



India High Range Landscape Project

**Advisory Review into Allegations of Non-Compliance with the Social and
Environmental Standards and other Relevant Policies
Relating to the India High Range Landscape Project in the Western Ghats of Kerala,
India**

21 November 2016

Final

Case No. SECU0001

Basic Data

Case No.	SECU0001
Category of Non-Compliance:	Primarily Social
Location:	Delhi and Kerala, India
Date Complaint received:	December, 2015
Source of Complaint:	M.P. Mr. Joice George
Eligibility assessment conducted by:	Richard Bissell, Lead Compliance Officer
Compliance Officer assigned:	Anne Perrault, Compliance Officer
Other investigators assigned:	Paul Goodwin, Research Analyst
Related Case(s):	N/A

Signatures:

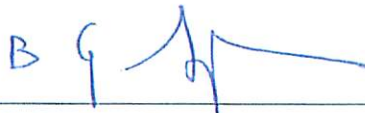
Prepared by:



Date: 21 November 2016

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Reviewed by:



Date: 21 November 2016

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I. List of Acronyms

Adv.	Advocate
CHR	Cardamom Hill Reserve
CO	UNDP Country Office
CPAP	Country Programme Action Plan
DIM	Direct Implementation Modality
ESSP	Environmental and Social Screening Procedure
FRA	Forest Rights Act
GEF	Global Environment Facility
HRSDS	High Range Sustainable Development Society
HVBA	High Value Biodiversity Area
IAT	UNDP OAI Information and Analysis Team
IHRML	India High Range Mountain Landscape
KFD	Kerala Forest Department
LP	Landscape Plan
MP	Member of Parliament
NGI	Non-governmental Institution
NGO	Non-governmental Organization
OAI	UNDP Office of Audit and Investigation
PA	Protected Area
PIF	GEF Project Identification Form
POPP	UNDP Programme and Operations Policies and Procedures
PPG	Project Preparatory Grant
Prodoc	UNDP Project Document
SECU	UNDP Social and Environmental Compliance Unit
SPs	Sector Plans
SRM	UNDP Stakeholder Response Mechanism
TOR	Terms of Reference
UN	United Nations
UNDP	United Nations Development Programme

II. Executive Summary

1. In May 2014, United Nations Development Programme (UNDP), the Government of India, and the Government of Kerala signed the India High Range Mountain Landscape Project (IHRML Project) project document (prodoc), Atlas Project ID: 00087493 and Atlas Award ID: 00075746, with a project start date of March 2014. The prodoc reflects that the project budget is US\$36,275,000, with US\$28,000,000 provided by the Government of India, US\$6,275,000 provided by the Global Environment Facility (GEF) (for directly supporting project activities), US\$ 1,000,000 by UNDP-managed sources, and US\$1,000,000 provided by the private sector (<http://open.undp.org/#project/00075746>). UNDP is acting as the GEF Executing Agency. It is executed under a Direct Implementation Modality (DIM), according to the Standard Basic Assistance Agreement between UNDP and the Government of India, and the Country Programme Action Plan (CPAP).
2. The prodoc reflects that the IHRML Project's overarching goal is to protect the globally-significant biodiversity in the Western Ghats region in southern India while responding to the needs of its inhabitants in a sustainable manner. The prodoc explains that the Western Ghats region in southern India is rich in biodiversity and home to a range of plant and animal species. Approximately 38 percent of India's flowering plants and 63 percent of evergreen woody plant species are endemic to the area, as are a wide variety of fish, reptiles, butterflies, birds, and mammals. Additionally, over 45 million people depend directly on the Western Ghats for their livelihoods, and around 245 million people living in peninsular India depend on it for fresh water. Several factors, including human activity and climate change, are threatening this biodiversity and the long-term sustainability of the area.
3. As described in the prodoc, the primary approach to accomplishing the overarching goal is to establish a conservation-compatible mosaic of land uses (through a cross-sectoral land use management framework in production sectors such as tea, cardamom and tourism), anchored in a cluster of protected areas. Through this approach, the project will increase conservation efforts in 84,600 additional hectares of 'high value biodiversity areas,' (HVBAs) and create a new protected area system in 11,650 hectares of these areas.
4. The prodoc does not describe the specific possible latitudinal and longitudinal locations of these areas or restrictions within these areas, but instead reflects a strategy to create a cross-sectoral platform – the High Range Sustainable Development Society (HRSDS) - that will involve a wide range of stakeholders in making both landscape-level and sector-level land-use decisions and in monitoring and enforcing such decisions. It indicates that the composition of the HRSDS, and the process through which decisions will be reached by the HRSDS, will be researched and decided within the first year of project implementation.

