, details such as these are to be included in an ‘action plan’ – a plan that has not yet been developed, and for which the MOU does not specify a process for development. The MOU additionally reflects that ASBABUK will undertake to ‘Comply with the prescriptions of the Management Plan of the

⁶¹ Prodoc, October 2017 p. 17. It provides several observations about stakeholder engagement - including (1) the need to consult with communities for purposes of respecting ‘social justice;’ (2) the need to recognize the lack of communication ‘between high-level authorities and local communities which do not have access to common communication channels such as newspapers and the internet. This creates a knowledge gap and a misunderstanding between national authorities and local people on conservation and natural resource use issues; and the idea that (3) ‘Land use planning must take into consideration the interests of local communities who largely depend on natural resources for income generation and for their livelihoods’

⁶² Prodoc, October 2017. p. 164

⁶³ Id.

⁶⁴ Response from UNDP Cameroon to OAI/SECU request for additional information. 7 February 2020.

targeted National Parks.’ However, a Management Plan has not yet been approved for Nki (a draft exists), and, as such, the measures ASBABUK is agreeing to undertake are unclear. The MOU does not specify how this Management Plan will be developed.

65. According to organizations that had been formally involved in the development of the MOU before it was finalized, including local NGO Okani and Forest Peoples Programme (FPP), the process for finalizing the MOU was not consistent with local decision-making processes,⁶⁵ and the final MOU omitted key items that had been tentatively agreed by all participating local organizations a few months prior to the time the agreement was finalized.⁶⁶ A report prepared by Okani and FPP provides a critique of the agreement and process.⁶⁷
66. SECU was informed that although consultations with locally-affected communities in the three protected areas did not occur prior to the signing of the MOU, some consultations have occurred since then by ASBABUK and WWF.

Finding 3: Project-level Grievance Mechanism and Monitoring Mechanism

67. The SES Policy Delivery provisions require UNDP to ensure that ‘when necessary’ an effective Project-level grievance mechanism is available to local communities. In the context of a project such as TRIDOM, which poses significant risks to Indigenous peoples, an effective mechanism is necessary. The Prodoc does not detail one that meets SES requirements that mechanisms, ‘address concerns promptly through dialogue and engagement, using and understandable and transparent process that is culturally appropriate, rights-compatible, and readily accessible to all stakeholders at no cost and without retribution.’
68. The SES require UNDP staff to monitor its performance against the objectives and requirements of the SES. The Prodoc does not describe a mechanism for such monitoring.

RECOMMENDATIONS

Recommendation 1 - Screening

69. Screen final drafts of the Prodoc in a manner consistent with SES requirements, properly identifying all potentially affected communities, categorizing project risks on the basis of all

⁶⁵ Clarke, Catherine, ‘In and Around Cameroon’s Protected Areas. A rights-based analysis of access and resource use agreements between Indigenous Peoples and the State.’ Forest Peoples Network. September 2019 <https://www.forestpeoples.org/sites/default/files/documents/In%20and%20Around%20Cameroons%20Protected%20Areas-ENG-final.pdf>. ASBABUK was not able to consult with communities prior to signing the MOU. The report further notes that the MOU was not reached with all traditional decision makers, but ‘signed by just one person (the president of a local association), as opposed to, for example, the Baka chief or representative of each concerned community (as was the case with the Ngoyla MOU).’ Moreover, according to Okani and FPP, several communities indicated that ASBABUK did not have a mandate to represent them. After the MOU was signed by ASBABUK, Okani and FPP interviewed ten Baka communities (including 260 individuals) living around Lobeke, Nki, and Boumba Bek, and heard that communities were not aware of the MOU.

⁶⁶ Id. These organizations indicated that the final MOU does not include many items that had been tentatively agreed with all of the local organizations several months before the agreement was finalized, including a description of areas to which communities have rights and would have access, an indication of when communities would access these areas, etc. Okani and FPP describe that, most fundamentally, the MOU does not provide the necessary recognition of indigenous peoples’ customary lands, territories and natural resources. The final agreement, without these items, did not have the agreement of all participating organizations.

⁶⁷ Id.

available information, identifying additional required assessments and how they will be implemented, and identifying SES standards that will apply to the project.

Recommendation 2 – Management Plan

70. Consistent with the SES, create an Indigenous Peoples plan in consultation with potentially affected Indigenous communities and include the following components: (1) a description of potentially-impacted Indigenous Peoples and their locations, customary lands and resources, (2) a summary of Indigenous Peoples’ substantive rights, (3) a plan for engaging stakeholders and securing their free, prior, informed consent (FPIC) for any activities that might impact the rights and/or adversely impact traditional livelihoods of Indigenous peoples, and (4) a plan for monitoring activities – including ‘participatory joint monitoring of Project implementation with indigenous peoples.’
71. Consistent with the SES, develop the IPP ‘in accordance with the effective and meaningful participation of indigenous peoples’ – including through community-chosen representatives - and ensure that the stakeholder engagement and FPIC component of the IPP is culturally appropriate, ensures respect for the substantive rights of the Baka, and allows the Baka to say ‘no’ and not just ‘yes’ to proposed project activities.⁶⁸ Additionally, ensure that communities trust and have the financial and technical capacity to participate effectively and free from undue influence in the process to create the IPP. Since the MOU between MINFOF and ASBABUK is inadequate evidence of consent for UNDP project activities - as described above, ensure that if parties seek to use it as support for project activities, SES REQUIREMENTS ARE MET in that context, I.E., IF THE MOU IS USED AS EVIDENCE OF SUPPORT FOR UNDP-SUPPORTED ACTIVITIES, ensure that communities potentially impacted by the MOU freely consent to it, that MOU-related action plans recognize and describe (in a manner consistent with human rights norms) community rights to access resources within and adjacent to Nki, and that community rights are supported through measures that communities trust will allow them to safely access these resources.

Recommendation 3 – Grievance Mechanism

72. Consistent with the SES, create a grievance mechanism that effectively responds to community concerns about the TRIDOM II project.

III. ANNEX I. UNDP’S SOCIAL AND ENVIRONMENTAL COMMITMENTS

UNDP SES OVERVIEW

73. UNDP’s Social and Environmental Standards (SES) describe actions UNDP staff must take, in the context of projects and programmes funded through UNDP accounts, to avoid and mitigate social and environmental harms. Most fundamentally, the SES require UNDP to

⁶⁸ Experts largely credit the Baka and other local Indigenous communities for maintaining the forests and biodiversity in and around Nki, and communities interviewed by OAI/SECU were sharply critical of the fact that, despite their critical role in biodiversity protection, they have been sidelined during the project design, screening and implementation process. . The project’s own consultant explains that recognition of local community rights to property is not only important for the communities, but also central to project success. He notes, among other reasons, that strengthened rights are a very powerful motivator for people to protect and conserve wildlife. Ajonina, Gordon. ‘Final Consultancy Report, Sustainable Landscape Management Expert’. November 2016. p. 40. SECU observes that securing FPIC at this point in the project development process could be more challenging given all of the activities and concerns expressed to date.

ensure that potential social and environmental risks, impacts, and opportunities are identified and addressed in all UNDP projects and programmes.

74. UNDP's standard Legal Agreement – which UNDP has required staff to use since March 2016 – indicates that UNDP's Programme and Operations Policies and Procedures (POPP) require UNDP Country Offices to apply the SES and ensure that Implementing Partners are conducting activities in a manner consistent with the SES. It states, 'Consistent with UNDP's Programme and Operations Policies and Procedures, social and environmental sustainability will be enhanced through application of the UNDP Social and Environmental Standards (<http://www.undp.org/ses>) and related Accountability Mechanism (<http://www.undp.org/secu-srm>).... The Implementing Partner shall: (a) conduct project and programme-related activities in a manner consistent with the UNDP Social and Environmental Standards, (b) implement any management or mitigation plan prepared for the project or programme to comply with such standards, and (c) engage in a constructive and timely manner to address any concerns and complaints raised through the Accountability Mechanism.'⁶⁹
75. SES provisions most relevant to the TRIDOM II project include the following: (1) a requirement to apply UNDP's Social and Environmental Screening Procedure (SESP) to identify social and environment-related risks and pursue additional assessments and measures as necessary to respond to these risks; (2) a requirement to meaningfully engage with local communities, including through implementation of a Stakeholder Engagement Plan; (3) SES Standard 6 requirements related to Indigenous Peoples; (4) SES Standard 4 related to Cultural Heritage; (5) SES Standard 5 Related to Displacement and Resettlement; (6) Overarching Policy and Principles requiring UNDP to avoid supporting activities that do not comply with National Law and obligations of International Law (whichever is the higher standard), and to further the realization of Human Rights; and (7) a requirement to ensure that mechanisms exist to receive and respond to grievances from potentially-impacted communities.

Social and Environmental Screening Procedure - Overview

76. The SES require UNDP staff to screen projects using UNDP's Social and Environmental Screening Procedure (SESP). The purpose for this is described in the SES as follows, 'All proposed Projects will be screened to identify potential application of requirements of the SES Overarching Policy and Principles (i.e. human rights, gender equality, environmental sustainability) and relevant Project-level Standards. UNDP utilizes its SESP to identify potential social and environmental risks and opportunities associated with the proposed Project.'⁷⁰
77. The screening considers how activities outlined in the Prodoc might directly and indirectly impact the environment or communities in the 'Project's area of influence' – defined to include, 'areas and communities potentially affected by cumulative impacts from the Project

⁶⁹ UNDP, 'Project Document Template'. 1 March 2016. Regarding OAI/SECU, the Legal Agreement additionally notes, 'UNDP will seek to ensure that communities and other project stakeholders are informed of and have access to the Accountability Mechanism. 6. All signatories to the Project Document shall cooperate in good faith with any exercise to evaluate any programme or project-related commitments or compliance with the UNDP Social and Environmental Standards. This includes providing access to project sites, relevant personnel, information, and documentation.'

⁷⁰ UNDP, 'Social and Environmental Standards', January 2015. p. 47.

or from other relevant past, present and reasonably foreseeable developments in the geographic area ... and ... areas and communities potentially affected by induced impacts from unplanned but predictable developments or activities caused by the Project, which may occur later or at a different location (e.g. facilitation of settlements, illegal logging, agricultural activities by new roads in intact forest areas).⁷¹

78. The SESP describes when and how the screening must be performed. More particularly, it describes that, as a 'first step', a range of existing social and environmental-related information should be used to perform a 'pre-screening' that informs project design, 'Review available information relevant to the Project's social and environmental aspects, such as: UNDAF, CPAP; planning documents including existing gender, human rights, social, environmental studies; applicable legal and regulatory framework; input from stakeholder engagement activities; relevant reports of UN or other agencies, such as Universal Periodic Reviews.'⁷²
79. As detailed more below, UNDP Country Offices must provide local communities with opportunities to express their views 'at all points' in the decision-making process on matters that affect them, including 'social and environmental risks and impacts... (and) proposed mitigation measures.' When the project potentially impacts Indigenous Peoples, the UNDP Country Office must identify Indigenous Peoples presence in the project area, and engage Indigenous Peoples' representatives in this pre-screening and project design process.⁷³
80. Risks identified during the screening are then used to 'categorize' the significance of the risk and to help UNDP determine if additional social and environmental assessments are necessary. The SES describe categorization as follows, 'UNDP's SESP applies a Project-level categorization system to reflect the significance of potential social and environmental risks and impacts and to determine the appropriate type and level of social and environmental assessment. Each proposed Project is scrutinized as to its type, location, scale, sensitivity and the magnitude of its potential social and environmental impacts.... Based on the screening, UNDP categorizes Projects according to the degree of potential social and environmental risks and impacts. In some cases, applicability of specific requirements will need to be determined through additional scoping, assessment, or management review. The screening process results in one of the following three categories for the proposed Project: low...moderate... high....Projects that undergo substantive revision after the initial screening and categorization will be re-screened and potentially re-categorized.'⁷⁴
81. According to the SESP's 'List of High Risk Projects,' when projects 'may adversely impact the rights, lands, and/or resources of Indigenous Peoples' they 'should generally be categorized as High Risk.'⁷⁵

⁷¹ Id. p. 49.

⁷² UNDP, 'Social and Environmental Screening Procedure' March 2016. p. 11.

⁷³ See also 'Guidance Note, UNDP Social and Environmental Standards, Standard 6: Indigenous Peoples'. January 2017. As noted in the Guidance Note for Standard 6, 'An early mapping of the affected indigenous peoples to be consulted should begin in the design phase. It is essential that such processes be developed in a participatory manner with the indigenous peoples concerned.' p. 12.

⁷⁴ UNDP, 'Social and Environmental Screening Procedure'. March 2016.

⁷⁵ The Guidance Note for Standard 6 describes risks that conservation-related projects pose for Indigenous Peoples: 'While some might see a Project activity – such as restricted access to resources for conservation purposes – as having little or no adverse impact on indigenous rights, lands or resources, from an indigenous perspective, it may be a deprivation of traditional medicines and materials or an interference with spiritual practices related to sacred flora or

82. UNDP Country Office staff must use SESP screening questions - detailed in the next section – to determine the final risk category.
83. Upon completion of the screening process, the following information and measures should exist: (1) A list of SES standards triggered by project activities; (2) An understanding of the significance/category of risk posed by project activities, e.g., low, moderate, or high risk; (3) a description of the approach the UNDP Country Office will take to any additional social and environmental assessments; and (4) a Stakeholder Engagement Plan (or at least a draft plan within an initial management plan) with detail that responds to the level of risk and information that help shapes required FPIC processes in a manner consistent with SES standards.