5. In November of 2015, Indian Parliamentarian Advocate Mr. Joice George and cardamom planters and spice growers in the Idukki District of Kerala filed a complaint with the UNDP Office of Audit and Investigations, which referred the issue to the Social and Environmental Compliance Unit (SECU) housed within the same office. Additionally, the UNDP India Country Office encouraged the complainant to pursue options with SECU and the dispute resolution arm of the Accountability Mechanism called the Stakeholder Response Mechanism. (For a complete timeline of the SECU Advisory Review process, beginning with receipt of the initial complaint through issuance of the final Advisory Review report, please refer to Annex 1).
6. The complainants conveyed concerns that the project as currently designed and approved would significantly adversely impact them and other local communities, including primarily by restricting their access to land and natural resources upon which they depend. In their view, such restrictions would result in community displacement, create 'conservation refugees,' and otherwise adversely impact their livelihoods, wellbeing, cultural heritage, and property rights.
7. They believe project information was incomplete and inaccurate, and consultations and support for the project inadequate.

For complaints meeting UNDP criteria and approved prior to 1 January 2015, SECU can provide Advisory Notes to help UNDP comply with its policies. Thus, in January 2016, SECU determined criteria for the complaint related to the Project were met: the project relates to a project supported by UNDP, raises issues relating to UNDP's compliance with its social and environmental commitments, and poses risks of adverse impacts to local communities. On that basis, SECU found the project eligible for an Advisory Note.

8. In June 2016, SECU traveled to Delhi, Trivandrum, Munnar, and Kochi, and, based on discussions with UNDP staff, government officials, complainants and other stakeholders, determined that despite successful efforts of project staff to initiate consultations and detail the significant biodiversity in the western Ghats, threats to this biodiversity, and possible measures to respond to these threats, shortcomings related to the process and project document have created and exacerbated concerns of individuals and communities potentially impacted by the project.
9. Shortcomings include (1) an unclear description of decision-making processes and the role of potentially-impacted individuals and communities in identifying and agreeing to measures to protect biodiversity, (2) a confused picture of decisions that have been made to date and by whom, how, and when future decisions will be made, (3) an incomplete application of UNDP's social and environmental screening and assessment tools - leading to an inadequate description of risks to individuals potentially impacted by the project, the significance of these risks, and how they will be further reviewed and assessed, (4) an incomplete picture of the context within

which the project is occurring – including an unclear description of pertinent resource-related conflicts, relevant legal actions, and conservation efforts and their relationship to the project, (5) consultations that inadequately informed and engaged all key stakeholders, and (6) insufficient community support for the project.

10. To help ensure UNDP's compliance with its policies, SECU provides the following advice to the Country Office for consideration:
 - (1) More clearly indicate in the prodoc what has been decided about possible locations of high value biodiversity areas and protected areas within HVBA and clearly articulate in the prodoc how potentially-impacted individuals/communities can participate in decisions relating to locations of these areas and possible restrictions within them.
 - (2) Identify, notify, and engage more directly with individuals and communities potentially impacted by possible restrictions in these areas, including through local self-government organizations. Ensure that they are aware of and have access to consultations, are provided information in an accessible format about both benefits and possible adverse impacts of the projects, and have real opportunities to discuss the project and voice their concerns.
 - (3) Perform a more complete screening and assessment of the project for risks to local individuals and communities – more robustly identifying, assessing, and describing risks as they exist prior to mitigation measures, and with greater participation of communities potentially impacted.
 - (4) Provide a clearer description, in the prodoc, of the relationship of the proposed project to previous conservation initiatives and studies as well as to conflicts related to land, forests, and other natural resources in the area targeted for protection, particularly the Cardamom Hill Reserve (CHR) area and surrounding areas.