Applying the Social and Environmental Screening Procedure – Screening Questions

84. The Social and Environmental Screening Procedure – SESP - includes two parts – the first, Part A., must be applied by UNDP staff to identify opportunities to integrate ‘overarching principles’, e.g. human rights and gender equality, into the project to strengthen social and environmental sustainability, and the second, Part B., must be applied to identify potential social and environmental risks and impacts associated with all activities outlined in Project documentation, and measures to respond to these risks.
85. To respond to the first question for Part B., ‘What are the Potential Social and Environmental Risks?’ UNDP staff are directed to use UNDP’s ‘Social and Environmental Risk Assessment Screening Checklist.’
86. Checklist questions most relevant to the TRIDOM II project include questions related to Human Rights (Principle 1.); Cultural Heritage (Standard 4.); Displacement and Resettlement (Standard 5); and Indigenous Peoples (Standard 6).
87. SESP screening questions related to Human Rights, and pertinent in the context of the TRIDOM II project, include the following: ‘1. Could the Project lead to adverse impacts on enjoyment of the human rights (civil, political, economic, social or cultural) of the affected population and particularly of marginalized groups? 2. Is there a likelihood that the Project would have inequitable or discriminatory adverse impacts on affected populations, particularly people living in poverty or marginalized or excluded individuals or groups? 3. Could the Project potentially restrict availability, quality of and access to resources or basic

fauna. Such restrictions might represent a permanent loss of the territorial base from which indigenous people sustain their unity and distinct governance, and manifest, preserve and transmit their cultural norms, values and practices.’ The Guidance Note additionally states on this point, ‘Standard 6 thus requires that “UNDP Projects will recognize that indigenous peoples have collective rights to own, use, and develop and control the lands, territories and resources they have traditionally owned, occupied, or otherwise used or acquired, including lands and territories for which they do not yet possess title” (see Requirement 6). In addressing this requirement, it is important to keep in mind at all times that: i. a profound relationship exists between indigenous peoples and their lands, territories and resources which has various social, cultural, spiritual, economic and political dimensions and responsibilities; ii. the collective dimension of this relationship is significant; and iii. the intergenerational aspect of such a relationship is also crucial to indigenous peoples’ identity, survival and cultural viability.’ The Guidance Note for Standard 6 includes indicative examples of low, moderate, and high-risk projects, including an example specific to conservation-related activities that are defined ‘in partnership’ with indigenous communities: ‘A forest conservation project conducted in conjunction with affected local indigenous communities. The risks are likely to be at most moderate if the project’s parameters and activities are defined in partnership with the affected indigenous community.’

services, in particular to marginalized individuals or groups? 4. Is there a likelihood that the Project would exclude any potentially affected stakeholders, in particular marginalized groups, from fully participating in decisions that may affect them? 5. Is there a risk that duty-bearers do not have the capacity to meet their obligations in the Project? 6. Is there a risk that rights-holders do not have the capacity to claim their rights? 7. Have local communities or individuals raised human rights concerns regarding the Project during the stakeholder engagement process? 8. Is there a risk that the Project would exacerbate conflicts among and/or the risk of violence to project-affected communities and individuals?’⁷⁶

88. SESP screening questions related to Cultural Heritage, and pertinent in the context of the TRIDOM II project, include the following: ‘4.1 Will the proposed Project result in interventions that would potentially adversely impact sites, structures, or objects with historical, cultural, artistic, traditional or religious values or intangible forms of culture (e.g. knowledge, innovations, practices)? (Note: Projects intended to protect and conserve Cultural Heritage may also have inadvertent adverse impacts).
89. SESP screening questions related to Displacement and Resettlement, and pertinent in the context of the TRIDOM II project, include the following: ‘5.2 Would the Project possibly result in economic displacement (e.g. loss of assets or access to resources due to land acquisition or access restrictions – even in the absence of physical relocation)? 5.4 Would the proposed Project possibly affect land tenure arrangements and/or community-based property rights/customary rights to land, territories and/or resources?’⁷⁷
90. SESP screening questions related to Indigenous Peoples, and pertinent in the context of the TRIDOM II project, include the following: 6.1 Are indigenous peoples present in the Project area (including Project area of influence)? 6.2 Is it likely that the Project or portions of the Project will be located on lands and territories claimed by indigenous peoples? 6.3 Would the proposed Project potentially affect the human rights, lands, natural resources, territories, and traditional livelihoods of indigenous peoples (regardless of whether indigenous peoples possess the legal titles to such areas, whether the Project is located within or outside of the lands and territories inhabited by the affected peoples, or whether the indigenous peoples are recognized as indigenous peoples by the country in question)? 6.4 Has there been an absence of culturally appropriate consultations carried out with the objective of achieving FPIC on matters that may affect the rights and interests, lands, resources, territories and traditional livelihoods of the indigenous peoples concerned? ... 6.6 Is there a potential for forced eviction or the whole or partial physical or economic displacement of indigenous peoples, including through access restrictions to lands, territories, and resources? 6.7 Would the Project adversely affect the development priorities of indigenous peoples as defined by them? 6.8 Would the Project potentially affect the traditional livelihoods, physical and cultural survival of indigenous peoples? 6.9 Would the Project potentially affect the Cultural Heritage of indigenous peoples, including through the commercialization or use of their traditional knowledge and practices?’⁷⁸
91. Significantly, responses to these questions must consider risks as they exist *prior* to mitigation or management measures. As noted in the SESP, ‘risks should be identified and quantified as if no mitigation or management measures were to be put in place’ because ‘It is

⁷⁶ UNDP, ‘Social and Environmental Screening Procedure’ March 2016. p. 31

⁷⁷ Id. p. 33.

⁷⁸ Id. p. 34.

necessary to form a clear picture of potential inherent risks in the event that mitigation measures are not implemented or fail.⁷⁹

92. As noted above, once the checklist questions are answered, and potential social and environmental risks are identified, the SESP requires staff to ‘categorize’ risks based on the potential severity and likelihood of risk.
93. Note that the SESP specifies that a ‘yes’ answer in response to question 6.3. – would the project potentially impact rights, natural resources, lands, livelihoods, etc. of Indigenous Peoples - means ‘the potential risk impacts are considered potentially severe and/or critical and the Project would be categorized as either Moderate or High Risk.’⁸⁰

Approach to Environmental Assessment When Indigenous Peoples Are Potentially Impacted

94. As noted above, after the UNDP Country Office applies the SESP and identifies risks and the significance of risk, e.g., category of risk, it must determine the scope of any required social and environmental assessments.
95. While low risk projects require no additional assessment, moderate and high-risk projects require additional social and environmental assessment and management measures to ensure compliance with the SES.⁸¹
96. Standard 6, Indigenous Peoples, specifies that ‘*All* [emphasis added] Projects that may impact the rights, lands, resources and territories of indigenous peoples require prior review and/or assessment of potential impacts and benefits.’ Additionally, ‘Projects with potentially significant adverse impacts require a full social and environmental assessment conducted by an independent and capable entity.’⁸²
97. The SESP specifies that such assessments should be ‘conducted as part of Project preparation.’ The Guidance Note for Standard 6, Indigenous Peoples, notes the same for projects involving Indigenous Peoples, ‘Timing of assessments: Every effort should be undertaken to ensure that the assessment is conducted and shared with potentially affected indigenous peoples and other stakeholders prior to Project approval.’
98. The SESP and the Guidance Note on Social and Environmental Assessment, also recognize, however, that in certain circumstances completion of a social and environmental assessment (and the scoping process) may need to be financed through the Project budget (hence, conducted during Project implementation). ‘In such cases, the Project Document needs to

⁷⁹ UNDP, ‘Social and Environmental Screening Procedure’. March 2016. p. 7. Question 2 of Social and Environmental Standards Procedure – What are the potential social and environmental risks? 33. Project activities are screened for their inherent social and environmental risks regardless of planned mitigation and management measures. It is necessary to form a clear picture of potential inherent risks in the event that mitigation measures are not implemented or fail. This means that risks should be identified and quantified as if no mitigation or management measures were to be put in place.

⁸⁰ As noted in Annex 2 of the Social and Environmental Screening Procedure, UNDP’s Indicative List similarly reflects that for projects that involve Indigenous Peoples and with ‘yes’ answers to screening questions related to Indigenous Peoples, UNDP is required to perform additional assessments/reviews of potential impacts to these communities, and to take measures to avoid and mitigate such impacts.

⁸¹ UNDP, ‘Social and Environmental Screening Procedure’. March 2016. p. 20. Note also that Strategic Environmental and Social Assessment (SESA) and/or Environmental and Social Impact Assessments (ESIA) are required for High Risk Projects, and may also be utilized to address potential impacts of Moderate Risk Projects.

⁸² UNDP ‘Social and Environmental Standards’, January 2015. p. 39.

incorporate an initial management plan and budget to conduct appropriate assessment during project implementation.’

99. Regardless of when the assessment occurs, potentially impacted Indigenous Peoples must be involved in the assessment process, ‘Reviews and assessments will be conducted transparently and with the full, effective and meaningful participation of the indigenous peoples concerned.’⁸³
100. Assessments must accomplish the following (detailed more in the Guidance Note on indigenous Peoples)⁸⁴: (1) Examine the short-and long-term, direct and indirect, and positive and negative impacts⁸⁵; (2) Analyze gender dimensions and impacts on marginalized groups; (3) Examine ownership and usage rights to lands, territories, resources;⁸⁶ (4) Analyze potential impacts on Cultural Heritage; and (5) Analyze potential relocation and displacement risks and impacts.
101. The SESP also addresses situations in which UNDP is not taking the lead on assessments, ‘Where UNDP will not take the lead on additional social and environmental assessment that may be required (see SESP para. 45), UNDP ensures that support is provided to partners through Project implementation to ensure adequate assessment and management plans are in place that are consistent with UNDP’s SES.’⁸⁷

Stakeholder Engagement

102. SES stakeholder engagement provisions require that UNDP Country Offices identify and consult with potentially-impacted local communities, with particular attention to vulnerable and marginalized communities, ‘Stakeholder analysis and engagement will (ensure) that potentially affected vulnerable and marginalized groups are identified and provided opportunities to participate. Measures will be undertaken to ensure that effective stakeholder engagement occurs where conditions for inclusive participation are unfavourable.’⁸⁸
103. The purpose, it notes, is to build a constructive relationship with these communities, and to avoid and mitigate potential risks in a timely manner, ‘Meaningful, effective and informed stakeholder engagement and participation will be undertaken that will seek to build and

⁸³ UNDP ‘Social and Environmental Standards’, January 2015. p. 39.

⁸⁴ UNDP, ‘Guidance Note, UNDP Social and Environmental Standards, Standard 6: Indigenous Peoples’, January 2017. p.23.

⁸⁵ Id. p. 21. The full paragraph is ‘Examine the short-and long-term, direct and indirect, and positive and negative impacts of the Project on the social, cultural and economic status and differential impacts of the project on their livelihood systems, culture and socioeconomic status of affected indigenous peoples (Requirement 10). The assessment should include confirmation and description of the presence (via both occupation and use) of indigenous peoples in areas that may be affected by the Project’s activities, including baseline socioeconomic profile of the IP groups in the project area (Requirement 5). In addition the assessment needs to summarize the participatory processes with affected indigenous groups on the conduct of the assessment, including, if already initiated, a summary of FPIC processes and documented outcomes (Requirement 9).’

⁸⁶ Id. The full paragraph, ‘Where Project activities may affect indigenous peoples’ lands, territories and resources, the social and environmental assessment will need to include a targeted analysis of the status of ownership and usage rights of the affected lands, territories and resources in order to analyze the Project’s potential impacts on such rights (see Box 8). The analysis would be conducted as part of the scoping exercise for the assessment in order to help focus the assessment on critical issues that require detailed examination.’

⁸⁷ UNDP, ‘Social and Environmental Screening Procedure’. March 2016. p. 19.

⁸⁸ UNDP, ‘Social and Environmental Standards’. January 2015. p. 51.

maintain over time a constructive relationship with stakeholders, with the purpose of avoiding or mitigating any potential risks in a timely manner.’⁸⁹

104. UNDP Country Office staff must provide local communities with opportunities to express their views ‘at all points’ in the decision-making process on matters that affect them.⁹⁰ It lists examples of topics stakeholders ‘will be able to express their views on’: ‘Programme and/or Project goals and strategies; social and environmental risks and impacts; proposed mitigation measures; sharing of development benefits and opportunities; and implementation issues.’⁹¹
105. The approach the UNDP Country Office will use to engage stakeholders this way must be detailed in a ‘Stakeholder Engagement Plan.’
106. For projects affecting Indigenous Peoples, the Guidance Note for Standard 6 further elaborates, ‘Mechanisms and processes for Indigenous Peoples to be involved throughout project development and implementation are to be articulated in a Stakeholder Engagement Plan that is incorporated in Project documentation, and specifically in the Indigenous Peoples Plan (described in greater detail in paragraphs below).’⁹² Additionally, ‘An early mapping of the affected indigenous peoples to be consulted should begin in the design phase. It is essential that such processes be developed in a participatory manner with the indigenous peoples concerned.’⁹³
107. As described in the Guidance Note for Standard 6, the Stakeholder Engagement plan for Indigenous Peoples must ensure that consultation processes meet the following criteria: (1) are culturally appropriate and conducted in good faith, i.e., exercised through the communities’ own governance structures and chosen representatives, and in accordance with their own laws and customs for decision-making on such matters; (2) pay attention to disadvantaged individuals/groups; (3) ensure timely access to information that is understandable to communities – ensuring for example, that both full and abbreviated versions of the Indigenous Peoples Plan– in draft and updated forms – are disclosed locally, in a proactive manner; and (4) ensure access to grievance redress mechanisms.’⁹⁴
108. The Guidance Note for Standard 6 further notes in relation to Stakeholder Engagement that the UNDP Country Office must secure the free, prior, informed consent (FPIC) of communities in certain circumstances, ‘while all consultations with Indigenous Peoples should be carried out in good faith with the objective of achieving agreement, Standard 6 stipulates circumstances in which FPIC must be pursued and secured before proceeding with the specified actions....’ See the standards section of this report describing how Standard 6, Indigenous Peoples, describe when and how requirements related to FPIC apply.

Measures in Response to Risks Identified in Screening and Assessment Process

⁸⁹ Id. p. 51.

⁹⁰ Id. Para. 14, ‘Meaningful, effective and informed consultation processes in UNDP Programmes and Projects seek to identify priorities of stakeholders and will provide them with opportunities to express their views at all points in the Programme and/or Project decision-making process on matters that affect them and allows the Programme and/or Project teams to consider and respond to them.’

⁹¹ Id. p. 52. The SES Stakeholder engagement provisions identify characteristics of ‘meaningful, effective and informed consultation processes’ including, for example, documentation of these processes with a description of measures to address risks and impacts.

⁹² UNDP, ‘Guidance Note, UNDP Social and Environmental Standards, Standard 6: Indigenous Peoples’. January 2017. p. 9.

⁹³ Id.

⁹⁴ Id.

109. As noted above, after screening and any additional assessments of risks are completed, UNDP staff are required to identify measures that must be taken to respond to these risks. For moderate or high-risk projects, these measures must be included in an Environmental and Social Management Plan or Framework.⁹⁵
110. The Guidance Note for Standard 6 reflects that, for projects that may affect Indigenous Peoples, this Plan/Framework typically is an Indigenous Peoples Plan, i.e., mitigation and management measures are typically contained in an Indigenous Peoples Plan (IPP) – a plan based on the findings of the social and environmental assessment.⁹⁶ This plan must be developed with the ‘full, effective and meaningful participation of potentially affected indigenous peoples.’⁹⁷
111. The Guidance Note for Standard 6 describes that ‘For projects that may require an IPP, every effort should be expended to ensure that the assessment is undertaken prior to project appraisal and a fully developed IPP be presented for PAC consideration. Where the assessment must be funded through the project budget and hence conducted during project implementation, an initial management plan must be presented for PAC consideration.’⁹⁸
112. The Guidance Note for Standard 6 further details, ‘The initial management plan must address as many aspects of the required IPP as possible ... and needs to clearly state when and how the full IPP will be developed and reflect the findings and recommendations of the social and environmental assessment, consultation and any required FPIC processes once undertaken. A subsequent PAC meeting or the Project Board needs to review the completed IPP and ensure all required measures are incorporated into the Project plan, budget, and monitoring indicators.’
113. The SES Standards detail measures that must be taken and included in the Indigenous Peoples Plan (described in greater detail below).⁹⁹ As noted in paragraph 164 above, for the TRIDOM II project, the most relevant SES Standards include those related to Indigenous Peoples, human rights, cultural heritage, and displacement.

SES Standards – Standard 6, Indigenous Peoples

⁹⁵ UNDP, ‘Social and Environmental Standards – Policy Delivery’. December 2016. ‘Enhance positive impacts and avoid, minimize, and/or mitigate adverse impacts through social and environmental planning and management. Develop an Environmental and Social Management Plan (ESMP) that includes the proposed measures for mitigation, monitoring, institutional capacity development and training (if required), an implementation schedule, and cost estimates. When uncertainty remains regarding specific Project components or exact locations (e.g. for “upstream” activities), develop an Environmental and Social Management Framework (ESMF) in place of an ESMP.’

⁹⁶ UNDP, ‘Guidance Note, UNDP Social and Environmental Standards, Standard 6: Indigenous Peoples’. January 2017. p. 25. As noted in Section 5, there is a presumption that such Projects are to be considered either Moderate or High-Risk projects (depending on the significance of risk rating). High Risk Projects would require an IPP in all cases. The presumption is that Moderate Risk Projects that affect indigenous peoples’ rights, lands, resources or territories would also require development of an IPP.

⁹⁷ Id. p. 25.

⁹⁸ Id.

⁹⁹ UNDP, ‘Guidance Note, UNDP Social and Environmental Standards, Standard 6: Indigenous Peoples’. January 2017. Annex 1. Attached to the end of this report which includes a description of what must be included in the IP

114. Standard 6, Indigenous Peoples, details requirements and measures UNDP must take to avoid and mitigate risks and potential impacts (identified during screening and assessment) to Indigenous Peoples.¹⁰⁰
115. This Standard applies ‘to all Projects which may affect the human rights, lands, natural resources, territories, and traditional livelihoods of indigenous peoples regardless of (i) whether the Project is located within or outside of the lands and territories inhabited by the indigenous peoples in question, (ii) whether or not title is possessed by the affected indigenous peoples over the lands and territories in question, or (iii) whether the indigenous peoples are recognized as indigenous peoples by the country in question.’
116. It first requires UNDP to respect the human rights of Indigenous Peoples (this is a requirement for the current SES ‘Human Rights’ principle also)¹⁰¹ and a UNDP commitment to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP): ‘UNDP will not participate in a Project that violates the human rights of indigenous peoples as affirmed by Applicable Law and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDP will ensure that social and environmental assessments for Projects involving indigenous peoples include an assessment of their substantive rights, as affirmed in Applicable Law.’¹⁰²
117. Several articles of the UNDRIP emphasize the rights of Indigenous Peoples to lands and resources, and with consideration for future generations. Article 25, for example, describes the right of Indigenous Peoples to maintain and strengthen the distinctive spiritual relationship with their traditionally owned or occupied and used lands, territories, and waters and to uphold their responsibilities to future generations. Article 26 also indicates the rights of Indigenous Peoples to lands and resources they possess by reason of traditional occupation or use.
118. The UNDRIP reflects that securing these rights requires the participation of Indigenous Peoples in decision-making when activities or measures would affect their rights. This must occur through representatives chosen by the communities, in accordance with their own procedures.¹⁰³

¹⁰⁰ Note that UNDP adopted the Guidance for Standard 6 in January 2017. The Prodoc was first submitted to the GEF for approval in December 2016, and resubmitted in March and May of 2017. The Guidance is not prescriptive and does not affect compliance with the SES, but it is important for building the capacity of staff to implement the SES Policy.

¹⁰¹ It was also a commitment under the former 2014 UNDP POPP. UNDP committed to ‘respect and promote the human rights principles of transparency, accountability, inclusion, participation, non-discrimination, equality and the rule of law, and standards derived from international human rights law.’

¹⁰² UNDP ‘Social and Environmental Standards’. January 2015. p. 37.

¹⁰³ United Nations, ‘United Nations Declaration on the Rights of Indigenous Peoples’. 13 September 2007. Art. 18, p. 15. ‘Indigenous Peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.’ See also, ‘Article 19, States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them; Article 20, 1. Indigenous Peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities; and Article 23, Indigenous Peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous Peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.’

119. Relatedly, and of particular note for the Cameroon TRIDOM II project, is another key requirement in Standard 6 that FPIC must be ensured in certain circumstances: 'FPIC will be ensured on any matters that may affect the rights and interests, lands, resources, territories (whether titled or untitled to the people in question) and traditional livelihoods of the indigenous peoples concerned. Project activities that may adversely affect the existence, value, use or enjoyment of indigenous lands, resources or territories shall not be conducted unless agreement has been achieved through the FPIC process.... UNDP will respect, protect, conserve and not take or appropriate the cultural, intellectual, religious and spiritual property of indigenous peoples without their free, prior and informed consent.'¹⁰⁴
120. The Guidance Note for Standard 6 further elaborates, 'In certain circumstances, free prior informed consent (FPIC) must be sought. These requirements go beyond the general stakeholder engagement requirements of the SES and must be carefully reviewed and implemented.' These circumstances include the following:
- 'Rights, lands territories, resources, traditional livelihoods: FPIC will be ensured on any matters that may affect the rights and interests, lands, resources, territories (whether titled or untitled to the people in question) and traditional livelihoods of the indigenous peoples concerned. Project activities that may adversely affect the existence, value, use or enjoyment of indigenous lands, resources or territories shall not be conducted unless agreement has been achieved through the FPIC process. (Requirement 9)
 - Resettlement: No relocation of indigenous peoples will take place without the free, prior and informed consent (FPIC) of the indigenous peoples concerned and only after agreement on just and fair compensation, and where possible, with the option of return (Requirement 8)
 - Cultural Heritage: UNDP will respect, protect, conserve and not take or appropriate the cultural, intellectual, religious and spiritual property of indigenous peoples without their free, prior and informed consent (Requirement 13d).'
121. Key parameters for this process are described in the Guidance Note, including the overall aim, 'The overall aim of the FPIC process with all stakeholders is to obtain a signed agreement or oral contract witnessed by an independent entity agreed to by both parties, ensuring that the greatest number of community members are involved and represented, including potentially marginalized groups. The community's customs and norms for participation, decision-making and information sharing are to be respected....'¹⁰⁵
122. The SES also refer to guidance documents reflecting that not all FPIC processes will lead to consent, 'while the objective of a consultation project is to reach agreement, not all FPIC processes will lead to the consent of and approval by the rights-holders in question. At the core of FPIC is the right of the peoples concerned to choose to engage, negotiate and decide to grant or withhold consent, as well as the acknowledgement that under certain

¹⁰⁴ UNDP, 'Guidance Note, UNDP Social and Environmental Standards, Standard 6: Indigenous Peoples', January 2017. p.11.

¹⁰⁵ Id. p. 13. Note, also, that SES footnote 74 points to guidance available to UNDP staff to implement FPIC requirements, including the United Nations Development Group Guidelines on Indigenous Peoples (herein UNDG Guidelines) and the UN-REDD Guidelines on Free, Prior and Informed Consent (herein UN-REDD Guidelines). The UNDG Guidelines describe that FPIC implies 'an absence of coercion, intimidation or manipulation, that consent has been sought sufficiently in advance of any authorization or commencement of activities, that respect is shown for time requirements of indigenous consultation/consensus processes and that full and understandable information on the likely impact is provided....The participation of indigenous peoples may be through their traditional authorities or a representative organization.' The UN-REDD Guidelines provide a similar description of FPIC.

circumstances, it must be accepted that the project will not proceed and/or that engagement must be ceased if the affected peoples decide that they do not want to commence or continue with negotiations or if they decide to withhold their consent...'¹⁰⁶

123. The UNDP, in ensuring respect for rights, must also consider findings of UN and regional human rights bodies, including, for example, findings of the African Court on Human and People's Rights relating to Indigenous Peoples.

124. A landmark decision from the African Court, involving the Ogiek community in Kenya, provides a clear analogous example in this regard. The court considered when rights to ancestral lands can be restricted. The Court acknowledged that while they can be restricted when measures in the public interest are necessary and proportional, the evictions of the Ogieks from their territory for the preservation of the natural ecosystem were not legal because the Government failed to provide any evidence that the Ogiek were the main cause for the depletion of the environment in that area. The Court concluded that the eviction of the Ogiek population was not necessary nor proportionate to achieve the purported justification of preserving the natural ecosystem of the Mau Forest and as a result, the Court held that the Government violated the rights to land, as defined by Article 26 of UNDRIP, as well as 14 of the Charter. The Court also addressed whether the Ogiek were 'Indigenous.' It found that because the Ogiek have certain traits, namely 'presence of priority in time with respect to the occupation and use of a specific territory; a voluntary perpetuation of cultural distinctiveness, which may include aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions, self-identification as well as recognition by other groups, or by State authorities that they are a distinct collectivity; and an experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist.'¹⁰⁷, the Ogiek community is considered Indigenous and have a right to use, occupy and enjoy their ancestral lands.

125. As noted above, Standard 6 also includes a requirement for an Indigenous Peoples Plan when projects may affect Indigenous Peoples.

126. UNDP's Guidance Note for Standard 6 lists the following as key components of an IPP:

'(B) Description of the Project: General description of the project, the project area, and components/activities that may lead to impacts on indigenous peoples;

(C) Description of Indigenous Peoples: A description of affected indigenous people(s) and their locations, including: i. a description of the community or communities constituting the affected peoples (e.g. names, ethnicities, dialects, estimated numbers, etc.); ii. a description of the resources, lands and territories to be affected and the affected peoples connections/relationship with those resources, lands, and territories; and iii. an identification of any vulnerable groups within the affected peoples (e.g. uncontacted and voluntary isolated peoples, women and girls, the disabled and elderly, others);

(D) Summary of Substantive Rights and Legal Framework: A description of the substantive rights of indigenous peoples and the applicable legal framework...

¹⁰⁶ The UNDG Guidelines and UN-REDD Guidelines refer to the 'Report of the UNPFII workshop on Methodologies regarding Free Prior and Informed Consent and Indigenous Peoples' as providing elements of a common understanding of FPIC.