III. Overview of Advisory Review Process

11. For complaints meeting UNDP criteria and approved prior to 1 January 2015, SECU can provide Advisory Notes to help UNDP comply with its policies. In January 2016, SECU determined criteria for the complaint related to the Project were met: the project relates to a project supported by UNDP, raises issues relating to UNDP's compliance with its social and environmental commitments, and poses risks of adverse impacts to local communities. On 29 January 2016, SECU posted draft Terms of Reference (TOR) for the review on the SECU website, and finalized the TOR 26 February 2016. In early June, after initial desk-based research, SECU conducted field-work in Delhi and Kerala. In Delhi, SECU met with UNDP-India staff members and relevant national government officials. In Kerala, SECU traveled to the state capital of Trivandrum where it met with relevant state ministry officials, UNDP staff/consultants involved in the project design and implementation, and other

individuals identified by SECU as reliable and relevant. After Trivandrum, SECU traveled to Munnar, the town in the center of the project area. In Munnar, SECU met with multiple groups of complainants/stakeholders and relevant individuals and groups. After Munnar, SECU traveled to Kochi, a town on the coast of Kerala. In Kochi, SECU met with relevant individuals. In late June, SECU prepared a draft advisory report for public comment. In early November, the report was finalized and submitted to relevant UNDP offices.

IV. Background and Concerns that led to Advisory Review

12. The Western Ghats region in southern India is rich in biodiversity and provides important ecosystem services to people in peninsular India, but it faces significant threats. Thirty-eight percent of India's flowering plants and sixty-three percent of evergreen woody plant species are endemic to the area. It has a wide variety of endemic fish, reptiles, butterflies, birds, and mammals, and has been identified as an "Endemic Bird Area," an important area of freshwater biodiversity (World Conservation Monitoring Centre), and home to 39 World Heritage sites (UNESCO). Over 45 million people depend directly on the Western Ghats for their livelihoods, and around 245 million people living in peninsular India receive most of their freshwater from rivers originating in these mountains. Human activity, including, for example, climate change and resource extraction, is threatening the biodiversity and long-term sustainability of the area.
13. The prodoc reflects that the project's overarching goal is to protect the globally-significant biodiversity and ecosystem services in the Western Ghats, while responding to the needs of its inhabitants in a sustainable manner. As described in the prodoc, the primary approach to accomplishing the overarching goal is to establish a conservation-compatible mosaic of land uses (through a cross-sectoral land use management framework in production sectors such as tea, cardamom and tourism), anchored in a cluster of protected areas. Through this approach, the project will increase conservation efforts in 84,600 additional hectares of 'high value biodiversity areas' (HVBAs), and create a new protected area system in 11,650 hectares of these areas.
14. The Project Identification Form (PIF), a GEF form related to approving GEF funding for a project, was signed in January of 2012. The UNDP prodoc was signed and approved by UNDP in May of 2014, showing a project start date of March 2014. The project is executed under a Direct Implementation Modality (DIM), according to the Standard Basic Assistance Agreement between UNDP and the Government of India, and the Country Programme Action Plan (CPAP).
15. On 16 December 2015, the Social and Environmental Compliance Unit (SECU) of the UNDP registered a complaint from Indian Parliamentarian Advocate Mr. Joice George, and cardamom planters and spice growers in the Idukki District of Kerala,

India, concerning the UNDP-supported India High Range Landscape Project – Developing an effective multiple-use management framework for conserving biodiversity in the mountain landscape of the High Ranges, the Western Ghats, India (the Project) .