¹⁰⁷ African Court on Human and People's Rights. 'African Commission on Human and People's Rights v. Republic of Kenya Judgement'. 26 May 2017. p.31.

(E) Summary of Social and Environmental Assessment and Mitigation Measures, including i. a summary of the findings and recommendations of the required prior social and environmental impact studies (e.g. limited assessment, ESIA, SESA, as applicable) – specifically those related to indigenous peoples, their rights, lands, resources and territories. This should include the manner in which the affected indigenous peoples participated in such study and their views on the participation mechanisms, the findings and recommendations, and ii. Where potential risks and adverse impacts to indigenous peoples, their lands, resources and territories are identified, the details and associated timelines for the planned measures to avoid, minimize, mitigate, or compensate for these adverse effects.

¹⁰⁸

127. Annex 1 to the Guidance Note for Standard 6, provides an ‘indicative outline of the substantive aspects’ that are to be addressed in the IPP, including: (1) Ensuring culturally appropriate benefits;¹⁰⁹ (2) creating action plans for legal recognition of indigenous peoples rights to lands, territories, resources and legal personality;¹¹⁰ (3) supporting rights implementation; and (4) creating a Resettlement Action Plan/Livelihood Action Plan.¹¹¹

128. A Livelihood Action Plan is required when displacement (including economic displacement) of Indigenous Peoples is unavoidable. The Guidance Note for Standard 6, observes, ‘In the exceptional circumstances when physical displacement or economic displacement of indigenous peoples is unavoidable, UNDP needs to integrate into the Project documentation a Resettlement Action Plan (RAP) or Livelihood Action Plan (LAP) that has been developed transparently with the individuals and communities to be displaced....The RAP/LAP must

¹⁰⁸ UNDP, ‘Guidance Note, UNDP Social and Environmental Standards, Standard 6: Indigenous Peoples’, January 2017. p.28.

¹⁰⁹ Id. p. 26. The full paragraph is, ‘The IPP needs to detail the arrangements agreed to with the indigenous peoples concerned regarding the equitable sharing of benefits to be derived by the Project in a manner that is culturally appropriate and inclusive and that does not impede land rights or equal access to basic services including health services, clean water, energy, education, safe and decent working conditions, and housing (Requirement 11). Those arrangements should be evidenced in the written outcomes of the consultation and consent process undertaken. Indigenous peoples should be provided with full information of the scope of potential income streams, services and benefits that the Project may generate for all potential beneficiaries. In determining what constitutes fair and equitable benefit sharing – particularly where traditional knowledge, cultural heritage, lands, resources, and territories are involved – indigenous peoples should be treated not just as stakeholders, but appropriately as rights holders.’

¹¹⁰ Id. The full paragraph is, ‘Certain Project activities may not be successful or may lead to adverse impacts unless the rights of indigenous peoples to traditional lands, territories and resources are officially recognized. For example, initiatives to support indigenous peoples land tenure or to develop resources on traditional lands may first require official recognition of legal rights. In addition, recognition of the rights of indigenous peoples to legal personality may also be required if not adequately provided for under domestic law. Where the success and continuation of the Project as a whole, or specific Project activities, are contingent (Box 9) on establishing legally recognized rights to lands, resources, or territories of the affected indigenous peoples, the IPP will need to contain an action plan that outlines UNDP must carefully evaluate whether a Project could continue without undue harm if needed legal reforms or delimitation, demarcation and titling activities cannot take place within the relevant time period of the Project given its mandate and financing. In such cases the IPP would need to clearly address the potential consequences where only some of the activities take place within the Project period (e.g. some progress but not final recognition of the land and territory rights). With the consent of relevant authorities, UNDP will support such activities to achieve such recognition.’

¹¹¹ Id. p. 27. The full paragraph states: ‘In the exceptional circumstances when physical displacement or economic displacement of indigenous peoples is unavoidable, UNDP needs to integrate into the Project documentation a Resettlement Action Plan (RAP) or Livelihood Action Plan (LAP) that has been developed transparently with the individuals and communities to be displaced. No relocation of indigenous peoples will take place without the free, prior and informed consent of the indigenous peoples concerned and only after agreement on just and fair compensation and, where possible, with the option of return (Requirement 8). The RAP/LAP must meet the requirements of Standard 5 and Standard 6, including documentation of agreement through FPIC. The objectives, activities, and timelines for both of these plans will be harmonized and incorporated by reference in the IPP. (See the Guidance Note on Standard 5 Displacement and Resettlement).’

meet the requirements of Standard 5 and Standard 6, including documentation of agreement through FPIC. The objectives, activities, and timelines for both of these plans will be harmonized and incorporated by reference in the IPP.’

129. Finally, the IPP must also outline monitoring measures to ensure that the Project’s mitigation and management measures (also described in the IPP) are being implemented, ‘Transparent participatory monitoring arrangements must be put in place wherein the indigenous peoples concerned will jointly monitor Project implementation.’

SES Standards – Standard 5 Displacement and Resettlement

130. The requirements of this standard largely overlap with the requirements of Standard 6, Indigenous Peoples for TRIDOM II activities. Standard 5, Displacement and Resettlement, however, details criteria and the process for creating a Livelihood Action Plan, which is required when communities (including Indigenous communities) are displaced (including economically displaced).
131. Key criteria for a Livelihood Action Plan include “(a) Displaced individuals and communities are compensated for loss of assets or loss of access to assets at full replacement cost. (b) In addition to compensation for lost assets, if any, economically displaced persons whose livelihoods or income levels are adversely affected will also be provided opportunities to improve, or at least restore, their means of income-earning capacity, production levels, and standards of living. An independent review, considering baseline data, will confirm that capacity, production levels and standards of living have been improved or restored. (c) Transitional support is provided to displaced persons and communities as necessary, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.”¹¹²

SES Standards – Standard 4, Cultural Heritage

132. This standard reflects that for projects that might impact the Cultural Heritage of indigenous peoples, the requirements of Standard 6: Indigenous Peoples apply. Requirements of Standard 6 are most relevant to the investigation.

SES Overarching Policy and Principles – National Law, International Law (Human Rights)

133. SES ‘Overarching Policy and Principles’ require UNDP to avoid supporting activities that do not comply with National Law and obligations of International Law (whichever is the higher standard), and to further the realization of Human Rights.¹¹³
134. The most relevant National Law includes the Forest Code of 1994, as well as the Forest and Wildlife Decrees implementing that Code.
135. The Forest Code is the main national legal instrument that regulates use rights, including hunting rights, in ‘State Forests’ – which are defined as ‘areas protected for wildlife’ including

¹¹² UNDP ‘Social and Environmental Standards’. January 2015, p. 34.

¹¹³ This requirement to comply with international law and further the realization of human rights overlaps with Standard 6, Indigenous Peoples, requirements to ensure respect for the human rights of Indigenous Peoples

national parks, reserves, buffer zones, and other protected areas. These are considered the 'private property' of the State.¹¹⁴

136. Generally, the Baka's ability to access these areas for hunting, fishing, and harvesting plants, is prohibited unless the management plan for an area allows such access. Although the Code acknowledges 'customary rights,' defining them as 'the right which is recognized as being that of the local population to harvest all forest, wildlife and fisheries products freely for their personal use, except the protected species'¹¹⁵ these rights are restricted in State Forests under other provisions of the Code. Among these include those relating to State Forest management plans - the Code requires a management plan for each State Forest, and specifies that such a plan controls activities that can (and cannot) occur within these forests.
137. The Code explicitly addresses traditional hunting, providing that it is authorized 'throughout the national territory except in State forests protected for wildlife conservation' and 'forbidden in ... [buffer] zones, as in the protected areas.'¹¹⁶
138. The Wildlife Decree implementing the Forest Code also expressly 'forbids hunting and fishing in National Parks, except as part of a park management operation.'¹¹⁷ Moreover, its definition of 'user rights' reflects that such rights do not apply to integral ecological reserves or national parks.
139. A consultant to the project, while recognizing the importance of customary law to biodiversity protection, expressed disappointment in Cameroon's lack of attention to such law, 'despite the fact that local customary laws have been used for protecting biodiversity especially in sacred forests, Cameroon has failed to incorporate these laws into its biodiversity protection strategy.'¹¹⁸ He noted, 'Non integration of customary conservation practices into domestic law.'¹¹⁹
140. UNDP staff must apply measures that ensure compliance with the SES 'Principles', including respect for Human Rights. As noted above, Standard 6 describes the rights most relevant to Indigenous Peoples. In addition to the Guidance Note for Standard 6, the UN has several guidance documents to support efforts to secure human rights.

SES Policy Delivery and Accountability Process

141. In addition to the SESP and requirements for a Stakeholder Engagement Plan, other key policy delivery provisions include those relating to a grievance mechanism and a monitoring mechanism. The SES notes 'When necessary, UNDP will ensure that an effective Project-level grievance mechanism is available. The mandate and functions of a project-level grievance mechanism could be executed by the Project Board or through an Implementing Partner's existing grievance mechanisms or procedures for addressing stakeholder concerns. Where

¹¹⁴ Republic of Cameroon. 'Law No. 94/01 of January 1994 to Lay Down Forestry, Wildlife and Fisheries Regulations'. 20 January 1994. p. 6.

¹¹⁵ Id. p. 2.

¹¹⁶ Republic of Cameroon. 'Law No. 94/01 of January 1994 to Lay Down Forestry, Wildlife and Fisheries Regulations'. 20 January 1994. p. 21.

¹¹⁷ Republic of Cameroon. 'Decree No. 95-466-PM of 20 July 1995 to lay Down the Conditions for the Implementation of Wildlife Regulations'. 20 July 1995. p. 3

¹¹⁸ Ajonina, Gordon. 'Final Consultancy Report, Sustainable Landscape Management Expert'. November 2016. p. 13

¹¹⁹ Id.

needed, UNDP and Implementing Partners will strengthen the Implementing Partners' capacities to address Project-related grievances.'¹²⁰ If further notes, 'Project-level grievance mechanisms and UNDP's Stakeholder Response Mechanism will address concerns promptly through dialogue and engagement, using an understandable and transparent process that is culturally appropriate, rights-compatible, and readily accessible to all stakeholders at no cost and without retribution. They will be gender- and age-inclusive and responsive and address potential access barriers to women, the elderly, the disabled, youth and other potentially marginalized groups as appropriate to the Project.'¹²¹ Additionally, the SES requires (through both the Policy Delivery section and Standard 6) UNDP staff to monitor its performance against the objectives and requirements of the SES.

IV. ANNEX II. BACKGROUND AND KEY EVIDENCE FROM THE INVESTIGATION OF TRIDOM II

142. The TRIDOM II project in Cameroon is focused on protecting biodiversity within the entire portion of the Tri-national Dja-Odzala-Minkebe landscape within Cameroon, including not only established protected areas, but also the 'interzone' territory between protected areas. Objectives include strengthening protected area governance and management, and reducing 'poaching' and illegal trafficking of threatened species throughout the project site.
143. UNDP is the GEF Implementing Agency, and the government of Cameroon is the Executing Partner. Approximately four million of the total 30 million US dollars for the project is channeled through UNDP.
144. This project is an extension of previous efforts by numerous entities, including the government of Cameroon, World Wildlife Fund (WWF), the World Bank, UNDP, and others, to protect globally-significant forest ecosystems and endangered species in the Tri-national Dja Odzala Minkebe (TRIDOM) region within Cameroon.¹²²
145. Previous efforts of particular relevance include: (1) the establishment, in 2005, of the Nki National Park¹²³ in southeast Cameroon, and related zoning that restricted access by local communities, including the Baka, to areas within the park;¹²⁴ (2) the TRIDOM I project, which was a UNDP-led GEF-funded project approved in 2006 that began in earnest in 2009 and included measures to protect biodiversity in protected areas of the TRIDOM region, such as Nki, as well as in the interzone between these areas; and (3) projects to protect biodiversity within the Ngoyla-Mintom area (an area also within the interzone between protected areas, and overlapping with the 'interzone' of the TRIDOM protected area complex within Cameroon).

¹²⁰ UNDP 'Social and Environmental Standards'. January 2015. p. 52.

¹²¹ Id. p. 53.

¹²² The full geographic scope of the Tri-national Dja Odzala Minkebe (TRIDOM) project extends not only to Cameroon, but also to Gabon and the Republic of Congo.

¹²³ World Wide Fund for Nature (WWF), 'Cameroon decrees two national parks.' 11 October 2005. Among the articles describing the decree include the following published by WWF: http://wwf.panda.org/wwf_news/?23778/Cameroon-decrees-two-new-national-parks.

https://www.thegef.org/sites/default/files/project_documents/4-9-04%2520Project%2520Brief%2520TRIDOM%2520v60404_0.pdf.

¹²⁴ Article 4 of the decree creating Nki noted restrictions to the rights of local communities, 'The rights of use of the riparian populations, particularly in terms of fishing, gathering and harvesting of medicinal plants, will be regulated as part of the management plan, which shall be developed through a participatory process. Only practices that are compatible with the objective of resource management will be accepted.'

TRIDOM II

146. The GEF-funded TRIDOM II in Cameroon builds on previous efforts under the TRIDOM I project to protect biodiversity in both the interzone and protected areas of the TRIDOM region. The midterm and terminal evaluations of TRIDOM I indicated that efforts to reduce all forms of hunting throughout the TRIDOM area, and otherwise establish zoning-related restrictions on access to resources, were largely successful. Efforts to support communities were much less so.¹²⁵ The Prodoc was signed on 01 December 2017 in response to remaining identified 'gaps and needs,' and was officially launched in December 2018.
147. The TRIDOM II Prodoc acknowledges the importance of the entire TRIDOM area to local communities, 'The whole Tri-national Dja-Odzala-Minkebe transboundary area shelters up to 25,000 elephants and 40,000 gorillas and chimpanzees. About 80,000 indigenous people (e.g. Baka ethnic groups) are an intrinsic part of the forest ecosystem and directly depend on the forests for their livelihood.'¹²⁶
148. With regard to Nki more specifically, it notes, "The national park is especially known for its large population of elephants and gorillas along with more than 265 species of birds. Around 22,000 people live around Nki; the largely rural population is mostly made up of Baka pygmies and ethnic Bantus.'¹²⁷
149. Although the Prodoc references Baka communities, and indicates that consultations had occurred with community representatives,¹²⁸ OAI/SECU heard during in-person meetings with UNDP Cameroon that funding was inadequate to support community-based

¹²⁵ As described in the Prodoc and evaluations, TRIDOM I sought to reduce hunting throughout TRIDOM, including hunting by 'village hunters' for all types of bushmeat, The TRIDOM I prodoc described one measure of success, 'The overall percentage of TRIDOM without bush meat hunting is stabilized or has increased compared to levels at Year 1 through an effective law enforcement system and collaborative management schemes with the private sector and communities.... The average distance covered on foot by village hunters is stabilized or has decreased compared to levels at Year 1' and 'A pragmatic legal framework for community hunting has been adopted for all of TRIDOM' Among the most prominent of measures proposed to reduce hunting included anti-poaching units ('poaching' was defined as the hunting or capture of wild animals in violation of the law¹²⁵), ecoguard stations, and canine brigades. Terminal Evaluation Review form, GEF Evaluation Office, Apr 2015, p. 11 describes success related to reduced hunting. The Report of the Final Evaluation describes that efforts related to community support were much less perceptible, 'Grégoire, Ngnono, 'Report of The Final Evaluation of The Project Conservation of Cross-Border Biodiversity in The Interzone Cameroon, Congo And Gabon, Final Version', October 2014. p. vii.

¹²⁶ Prodoc. October 2017. p. 9.

¹²⁷ Id. p. 30.

¹²⁸ Prodoc. October 2017. p. 162. "The process of consideration of land issues, traditional and socio-cultural indigenous peoples and their participation in the management of natural resources has begun but is still limited. This process was engaged through negotiation on land use plan, the participation in the development of management plans, the development of efficient management mechanisms and equitable sharing of benefits". p. 144. 'Local communities or individuals had the opportunity to raise human rights concerns in the project during the stakeholder engagement process. Several meetings and consultations were held with local NGOs working in the area and some communities discussed with the project development team. Nevertheless, throughout the implementation of the project these consultations and dialogues will be permanent' Additionally, in response to questions about how the Baka were involved in consultations, discussions, and decisions related to the project, UNDP Cameroon provided the following information in its September 2018 email: 'Project n° 9155: Please find reports of consultations, which included representatives of indigenous communities in the formulation of the project on the Sharepoint. The methodological note for the consultations and the list of actors involved/consulted is also available on share point.'

consultations during project design. According to UNDP Cameroon, consultations occurred only at the 'strategic' level, and, as such, most Baka and other local Indigenous communities were not consulted during project design.

150. UNDP Cameroon indicated an awareness of the need to consult with the Baka and other indigenous communities, and noted that the Prodoc references this need as well (See below for a discussion of the Prodoc's approach to consultation).

TRIDOM II Context

151. The Prodoc describes that the project's protected areas, including Nki, are areas in which human activities are forbidden or restricted, 'The proposed project's targeted protected areas (Dja, Bouma-Bek, Nki, Ngoyla, and Mengamé) form a conservation area where all human activities are either forbidden or restricted.'¹²⁹
152. These restrictions, it notes, are enforced by patrol operations and Interpol, but implemented without an approved management plan, 'Bi-national patrol operations are led with the Republic of Congo, as well as cooperation with Interpol. Nki National Park has no management plan; total staff counts 39 people, with 2 engineers and 37 eco-guards.'¹³⁰
153. It acknowledges that such restrictions can cause conflicts between 'forestry agents' and communities: 'Forestry agents do not always know or understand forestry code properly and often get into conflicts with local communities regarding forest resources use.'¹³¹
154. An article published in 2012 by individuals working for WWF and IUCN confirmed that Nki (as well as adjacent Boumba Bek National Park) represented a 'significant restriction' on rights, 'Indeed, as previously stated, the creation of national parks implies a significant restriction of the rights of people in the space concerned.'¹³²
155. These authors described that consultations to establish Nki (and other protected areas) were based on an inadequate identification and understanding of the Baka, and the authors reflected concern for the customary rights of the Baka and others in relation to these protected areas, 'Even though we appreciate efforts made by different actors, from the technocrats who designed the zoning plan to the authorities that created the regulatory framework specifically for this exercise, it is important to raise concerns on the unsatisfactory involvement of the Baka hunter-gatherers in the zoning process.'¹³³

¹²⁹ Prodoc. October 2017. p. 9.

¹³⁰ Id. p. 31.

¹³¹ Id. p. 16.

¹³² Tegomo, O.N, Louis Defo, Leonard Usongo, 'Mapping of Resource Use Area by The Baka Pygmies Inside and Around Boumba-Bek National Park in Southeast Cameroon, With Special Reference to Baka's Customary Rights', African Study Monographs, Suppl. 43: 45-59, March 2012.

¹³³ The article further notes, 'During the process, the recognition of "human occupation of territory" was limited only to clear indicators of human inhabitation such as settlements, farming fields and fallows that can be identified by aerial photographs and satellite images (Côté, 1993)....this procedure can only take into account the land used by sedentary farmers, and the mode of occupation and exploitation by the semi-nomadic hunter-gatherers were largely invisible and ignored....In addition ... we realize that the zoning process did not guarantee an optimal involvement of the Baka in the process.... given the above procedure of regulatory framework, the participation of Baka in the zoning process was very small.'

156. The authors' mapping of the Baka's use of land and resource uses around and in Nki and Boumba Bek confirmed that areas in and around these parks have traditionally been very important to the Baka. Of use specifically within the parks it notes, 'large parts of the two national parks are penetrated by Baka while carrying out their activities.'¹³⁴ It estimated use by the Baka of 260 km² of Nki, and shared that 'These figures clearly show that forest included in national parks ... are very relevant to Baka life in this region.'¹³⁵ It raised the following concern,, 'As both game and useful plants become rarer in the nearby agro-forestry areas, the low penetration area could become more important for their hunting and gathering life.'¹³⁶

TRIDOM II Objectives

157. The TRIDOM II Prodoc describes that, despite TRIDOM I measures to reduce hunting, protected areas and the interzone are facing an increase in poaching and IWT. It cites to documentation in support of the idea that this increased poaching and IWT are primary threats to biodiversity.¹³⁷

158. It explains that the primary objective of the Cameroon-focused TRIDOM II Project is to 'strengthen the conservation of globally threatened species in Cameroon by improving biodiversity enforcement, resilience, and management with a key focus on the portion of the Tri-national Dja-Odzala-Minkebe transboundary area.' The Prodoc states, 'The objective will be achieved through implementation of four interconnected components: (1) strengthening capacity for Protected Area (PA) governance and IWT control, (2) improving management of globally significant PAs by national and local institutions, (3) reducing poaching and illegal trafficking of threatened species in the TRIDOM area, and (4) knowledge management.'¹³⁸

TRIDOM II Outcomes: Anti-poaching, Community Involvement, UNESCO Reserve

159. Project outcomes¹³⁹ reflect a renewed focus on strengthening enforcement of protected area laws and regulations, including those related to poaching and illegal wildlife trafficking (IWT). Outcome 3, for example, states, 'Wildlife crime is combated on the ground by strengthening enforcement operations across target PAs, interzones and key trafficking routes/hubs.'

¹³⁴ Id. p. 54.

¹³⁵ Other reports suggest that the Baka's use of resources in these areas is even more significant.

¹³⁶ Olivier Njounan Tegomo, Louis Defo, Leonard Usongo, 'Mapping of Resource Use Area by The Baka Pygmies Inside and Around Boumba-Bek National Park in Southeast Cameroon, With Special Reference to Baka's Customary Rights', African Study Monographs, March 2012. p. 54.

¹³⁷ Id. p. 10. For example, the 'Threats, Root Causes and Impacts Section' of the Prodoc indicates "Some studies suggest that during the 20th century, 80% of rainforests in Cameroon were converted to agriculture-forest mosaic. International and domestic demand for timber and minerals, high prices for wildlife products and IWT, extreme poverty of local communities, rapid population growth, government corruption, and low public awareness about the effect of IWT are main root causes of the threats to Cameroonian biodiversity."

¹³⁸ Id. p. 2.

¹³⁹ Id. p. 41. See also Africa Sustainable Conservation News, 22 December 2018. Statements at the project launch ceremony 18 December 2018: For Jean Louis Parfait Ze, the national director of the Tridom II project, "when we chase the poachers from Cameroon they take refuge in Gabon or Congo and vice versa. So the three countries realized that by joining forces, it could help to counteract this crime....According to Dr. Martin De Nlo'o, the representative of the United Nations Development Program (UNDP), "Poaching is no longer just a matter of poachers, but a case managed by externalities that lead states to take action.' <https://africasustainableconservation.com/2018/12/22/cameroon-gabon-congo-protection-of-tridom-area/>

160. Poaching enforcement activities are detailed in several Outputs within Outcome 3, including Outputs 3.1 and 3.2. Output 3.1 states, 'Two anti-poaching brigades and five posts to control IWT are established in Tri-national Dja-Odzala-Minkebe transboundary area and fully operational.'
161. Notably, Output 3.2 describes that the project will introduce a community-based poaching and IWT surveillance system, 'Output 3.2: Community based poaching and IWT surveillance and monitoring system is developed and introduced in the project area.'
162. Two outcomes – Outcomes 2 and 3 – acknowledge the need to include and support communities in efforts to develop management plans for protected areas and 'community centered initiatives' for sustainable livelihoods in the interzone. Outcome 2, for example, which is focused on 'Improved management effectiveness of PAs in forest landscapes' includes Activity 2.1.3, 'Assistance to the PA managers in the development of management plans for four target PAs (except of Dja that has updated MP) using participatory method (involving local and indigenous communities, private sector and other stakeholders) and approval of the plans by local communities and key stakeholders.' Outcome 3 cites a need for 'Adoption of management practices and community centred initiatives in the forest interzone that support sustainable livelihoods, sustainable land management (SLM) and reduce wildlife crime.'
163. The Prodoc also describes the creation of a UNESCO reserve. Prodoc Outcome 1, describes that one primary 'policy framework' relates to legislation to recognize a new transboundary reserve, 'Output 1.1: Legislation documents recognizing new transboundary UNESCO Biosphere Reserve in the Tri-national Dja-Odzala-Minkebe transboundary area and management arrangements for it are developed and submitted to the UNESCO Committee, and governments of Cameroon, Congo and Gabon for approval.'¹⁴⁰
164. The Prodoc's Multi-year Work Plan¹⁴¹ describes when and how funds will be spent for these Outcomes and Outputs. Funding for Outcomes and Outputs that involve local communities are described as follows: For Output 3.2 - 'Community based poaching and IWT surveillance and monitoring system is developed and introduced to key stakeholders in the project area'¹⁴² the Annex indicates that funds will be expended beginning in Year 2. Similarly, for Output 3.3, 'Integrated Management Plan is developed and implemented over 1,300,000 ha of the inter-zone in the Tri-national Dja-Odzala_Minkebe transboundary area with participation of local and indigenous communities' the Annex indicates funding available in Year 2 also.
165. According to the Work Plan, such expenditures would occur after funding is provided to develop a management plan for Nki. In this regard, Output 2.1 indicates, 'Up-to-date management plans for.... Nki PAs are developed' in Year 1.¹⁴³ The Work Plan does not describe if and/or how communities would be involved in development of the Nki management plan in Year 1.

¹⁴⁰ Id. p. 41.

¹⁴¹ Id. Annex 1

¹⁴² Note this is a ZSL and WWF RESPONSIBILITY.

¹⁴³ Prodoc. October 2017.p. 75. OAI/SECU was unable to identify an Output focused on involving local communities in the development of a plan for Nki. Output 3.3 envisions including communities in development of a management plan for the interzone (without mention of Nki).