16. In an August 7, 2015 letter to UNDP-GEF, and in a subsequent formal complaint to SECU, the complainants conveyed concerns that the project as currently designed and approved would significantly adversely impact them and other local communities, including primarily by restricting their access to land and natural resources upon which they depend. In their view, such restrictions would result in community displacement, create ‘conservation refugees,’ and otherwise adversely impact their livelihoods, wellbeing, cultural heritage, and property rights.
17. They indicated a perception that the project would advance such restrictions primarily by supporting a shift in the legal status of lands they currently occupy and use from one in which most of the lands are government-owned ‘revenue’ lands leased to farmers (with some land owned by farmers through pattas), with trees in the entire area managed by the Forest Department, to one in which most of the lands are ‘Forest Reserve’ lands and/or protected areas, owned and managed primarily by the Kerala Forest Department.
18. Through documents submitted by complainants and in-person meetings with complainants and other stakeholders, SECU was able to determine that complainants believe potential harms are related to: (1) a failure of UNDP to ensure that project information, including an assessment of impacts, was complete and accurate; and (2) inadequate consultation with potentially impacted communities and inadequate support for the project.

V. Policies Identified as Relevant

19. When the prodoc was signed by UNDP in May 2014, UNDP’s Programme and Operations Policies and Procedures (POPP) required UNDP to meet listed social and environmental policy commitments reflected in the POPP (See Annex 1), and to screen and assess the project for possible adverse impacts to local communities and the environment using UNDP’s Environmental and Social Screening Procedure (ESSP).
20. Concerns raised by complainants were related to several social and environmental commitments listed in the POPP, including commitments to ‘ensure effective and informed participation of stakeholders in the formulation and implementation of programmes and projects’ and ‘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.’

21. Recognizing that these commitments – particularly the POPP commitment to ‘respect and promote human rights principles’ – are broad and could implicate a long list of requirements, SECU chose to focus on the most fundamental of these requirements for its review:¹

- (1) Adequacy of Information and Assessment of Impacts
- (2) Consultation and Effective Participation of Stakeholders in Decision-Making

VI. Reviewing Compliance with Policies

Adequacy of Information and Assessment of Impacts: Concerns Expressed and Responses Provided

22. The complaint and related documents submitted to SECU indicate that complainants found information about the project lacking and inaccurate. Through in-person meetings with listed complainants, other stakeholders supporting the complaint, UNDP staff and former consultants, and Kerala officials and employees, SECU identified the following more specific key concerns of complainants and responses to these concerns.

Description of potential project implications/impacts, individuals potentially impacted, and the processes through which decisions are made and potentially-impacted individuals can be engaged

Complainants’ concerns:

23. The complainants note that the project document appears to reflect a commitment to GEF to increase conservation efforts in 84,600 additional hectares of ‘high value biodiversity areas,’ (HVBAs) – including the creation of a new 11,650 hectare protected area (PA) system within these areas – but does not include the specific possible latitudinal and longitudinal locations of HVBAs or protected areas. They note that an annex (Annexure 17: List of High Value Biodiversity Areas to be Added to PA System), indicates only the number of hectares of HVBAs within each Forest Division, the number of these hectares to be added to each existing protected area

¹ The need to assess project impacts, provide this information to local communities, consult with communities and ensure their effective participation in decision-making processes that may impact them, is fundamental and incontrovertible, according not only to the UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding) adopted by the United Nations Development Group in 2003, <http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>, and <https://undg.org/home/undg-mechanisms/undg-hrm/knowledge-management/about-the-un-practitioners-portal-on-hrba-programming-hrba-portal/english-learning-package/>, but also according to the UN Special Procedures, including, for example, Professor John Ruggie, UN Special Representative on Business and Human Rights, <https://business-humanrights.org/en/un-guiding-principles>, i.e., noting the importance of human rights impact assessments. Even development institutions with social safeguard standards that do not explicitly incorporate ‘respect for human rights’ recognize these activities as fundamental to sustainable, just development.

for a new protected area system, and the name of the existing protected area to which the addition is to be made.