TRIDOM II: Baka Involvement

Baka Involvement as Described in Project Documents

166. Several paragraphs in the Prodoc reflect a need to consult communities, including for purposes of respecting ‘social justice.’ One such paragraph, describes that ‘Poor involvement of local communities in biodiversity conservation’ is a barrier to achieving a solution, ‘Taking a participatory approach to conservation (involving local communities) has been a main element for biodiversity conservation in Africa. Failure to respect social justice and recognize the significant role of local people in conservation is a substantial barrier to communities’ involvement in species and habitat protection in Cameroon. Communities living around PAs do not receive any significant benefits from conservation, which in turn has not fostered attitudes that are supportive of conservation practices.’¹⁴⁴
167. This paragraph briefly indicates how consultation should occur, ‘Wildlife and other natural resource co-management systems should be encouraged by setting up multi-stakeholder consultation platforms with participation of representatives of surrounding local communities. It is essential to tackle these issues at the inter-zone scale, and to involve all of the actors present, including the private sector, CSOs, local authorities, etc. There is a lack of communication between high-level authorities and local communities which do not have access to common communication channels such as newspapers and the internet. This creates a knowledge gap and a misunderstanding between national authorities and local people on conservation and natural resource use issues.’¹⁴⁵
168. It further notes that the interests of communities, including their access to protected areas, must be addressed, ‘Land use planning must take into consideration the interests of local communities who largely depend on natural resources for income generation and for their livelihoods. In the Tri-national Dja-Odzala-Minkebe landscape within Cameroon, indigenous forest people should be granted regular and controlled access to PAs, especially for cultural reasons such as visiting ancestral sites or harvesting on non-timber forest products such as wild mangoes, mushrooms, etc.’¹⁴⁶
169. A subsequent paragraph reiterates a need to ensure that local communities have alternatives to ‘poaching:’ ‘Another alternative that would be less cost effective is to focus on law enforcement and repression without coupling anti-poaching activities with alternative livelihoods development, strong awareness-raising from villages to national institutions, and substantial incentives to divert people from poaching. Without strong local support acquired through consultation and involvement of local communities in PA development activities and the development of sustainable practices, as well as proper incentives for PA rangers and managers to engage in the fight against poaching, enforcement-strengthening activities at national level would have a much lower impact in the field. Thus, the project is focused on the key areas for conservation of endangered species and employs both conservation mechanisms – law enforcement and community-based conservation – to increase effectiveness.’¹⁴⁷

¹⁴⁴ Id. p. 17.

¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ Id. p. 60.

170. The Prodoc draws most of these observations from a report prepared by an expert consultant to the project.¹⁴⁸ However, several other relevant and significant observations and strategies offered by this expert are not included in the Prodoc, including the following – which help shape an understanding of issues raised in the complaint. First, the Baka face ‘particular constraints ... to ensuring that their rights and needs are reflected in decision-making due to social and political marginalization’ and, as such, ‘engaging them in meaningful ways needs to go well beyond consultation or co-management ‘on paper.’¹⁴⁹ He describes several important measures for doing this, including developing an understanding of decision-making processes of local communities, providing appropriate capacity-building activities, and supporting institutional mechanisms, e.g., community-based institutions such as community associations, that enable communities to define and represent their interests to external actors.¹⁵⁰ Second, for project success, the Baka’s land and resource rights must be secured,¹⁵¹ e.g., ‘It is critical in this exercise to ensure the rights of local communities particularly indigenous forest people are sufficiently addressed in the process...’, including through documenting customary land and resource rights through participatory mapping, assessing the potential for alignment and conflicts between community resource use and protected areas, and negotiating agreements recognizing customary land and resource rights and promoting development of land use designations protecting community resource rights.¹⁵² Relatedly, the report advocates documenting on-the-ground experiences to inform policy-level change and to create an enabling legal environment for recognition and protection of customary rights.

¹⁴⁸ Ajonina, Gordon. ‘Final Consultancy Report, Sustainable Landscape Management Expert’. November 2016.

¹⁴⁹ Id. p. 48. Livelihood programs as incentive measures and to combat poverty alleviation must reflect the needs and aspirations of surrounding local communities. Engaging communities in a meaningful way needs to go well beyond consultation or co-management “on paper”. Indigenous people and local communities IPLCs need to be empowered, with strengthened rights and ownership or stewardship over wildlife. A feeling of empowerment and having control over their own resources can be a very powerful motivator for people to protect and conserve wildlife. Improving the meaningful engagement of IPLCs in the management of protected areas, and/or supporting community managed wildlife areas, can be powerful approaches in combating IWT. Diversifying categories of protected areas beyond state-managed ones - particularly considering the inclusion of Indigenous peoples’ and community conserved territories and areas (ICCAs) - is likely to be beneficial.’

¹⁵⁰ Id. p. 61. ‘Support the formation of community associations for natural resource management and development of management plans and activities grounded in traditional knowledge, and revenue-sharing agreements that provide benefits to communities from commercial activities.’

¹⁵¹ Id. p. 40. The consultant explains, in several locations in the report, why recognition of local community rights is central to project success, including, for example, through the following statements, ‘Empowerment of local communities through land ownership and recognition of their rights over some of the natural resources is part of responsible management. The local communities tend to be more careful and conscious when they know the land belongs to them. They abide to rules especially in communities where there are traditional rules or local governance systems’ and ‘Active support from the local communities is contingent to safeguarding their interests in overall natural resource management process including land allocations and other rights and benefits’ and ‘Indigenous people and local communities IPLCs need to be empowered, with strengthened rights and ownership or stewardship over wildlife. A feeling of empowerment and having control over their own resources can be a very powerful motivator for people to protect and conserve wildlife.’

¹⁵² Id. p. 40. It includes the following related paragraph: ‘Participatory management approach is fundamental for managing large complex multi stakeholders’ landscape such as TRIDOM. To resolve the problem of conflicting interest from the different stakeholders the government authorities should embark on broad based transparent consultative processes in land use planning, zoning and attributions for various management regimes. It is critical in this exercise to ensure the rights of local communities particularly indigenous forest people are sufficiently addressed in the process. That is why their participation in this process is highly recommended to ensure community use areas are allocated following consultations with beneficiaries. The success of conservation programs such as TRIDOM initiative hinges on strong adherence and participation of local communities. Active support from the local communities is contingent to safeguarding their interests in overall natural resource management process including land allocations and other rights and benefits.’

171. The consultant sums up his reasons for these strategies in paragraphs such as the following, which notes that inadequate attention to customary resource rights has increased the access of extractive companies to areas and resources traditionally used by the Baka, and led to unsustainable levels of resource extraction and inequitable access by communities to these resources, 'Livelihoods and opportunities for poverty reduction of indigenous and traditional peoples in TRIDOM landscape are highly dependent on equitable and sustainable access to natural resources. However, the current situation in the area is one of increasing competition over resources driven mostly by extractive companies, highly inequitable access and unsustainable levels of extraction. Logging concessions and other extractive industry activities overlapping traditional lands and resources, pressures from commercial trade in wildlife, and protection measures developed with inadequate attention to customary resource rights and management limit potentials for resource-based poverty reduction....The conflicts observed over years are largely orchestrated by increased marginalisation of indigenous forest people and local communities in general in land use planning and resource allocations including benefit sharing schemes. The local communities should feel fully empowered and their rights recognized by forest administration. They should be granted regulated access to certain sections of the national parks in order meet their subsistent needs especially if they do not compromise management regulations and also for performance of certain ancestral rights with their cultures.'¹⁵³
172. Three sections of the Prodoc indicate how local communities (and other 'stakeholders') will be involved in the project – the 'Key Stakeholder Matrix' the 'Stakeholder Involvement Plan' and 'Management Arrangements.'
173. The Prodoc describes the Stakeholder Matrix as follows: 'During the project preparation stage, a stakeholder analysis was undertaken to identify key stakeholders and assess their prospective roles and responsibilities in the context of the proposed project (see also the profile of institutions in description of the Institutional Context above). The table below lists the key stakeholder organizations, provides a summary of the responsibilities of each of these stakeholder organizations in the project implementation, and broadly describes the anticipated role of each of the stakeholder organizations in supporting or facilitating the implementation of project activities (Table 5).'
- ¹⁵⁴
174. This Key Stakeholder Matrix lists 14 National Government and intergovernmental subregional institutions, five 'Development Partners', e.g., the World Bank, eight 'International Partners', e.g., WWF-CARPO, two 'Private Sector' entities, e.g., 'Natural resource extraction companies', and four 'OSCs and local NGOs. This final group includes the 'Bantu and Baka pygmies' and at least one organization described as an entity working with the Baka, e.g. 'Observatoire des Cultures Baka et Bantou' (OCBB). The Bantu and Baka are described as follows: 'Key beneficiaries of the project. Implication of local populations contributes to an inclusive project management in the project area. During this project, communities will be involved in PA management plan development, and community forestry development (Component 3).'
- ¹⁵⁵
175. The Stakeholders Involvement Plan lists three categories of 'stakeholders involved in the management of the protected area': (1) institutional, e.g., government entities; (2)

¹⁵³ Ajonina, Gordon. 'Final Consultancy Report, Sustainable Landscape Management Expert'. November 2016.

¹⁵⁴ Prodoc. October 2017.p. 20.

¹⁵⁵ Id. p. 25.

operational, e.g., donors; and (3) heterogeneous – described as ‘... regional and local authorities, the private sector, civil society and local populations of actors whose role contributes to a form of participatory and consultative management in the area.’¹⁵⁶ This third category includes not only Indigenous communities such as the Baka, but also local municipalities.

176. This Annex acknowledges the need for consultations with Indigenous Peoples and other local communities, and briefly refers to the limited efforts to-date to address issues related to Indigenous Peoples in the context of the project.

177. Regarding the need to consult ‘Local and indigenous populations’ the Annex states, ‘The involvement of the local population contributes to the inclusive management of projects and programs that are implemented in the Tri-national Dja-Odzala-Minkebe transboundary area. The consideration of the concerns and expectations of various communities is a solid foundation for an effective management of natural resources in general and especially for wildlife management. For instance, the Fang and Baka communities in the region Minvoul in Gabon have been consulted for the project of a protected corridor between Minkébé National Park in Gabon and Mengamé National Park in Cameroon (PFBC, state of forests 2008). Local groups in the Dja region in Cameroon are actively working with the service of conservation of the Dja Wildlife in anti-poaching activities.’¹⁵⁷

178. Regarding the limited process to date to consider issues related to Indigenous Peoples, the Annex notes, ‘The process of consideration of land issues, traditional and socio-cultural indigenous peoples and their participation in the management of natural resources has begun but is still limited. This process was engaged through negotiation on land use plan, the participation in the development of management plans, the development of efficient management mechanisms and equitable sharing of benefits. Aware of their commitments through international legal instruments (United Nations Declaration on the Rights of Indigenous Peoples, African Charter on Human and Peoples' Rights), Cameroon is trying to protect the specificity of indigenous peoples' culture, the integrity of their lands, and protect them against discrimination.’¹⁵⁸

179. The Annex also briefly mentions that Cameroon law recognizes that ‘local people have the ‘right of use’ including use of forest products, wildlife and fisheries, and further describes that current proposed revisions to the law would incorporate ‘concerns beyond use rights’: ‘In Cameroon, Article 8 of Law 94/01 of 20 January 1994 on forest, wildlife and fisheries recognizes the right of use to local people, and their right to exploit forest products, wildlife and fisheries with the exception of protected species for personal use. In terms of wildlife exploitation, the granting of a license to a natural person wishing to capture the animals in the scientific, commercial or detention is subject to obtaining specifications whose clauses prescribes the holder to: - Respect and preserve of knowledge, innovations or practices of the surrounding communities; - Respect traditional lifestyles relevant for the conservation and sustainable use of biological diversity. The current revision of this law incorporates concerns beyond use rights to reflect the involvement of indigenous and local communities in the

¹⁵⁶ Id. p. 160.

¹⁵⁷ Id. p. 162.

¹⁵⁸ Id. p. 163.

management of the land and its resources including access and sharing of benefits arising from the exploitation of these resources.’¹⁵⁹

180. The Annex very briefly describes the ‘means’ of involving local communities in the project, notes previous encouraging signs and ‘pitfalls’ concerning the involvement of stakeholders in management of the TRIDOM, and reveals a ‘stakeholder involvement strategy’ for each state of the project.
181. Regarding the ‘means of participation for local communities in the governance and management of the resources’ it notes that the means ‘includes: Access to information: meetings, participation of community volunteers, progress reports, bulletin boards in chiefdoms, announcements in churches, memos; - Transparency and participation through: designation by the communities themselves of their representatives in management bodies, taking account of gender and minorities in these instances, consultations for decision-making, accountability by through agreements signed with the communities, giving them a number of tasks and responsibilities.’¹⁶⁰
182. Previous encouraging signs and pitfalls are described as follows: ‘As can be seen, the involvement of stakeholders in the management of the Tri-national Dja-Odzala-Minkebe transboundary area are is quite encouraging but pitfalls remain.’¹⁶¹
183. Regarding the ‘strategy’ it specifies that it will be based on the municipalities, and pursued in phases, with the first phase focused on awareness raising, and the second phase focused on implementation and the involvement of local communities. In this regard, it notes, ‘The stakeholder involvement strategy will be based on the municipalities of the project area in order to be in line with the decentralization and transfer of competencies process of sectoral ministries to municipalities: At project start: This phase requires information and awareness raising activities for stakeholders. These actions will aim to inform them on the issues, objectives, project activities, and also about their positive and negative effects and the measures proposed to mitigate and / or optimize, and finally to inform them on the mechanism provided for their effective involvement in the Project. In practice, a series of briefings and awareness-raising workshops will have to be organized in the framework of the project for target communities including villages and camps in the Baka massif. These meetings will bring together not only the traditional authorities (chiefs), but also local elites, local politicians (MPs, mayors); the gender aspect to be taken into account in ensuring the representativeness of the Baka, women, young people and all social strata. They will be organized in collaboration with local administrative authorities (departments of Haut Nyong and Dja and Lobo). During the implementation phase: The involvement of local communities in the implementation of project activities will be done in part by recruiting in priority local people for project activities and through the permanent strengthening of their capacities to prepare for the post- project phase, and secondly by establishing partnerships with local organizations already working with communities (NGOs, GIC, Associations) in the implementation of eco-development activities under the project; and building their capacity for better result.’¹⁶²

¹⁵⁹ Id.