24. The complainants indicate that paralleling the lack of information relating to possible locations of the new protected area system and HVBA is an inadequate description of who might be impacted, e.g., which specific individuals and communities, and how, e.g., implications of these designations.
25. Relatedly, they note a dearth of information relating to specific possible impacts to growers, farmers, and others, e.g., employment impacts, economic costs, mental and emotional challenges, impacts to revenues to the area through reduced trade. They also believe the prodoc seeks to downplay impacts by underestimating population size per hectare, particularly in the Cardamom Hill Reserve.
26. Moreover, they believe the processes through which individuals and communities potentially adversely impacted by project activities would be consulted and engaged (including to protect their rights), are unclear. They fear that their rights – including their due process rights and rights to just compensation – could be impaired if the project restricts their access to natural resources.

Response to concerns:

27. A 30 January 2015 letter from the Minister of State (Independent Charge) Environment, Forests and Climate Change, Government of India, to Adv. Joice George, sent after the project was approved, states ‘The project does not envisage expansion of the National Parks and Sanctuaries in non-forest areas.’
28. A former UNDP staff person and Kerala Forest department employee described, in a meeting with SECU, the types of areas that could become protected areas, and indicated that these would be those ‘already with the government, and where there are no disputes.’ He further indicated that some areas under government control would not be protected areas, noting, ‘Certain areas even under government control which are not feasible for Protected Areas can proceed in other ways; restoration, fire protection, soil and water conservation...those areas are still part of government. They will not be part of the Protected Area system.’
29. He also described areas within the Cardamom Hill Reserve (CHR) that would be impacted by the project, indicating that Annexure 17 specifies that while 1800 hectares in CHR are slated for HVBA status, no protected areas are planned in CHR. Referring to Annexure 17, he explained, ‘Look at the table carefully, it’s the list of HVBA to be added to the protected area system. It talks about potential HVBA, but if you look at column 3 and 4 it says 1800 of this area, bordering the CHR, it’s a HVBA. Next column shows zero proposition to move to protected areas.’

30. Kerala Forest Department officials additionally explained that an HVBA is not a 'legal entity' but rather a label that reflects a value – the value of an area as highly biodiverse. They indicated that the notion of Pas as restrictive is 'preconceived' and not accurate – in India, 'Protected areas can be created with different degrees of protection and management arrangements' – and the project would follow the process as per Indian Wildlife legislation to declare a protected area. They further noted that the prodoc reflects that most of the HVBA's are already under the management of the Kerala Forest Department.
31. UNDP and project staff in in-person meetings further indicated that the project commitment to establish a new protected area system and adopt conservation measures within HVBA's in exchange for GEF funds would not necessitate an imposition of restrictions on communities. They noted that decisions relating to protection measures can and will occur now that the project is approved, primarily through a new formal institutional platform – the High Range Sustainable Development Society (HRSDS).
32. The Inspector General of Forests at the Ministry of Environment, Forests and Climate Change within the Government of India indicated that complainants' concerns can be resolved, noting 'Communities' rights will not be tampered with. Dialogue with them will be introduced so they become friends of conservation.'
33. The Additional Chief Secretary further indicated an interest in working with M.P. Joice George and the project to make its goals clearer for everyone. 'It's better to make it more sustainable, and improve the thing...we can't remove it [the project] just like that. The main assurance the people would like to have, and what gains they have, we have to explain to them more clearly.' He expressed an interest in working with the complainants to ease their concerns, saying, '...we should convince him we're only enriching an existing situation. Make it diversified....If Joice George has serious concerns, can you address them?'
34. Staff at UNDP and the Kerala Forest Department explained that stakeholders, including potentially-impacted individuals and communities, would be consulted through a multi-sectoral collaborative coordination mechanism – the High Range Sustainable Development Society (HRSDS). Sector plans would be prepared through a fact-driven consultative process.