¹⁶⁰ Id.

¹⁶¹ Id.

¹⁶² Id. p. 164.

184. Finally, it describes that the project will establish several ‘multi-stakeholder platforms,’ including at the ‘municipal level’, in ‘the project area’, and at the ‘regional level’, and notes that the ‘Project Management Unit’ will ‘establish a functional mechanism for all platforms.’¹⁶³
185. At the municipal level, the platform will include representatives from ‘local NGOs, development committees, community forests, women and youth associations, chiefdoms, the local royalties management committee, loggers, mining and manufacturers.’¹⁶⁴
186. In the project area, the platform will be composed of ‘local elected MPs, senators and mayors.’¹⁶⁵
187. At the regional level, the ‘governance platform’ will be ‘chaired by each Governor will be composed of various heads departmental services, the private sector, NGOs, elected representatives of the people.’¹⁶⁶
188. The Annex does not indicate how the platforms will be established, how they relate to each other, and decisions to be made by each.
189. It also does not describe the processes through which decisions will be made by each platform, and how the municipal level platform that includes a very large and diverse group of individuals and groups (including ‘chiefdoms’) - with varying degrees of capacity and power to vocalize opinions - will ensure that all voices are heard and respected.
190. It also is not clear how these platforms relate to the stakeholder involvement strategy for the engagement of Indigenous Peoples and other local communities, and how the ‘means’ for the engagement of these communities will be applied to the platforms.
191. Similar to the body of the Prodoc, the Annex does not recognize the marginalized status of the Baka, and other limitations in their capacity to participate effectively in decision-making processes.
192. The Prodoc ‘Management Arrangements’ reflect that the Project Steering Committee (PSC) includes 13 types of entities, one of which is ‘Representatives of targeted local and indigenous communities.’ The PSC is scheduled to meet every twelve months.¹⁶⁷
193. The Prodoc describes that the Project Management Unit (PMU) is the operational body for the project – administering it ‘on a day-to-day basis on behalf of the UNDP....’¹⁶⁸
194. The Prodoc and Annexes do not otherwise describe the specific process through which the Baka or other Indigenous communities were, or will be, involved in the project and decision-making. It does not include, for example, an Indigenous Peoples Plan describing Indigenous communities to be consulted and how to consult them. It does not include a description of where these communities are located, how appropriate decision-makers will be identified,

¹⁶³ Id.

¹⁶⁴ Id.

¹⁶⁵ Id.

¹⁶⁶ Id.

¹⁶⁷ Id. p. 79.

¹⁶⁸ Id. p. 80.

what measures are necessary to ensure that community decision-making processes are respected and how all voices will be heard, etc.

195. Neither the main Prodoc nor the Annex describe concerns expressed by Indigenous communities potentially impacted by the project, although UNDP Cameroon acknowledged to OAI/SECU that it was aware of significant concerns related to TRIDOM I and the rights of the Baka when it developed TRIDOM II.¹⁶⁹

Baka Involvement as Determined Through OAI/SECU's Field Investigation

196. During OAI/SECU's field investigation, Baka communities who live in Zoulabot Ancien told OAI/SECU they have not been provided any information or engaged in any consultations related to TRIDOM II, just as they had not been informed or consulted for TRIDOM I. They described that ecoguards have for many years restricted their access to resources traditionally accessed in Nki and the adjacent interzone. Each community described incidents – some first-hand, others hearsay - of harassment and harsh physical treatment by the ecoguards when ecoguards either found Baka in Nki, or when they perceived the Baka had been in Nki. The communities described that such treatment instilled fear, and effectively restricted their access to Nki. They currently fear, given the lack of any information or consultation, that TRIDOM II will continue the same restrictions and threats. They described that the restrictions are devastating for their livelihoods and wellbeing. The communities told OAI/SECU they had complained about this to UNDP during TRIDOM I.
197. One community showed OAI/SECU new Baka camps established away from the main road out of concern that ecoguards would visit and destroy Baka huts near the road. This concern derived from a practice, described by a few communities, of ecoguards visiting villages in response to a tip that a Baka individual or group had secured bushmeat from Nki.
198. Several non-Baka individuals informed OAI/SECU that some Baka are contributing to illegal poaching and not limiting their activities to traditional hunting. Some individuals explained to OAI/SECU that, in the absence of access to traditional wildlife and natural resources, some Baka are left vulnerable to overtures by elite poachers who provide financial and other

¹⁶⁹ UNDP Cameroon, in a 21 September 2018 response to a OAI/SECU question about whether UNDP Cameroon was aware of concerns related to the first TRIDOM project when it developed TRIDOM II, acknowledged that concerns had been raised in an earlier 27 November 2014 Survival International letter to the UNDP Administrator, 'During implementation of Project n°1095, a letter was received in late 2014 by the UNDP Administrator from Survival International concerning abuses of Baka Pygmies by anti-poaching squads in Cameroon.' The letter from Survival International to UNDP Administrator Helen Clark claimed that Baka were being forced from forested lands they traditionally used, with significant impacts to their health and culture, and in violation of their rights under ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples, 'The Baka are being forced from their forest lands and many say their health has plummeted in roadside villages where most now live. This clearly violates their rights as set out in ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples.' They further claimed that while, in theory, the Baka were permitted to hunt in some areas of the protected areas, severe violence against hunters by anti-poaching squads was preventing such hunting, 'Although in theory some Baka communities are permitted to hunt in designated parts of these protected areas or buffer zones, this rarely happens in practice because the Baka live in fear of reprisals from government anti-poaching squads. Survival has received disturbing reports which reveal that systematic and violent abuse of Baka has been ongoing for over 13 years. Many Baka have been beaten and even tortured by members of these squads. Some may even have died as a result of this abuse. Baka hunting camps in the forest are routinely demolished and their possessions destroyed.' They requested that UNDP suspend financial support until the abuse stops.' Additionally, UNDP Cameroon was aware of media reports describing abuses of the Baka, 'Cameroon is aware of a Human Rights Report on abuses of Baka Pygmies by anti-poaching squads in Cameroon. We were also made aware of information... regarding problems in the WWF area of intervention.'

support to the Baka in exchange for assistance locating animals. Several reports describe this situation, noting, for example, ‘despite the great natural wealth in south-east Cameroon, mismanagement of forest and wildlife revenues is exacerbating regional poverty, and people are desperate for cash. Baka are often solicited by commercial poachers to help them find their way in the forest. Some Bodawa have taken up commercial hunting of species they would normally protect, including those they would not normally eat, like primates.’¹⁷⁰

199. Most non-Baka interviewees noted, however, that the involvement of Baka in illegal poaching activities is not the norm for Baka. A UNEP-supported article describes, ‘These exceptional cases are often used to justify the actions of forest guards, who are currently alienating local people from conservation.’¹⁷¹

200. As noted above, UNDP Cameroon acknowledged that consultations with IPs, including the Baka, had not yet occurred in earnest due to funding limitations. A January 2019 email exchange between OAI/SECU and UNDP Cameroon, in which OAI/SECU requests information about consultations with, and consent from communities, includes the following response from UNDP Cameroon: ‘We have not work on this according to the objectives of the project document of the first phase (support/consent for project activities).’¹⁷²

TRIDOM II: Environmental and Social Standards and Screening

201. Although UNDP’s standard text for the ‘Legal Context and Risk Management’ sections of all project documents, adopted in March 2016, includes reference to SES and SESP¹⁷³, the TRIDOM II Prodoc ‘Legal Requirements’ section does not mention the SES, SESP or even UNDP’s Programme and Operations Policies and Procedures (POPP).¹⁷⁴

¹⁷⁰ John Nelson and Messe Venant. ‘Indigenous peoples’ participation in mapping of traditional forest resources for sustainable livelihoods and great ape conservation Report to the United Nations Environment Programme (UNEP). Forest Peoples Programme. November 2008. P. 14. http://www.iapad.org/wp-content/uploads/2015/07/cameroon_unep_report_nov08_eng.pdf

¹⁷¹ Id. p. 14. This report also described that the increase in logging in southeast Cameroon resulted in increased commercial poaching, ‘The arrival of logging in south-east Cameroon encouraged an influx of outsiders who do not hold the same conservation beliefs, resulting in increased commercial poaching generally.’

¹⁷² Response from UNDP Cameroon to OAI/SECU request for information. January 2019.

¹⁷³ UNDP, ‘Project Document Template’. 1 March 2016. This document includes the following directive: ‘NOTE: The following sections are required for all project documents, and contains the general provisions and alternative texts for the different types of implementation modalities for individual projects. Select one option from each the legal context and risk management standard clauses and include these in your project document under the Legal Context and Risk Management Standard Clauses headings.’ Standard clauses include the following clauses referencing the SES and SESP: ‘4. Consistent with UNDP’s Programme and Operations Policies and Procedures, social and environmental sustainability will be enhanced through application of the UNDP Social and Environmental Standards (<http://www.undp.org/ses>) and related Accountability Mechanism (<http://www.undp.org/secu-srm>). 5. The Implementing Partner shall: (a) conduct project and programme-related activities in a manner consistent with the UNDP Social and Environmental Standards, (b) implement any management or mitigation plan prepared for the project or programme to comply with such standards, and (c) engage in a constructive and timely manner to address any concerns and complaints raised through the Accountability Mechanism. UNDP will seek to ensure that communities and other project stakeholders are informed of and have access to the Accountability Mechanism. 6. All signatories to the Project Document shall cooperate in good faith with any exercise to evaluate any programme or project-related commitments or compliance with the UNDP Social and Environmental Standards. This includes providing access to project sites, relevant personnel, information, and documentation.’

¹⁷⁴ Prodoc. October 2017. ‘Part 6. Legal Requirements’ focuses only on security. p. 89

202. Nevertheless, the Prodoc and an Annex to the Prodoc include a ‘Social and Environmental Standards’ section, with a focus on results from application of the Social and Environmental Screening Procedure.¹⁷⁵
203. Summary conclusions drawn by UNDP Cameroon based on its application of the SESP include the finding of *no significant environmental and social risks* (emphasis added), ‘The UNDP Social and Environmental Screening Procedure has been applied during project preparation and did not identify any significant environmental or social risks associated with the proposed project. In general, the project will contribute positively towards conserving globally endangered populations of endangered species and their habitats.’¹⁷⁶
204. The risk that the project ‘negatively affects indigenous people traditional livelihoods and land use via strengthened law enforcement’ is rated ‘low.’¹⁷⁷
205. It describes that ‘continuous consultation’ ‘effective participation of indigenous people’ and a ‘careful social assessment’ will mitigate potential impacts, ‘The project is planning to set up continuous consultation with indigenous people to ensure their implication in project activities and their role in decision-making on activities that directly concern them. A careful social assessment should be undertaken before implementing specific wildlife use and NTFP activities affecting indigenous people’s livelihoods (emphasis added). Continuous consultation and effective participation of indigenous people will ensure that the project is respectful of their culture and traditional livelihoods.’¹⁷⁸
206. The paragraph does not acknowledge previous and existing community claims of harm raised in the context of TRIDOM I, including those related to access to resources and protection of traditional livelihoods, and risks related to these claimed harms. It does not, for example, describe that previous anti-poaching activities targeted not only elite poachers, but also Baka individuals attempting to access resources traditionally accessed.
207. The Prodoc’s Annex 8. ‘Social and Environmental Safeguards,’ further elaborates results, and includes the full SESP. It notes, The UNDP environmental and social safeguards requirements have been followed in the development of this project. In accordance with the UNDP Social and Environmental Screening Procedure, this project is rated as having a low environmental and social risk. With regards to the overall project, *there are almost no activities that are deemed to represent some level of risk* (emphasis added). All outputs having little to no potential negative environmental or social effects. Given this logic, there are no tradeoffs between environmental and socioeconomic objectives. The potential negative environmental and social effects of the project are thus mainly those of unintended consequences, largely

¹⁷⁵ Id. Annex 8. This is in the Social and Environmental Safeguards section(s) of the report, including the Risk Analysis (p.56) and Annex 8: Social and Environmental Safeguards (p.137), which includes the results of application of the Social and Environmental Screening Procedure. Two other sections of the Prodoc describe ‘risks’ the project must consider and measures to respond to these risks. These include Section 2. Strategic Results – Risks and Adaptation measures (p. 91) – which focuses on risks to project success, and includes consideration of social risks in this context, and Annex 10 describing the UNDP Risk Log (p. 149).

¹⁷⁶ Id. Section 2.3.2 Risk analysis, p. 56. This summary is introduced by the following explanation: ‘During the PPG phase, project risks were updated based on those presented at the PIF stage. They were further elaborated and classified according to the UNDP/GEF Risk Standard Categories, and assessed according to criteria of ‘impact’ and ‘likelihood’. This paragraph additionally notes, ‘These risks and the mitigation measures will be continuously monitored and updated throughout the project, and will be logged in ATLAS and reported in the PIRs.’

¹⁷⁷ Id. p. 58. Table 2.

¹⁷⁸ Id. p. 140.

preventable with the implementation of appropriate studies, sound mitigation measures, surveillance of work as well as monitoring mechanisms. Also, the extent of potential impacts, even without any kind of mitigation action, are generally limited in time and space as well as reversible. Furthermore, given the broad range of possible measures included in the project's framework, output-specific social and environmental assessments conducted in the first phases of the project will very quickly identify: (1) the best technical measures to be put forward in each targeted community, prohibiting certain measures if environmental and social impacts associated with them in a specific environment are likely to be significant; (2) the best sites within a given location for each measure as to reduce negative impacts to a minimum; and (3) environmental and social management measures to be included in the Terms of Reference of contractors. Field surveys during the PPG phase sought to document any socio-environmental characteristics of targeted sites that might be of relevance for environmental and social management going forward. These will inform the next steps and contribute to tailoring various studies and measures to local environmental and social contexts. Environmental and social grievances will be reported to the GEF in the annual PIR.¹⁷⁹

208. The SESP identifies four possible risks based on five 'yes' responses to UNDP's 'Checklist of Potential Social and Environmental Risks' (the full set of responses to the Checklist can be found in the Annex section of this report). Two of the four risks relate to Indigenous Peoples (the other two related to climate change and critical habitat/environmentally sensitive areas).
209. 'Yes' responses are provided in response to the following two questions concerning Indigenous Peoples: 6.1 Are indigenous peoples present in the Project area (including Project area of influence)? And 6.2 Is it likely that the Project or portions of the Project will be located on lands and territories claimed by indigenous peoples?
210. The more detailed response provided to the first question – if Indigenous Peoples are present in the Project area - is: 'The project area is inhabited by many different indigenous people (including Baka and Bantu pygmies, Bakola, and Bagyeli) whom subsistence is based on the use local natural resources, especially from surrounding forests. Project activities concerning the management of the interzone (output 3.4) are directly targeting local communities and especially indigenous people to introduce new wildlife and NTFP use management practices, which might disturb traditional subsistence livelihoods and alter some traditional practices that are part of indigenous people's culture.'¹⁸⁰
211. The description of assessment and management measures required to respond to this identified risk include the following: 'The project is planning to set up continuous consultation with indigenous people to ensure their implication in project activities and their role in decision-making on activities that directly concern them. A careful social assessment should be undertaken before implementing specific wildlife use and NTFP activities affecting indigenous people's livelihoods. Continuous consultation and effective participation of indigenous people will ensure that the project is respectful of their culture and traditional livelihoods.'¹⁸¹

¹⁷⁹ Id. Annex 8.

¹⁸⁰ Id. p. 140.

¹⁸¹ Id.

212. The SESP provides the following response to the second question about whether the Project will be located on land claimed by indigenous peoples, ‘the project area does cover lands and territories claimed by indigenous people. Consultation and specific arrangements have to be established to avoid any conflict on land use and land management in these territories.’¹⁸²
213. The SESP describes that assessment and management measures required to respond to this identified risk include the following: The project is planning to set up continuous consultation with indigenous people to ensure their implication in project activities and their role in decision-making on activities that directly concern them. Special treatment for indigenous people is likely to be implemented: specific arrangements for their use of natural resources and activities even within protected areas will enable them to maintain their subsistence and traditional livelihoods.
214. For both of the above-described risks relating to Indigenous Peoples, the SESP indicates that the likely impact, on a scale from 1-5 (with 1 as lowest impact) is 1 – the lowest likely impact. And the probability of impact, using the same scale, is 1. As such, the overall risk relating to Indigenous Peoples is ‘low.’
215. As noted below, in responding to the checklist, UNDP Cameroon, answered ‘no’ to most key questions relating to social risks - including those asking about whether an impact was ‘possible’ or ‘likely.’
216. For example, UNDP Cameroon answered ‘no’ to the following questions relating to UNDP’s Human Rights Principle¹⁸³: ‘Could the Project lead to adverse impacts on enjoyment of the human rights (civil, political, economic, social or cultural) of the affected population and particularly of marginalized groups?’; ‘Is there a ‘likelihood’ the Project would have ‘inequitable or discriminatory adverse impacts on affected populations, particularly people living in poverty or marginalized or excluded individuals or groups?’; ‘Could the project ‘potentially restrict availability, quality of and access to resources or basic services, in particular to marginalized individuals or groups?’ [UNDP Cameroon elaborated on this point, ‘In protected areas and in the interzone, resource management is just regulated for all local communities. Baka populations have a particular regime of access to resources in protected areas that takes into account their vital and cultural needs.’] Is it ‘likely’ there are issues related to the participation of marginalized groups in decision-making? Is there ‘a likelihood’ the Project would exclude any potentially affected stakeholders, in particular marginalized groups, from fully participating in decisions that may affect them?’ [The response further elaborates, ‘Several consultative frameworks will be set up at the municipal and regional level

¹⁸² Id.

¹⁸³Id. p. 132. In addition to describing human rights-related risks, the SESP provides the following description of how project will mainstream the human rights-based approach to strengthen the environmental and social sustainability of the project: ‘The project supports meaningful participation and inclusion of all stakeholders, in particular local individuals and groups, in processes that may impact them including design, implementation and monitoring of the project, e.g. through capacity building, creating an enabling environment for participation, etc. (consistent with participation and inclusion human rights principle). It supports means for local communities to raise concerns and/or grievances when activities may adversely impact them (consistent with accountability and rule of law human rights principle). The project will strengthen national capacity for effective law enforcement and consequently support the consistency of the rule of law in the country. The project main goal is to reduce poaching and wildlife trafficking which are deeply entangled with corruption within high social and political spheres in Cameroon, it will thus participate in combating corruption. By strengthening the rule of law the project will participate in ensuring the protection of human rights in Cameroon As the human rights based approach is not only about empowering people to know and claim their rights, it also increases accountability of individuals and institutions – namely through enforcement of laws.’

to guarantee the participation of the communities and the ownership of the development actions put in place. Consultations with communities are planned throughout the implementation of the project. In addition, current legislation on the management of protected areas requires the establishment of governance structures and the representativeness of all social strata including indigenous peoples Baka and women.¹⁸⁴ Is there a 'risk' that duty-bearers do not have the capacity to meet their obligations in the project? And 'a risk' that rights-holders do not have the capacity to claim their rights?' And is there a 'a risk that the Project would exacerbate conflicts among and/or the risk of violence to project-affected communities and individuals.'

217. UNDP Cameroon provided a 'yes' in response to one question relating to human rights - whether human rights concerns were raised during the stakeholder engagement process.
218. Regarding such concerns', the SESP provides the following, 'When a Project is categorized as Low Risk no further social and environmental assessment is required. If stakeholders have raised concerns regarding the Project's social and environmental aspects...[a] Low Risk designation must be carefully reviewed (e.g. serious objections should warrant Moderate or High-Risk categorization).¹⁸⁵
219. For relevant questions relating to Standard 1: Biodiversity Conservation and Sustainable Natural Resource Management, the UNDP answered 'yes' to a question about whether project activities are proposed adjacent to areas of importance to indigenous peoples or local communities, responding, 'There are indigenous Baka populations in the project area.'¹⁸⁶ UNDP Cameroon responded 'NO' to a question about whether the Project would involve changes to the use of lands that may have adverse impacts on livelihoods. It elaborated, 'The project does not restrict the availability, quality and accessibility of resources or basic services, especially for marginalized individuals or groups. Protected areas and interzone resource management will just be regulated for all local communities. Baka populations have a particular regime of access to resources in protected areas that takes into account their vital and cultural needs.'¹⁸⁷
220. UNDP Cameroon provided a 'NO' response to the following question relating to Standard 3, Community Health, Safety and Working Conditions - will the Project 'engage security personnel that may pose a potential risk to health and safety of communities and/or individuals (e.g. due to a lack of adequate training or accountability)?'
221. UNDP Cameroon provided a 'NO' response to a Standard 4, Cultural Heritage question about whether the proposed Project would 'result in interventions that would potentially adversely impact... sites...with historical, cultural, artistic, traditional or religious values or intangible forms of culture (e.g. knowledge, innovations, practices)?'
222. UNDP Cameroon responded 'NO' to all three relevant questions relating to Standard 5, Displacement and Resettlement, 'Would the Project potentially involve temporary or permanent and full or partial physical displacement?', 'Would the Project possibly result in economic displacement (e.g. loss of assets or access to resources due to land acquisition or

¹⁸⁴ Id. p. 144.

¹⁸⁵ UNDP, 'Social and Environmental Screening Procedure'. March 2016. p. 20.

¹⁸⁶ Prodoc. October 2017. p. 145.

¹⁸⁷ Id.

access restrictions – even in the absence of physical relocation)?’ and ‘Would the proposed Project possibly affect land tenure arrangements and/or community based property rights/customary rights to land, territories and/or resources?’

223. For all ‘No’ answers, UNDP Cameroon provided the same response, ‘Project activities will not involve relocation or displacement because they will be implemented on sites already settled as protected areas. There will be no new protected areas created.’¹⁸⁸
224. As detailed below, according to the SES, a ‘low’ risk rating allows the project to move forward without additional assessments.
225. As such, although the SESP references a need for additional social assessments in its responses to the SESP Checklist – indicating that such assessments are necessary to avoid potential impacts - the Prodoc does not include a detailed description of social assessments that will occur, i.e., the Project Document does not detail what risks will be assessed, how they will be assessed – including, for example, how Indigenous Communities will be involved in any assessment, and when these risks will be assessed.
226. In UNDP Cameroon’s 21 September email to OAI/SECU describing why risk was low, UNDP Cameroon described a different reason for the ‘low risk’ rating – one tied to a claim that previous complaints do not relate to the project area, ‘Risks related to compromising the lives and aspirations of the Baka, was assessed at a low level under the SESP because the geographical area that will be the subject of the scheduled project interventions in the frame of the cross-border approaches is not where the facts reported in the complaints occurred as stated in the UNDP Cameroon response letter to Survival International regarding abuses against the Bakas in 2015 (see question 7). Please note that because the project has not yet started operationally, there have not been any Environmental Impact Reports/Assessments to date.’¹⁸⁹
227. Given the risks that were identified (and despite their characterization as ‘low’), the SESP identifies four SES standards (including ‘principles’) that would apply to the project: Human Rights, Gender Equality and Women’s Empowerment, Climate Change Mitigation and Adaptation, and Indigenous Peoples.
228. The Prodoc does not otherwise describe the specific social and environmental measures required by the SES that will be taken to respond to social and environmental risks.
229. The Prodoc does not include a description of a project-level grievance mechanism – other than mention that ‘Environmental and social grievances will be reported to the GEF in the annual PIR.’

TRIDOM II Complaint

230. Concerned that activities under TRIDOM II would continue measures under TRIDOM I that, they claim, continue eviction and displacement activities initiated by the creation of Nki and continued through TRIDOM I and the Ngoyla Mintom projects, Baka (and Bantu) individuals filed a complaint (with the help of international NGO Survival International) to the Investigations Section of UNDP’s Office of Audit and Investigations on 2 August 2018.

¹⁸⁸ Id. p. 147.

¹⁸⁹ Response from UNDP Cameroon to OAI/SECU. 21 September 2018.

231. The Investigations Section forwarded the complaint to UNDP SECU (also within UNDP'S Office of Audit and Investigations).
232. UNDP Cameroon responded by reiterating earlier assertions that the complaints do not relate to the project area, '... the Baka are a population that live across the Cameroon portion of the TRIDOM. This said it is important to note that none of the specific geographic areas mentioned in the letters of complaint attached to Survival's letter are areas where UNDP has implemented or plans to implement its work.'¹⁹⁰
233. OAI/SECU observes that the Cameroon-focused letter of complaint attached to Survival's letter references issues related to access to natural resources in the Nki National Park and is signed by nine individuals from the village of Zoulabot Ancien, 'We, the undersigned Baka from the village of Zoulabot Ancien, would like to explain to you the suffering we are going through because of conservation. Nki National Park was created in 2005 and ever since we have lost the forest that our ancestors left us. We cannot go hunting safely, or climb trees to gather honey, or dig for wild yams or collect our medicinal plants.'
234. UNDP Cameroon did not explain how areas mentioned in the complaint – including Nki - are not relevant to the areas where UNDP has implemented or plans to implement its work. Project areas include Nki and the interzone.
235. OAI/SECU found the complaint eligible for an investigation on 24 October 2018, and performed a field visit to the area from 12 – 20 February 2019.

¹⁹⁰ Response from UNDP Cameroon to OAI/SECU. 21 September 2018.

V. ANNEX III. INDICATIVE LIST OF INTERVIEWEES

Communities

- Baka Community in Zoulabot Ancien (Complainants)
- Additional Members of Baka Communities
- Members of Bantu Communities

UN/UNDP Personnel

- UN Resident Coordinator
- UNDP Resident Representative
- UNDP Cameroon Project Staff in Yaoundé

Representatives of WWF

- Representative from WWF in Geneva, Switzerland
- Representatives from WWF in Yaoundé

Representatives of the Government of the Republic of Cameroon

- Representatives from the Ministry of Environment, Nature Protection and Sustainable Development (MINEPDED-Cameroon)
- Representatives of the Ministry of Forests and Wildlife (MINFOF)
- Representatives of the Ministry of Social Affairs

Community Organizations / Civil Society Organizations

- Representatives of Forest Peoples Programme Cameroon
- Representative of OKANI
- Representatives of Centre pour l'Environnement et le Développement (CED)
- Representative of Réseau Recherches Actions Concertées Pygmées (RACOPY)
- Representative of ASBAK
- Representatives of AFFEBEN

Other Stakeholders

- Representatives of Survival International
- Representative of the Center for International Forestry Research (CIFOR)
- Academic Experts / Biologist on Cameroon's Wildlife Conservation and Communities