Description of the legal status of lands within the proposed project area and context for the project

Complainants' concerns:

35. Complainants believe the prodoc provides an inaccurate description of the legal status of lands within the project area, particularly the Cardamom Hill Reserve (CHR)

Area. They believe this inaccurate description is an attempt to support a position that is legally disputed, noting, for example, that the following language in paragraph 9 on page 10 is intended to support the position that most lands in CHR are ‘forest reserve’ lands and not revenue lands. ‘The Cardamom Hill Reserve (CHR), even though notified as a Reserved Forest in 1897 with an area of 865 km², has only a marginal portion under exclusive conservation regimes (e.g., Mathikettan National Park); the rest being production areas under varied land use – from small towns like Kattappana and Nedumkandom through cardamom estates to forested revenue lands.’ Complainants believe such a position would mean the area is *already* subject to stricter management by the Kerala Forest Department (KFD), and, as a result, even assuming the CHR is not included on the list of potential protected areas, it can be treated as such.

36. Similarly, complainants are concerned about the relationship of the proposed project to previous conservation initiatives. They described that not long before the project was approved, the ‘Report of the Western Ghats Ecology Expert Panel’ (also known as the Gadgil Committee report after panel Chairman Madhav Gadgil), was issued, with recommendations that included restrictions on activities in CHR and elsewhere in the project area. These proposed restrictions were (and are) of concern to many living in these areas. They observed that the prodoc does not indicate how the UNDP project does or does not relate to the proposed recommendations for the same areas. Additionally, they noted that in 2012, 39 sites in the Western Ghats were inscribed as World Heritage Natural Sites, and this raised concerns among many. The creation and extension of the Periyar Tiger Reserve also contributed to anxieties for some farmers/growers, particularly in Cardamom Hills.

Response to concerns:

37. In interviews with UNDP staff and government officials involved with the design and implementation of the project, SECU was informed that offers had been made to Adv. Joice George to remove certain language from the Prodoc that was problematic for him – including paragraph 9, quoted above. One UNDP staff noted that when meeting with Adv. George he asked ‘Is there a way forward? Can we remove clauses’, to which Adv. George responded ‘no I don’t think we can move forward with the project. We’d have to do a new project.’ Both UNDP staff and government officials indicated that these concessions were rejected by Adv. George.
38. Additionally, in one interview with project designers, they indicated that the prodoc did not contemplate any redefining of land status in CHR, as this is a question of Indian law and these issues are pending before the Indian Supreme Court, ‘A group in Kerala filed a case in the Supreme Court saying it [the CHR] is a reserve forest. We are not supporting that [contention].... its status cannot be changed within the project.’

39. Comments from a project consultant in response to a draft of this report indicated that the project is designed to address land tenure issues. Annexure 9, describing 'indicative interventions' in various sectors confirms that one possible intervention is 'Survey of Cardamom leases and pattas for clarity about ownership/custodianship of cardamom areas.'
40. A response provided by a cardamom farmer in the project area to a draft of this report indicates that, of the approximately 20 – 25 estimated attendees in a February 2013 meeting organized by project staff to discuss the project with cardamom farmers and others, several expressed apprehensions about the relationship of the project to the Gadgil report. He notes, 'Farmers expressed their apprehension whether this Project had anything to do with Gadgil report which was facing much opposition from various groups in Idukki. It was categorically stated by the PPG team that this was a sustainable development Project which had nothing to do with Gadgil Report.'

Description of threats

Complainants' concerns:

41. Complainants object to the project document's description of threats to biodiversity posed by agricultural practices. More specifically, for example, complainants disagree with assertions that cardamom farmers are using new varieties of cardamom that need more sunlight and require removal of forest canopy. They also disagree with the project document's implications of excessive use of chemical fertilizers and pesticides in tea and cardamom sectors. The project document notes, for example, that 'the long-term impacts and challenges of intensive agronomic practices, (e.g., excessive use of chemical fertilizers and pesticides) in tea and cardamom sectors canopy opening in CHR, ... need to be understood in detail and translated for local guidance for land use planning.' (para. 62)

Response to concerns:

42. Kerala Forest Department employees indicated to SECU 'The plant used to occur under natural rainforest. They developed new varieties that are not shade loving; it's actually sun loving. It gives you incentive to cut down trees. To promote the problem, cardamom also requires wood fuel to cure the seeds. So they cut down trees. The temperature of that area has increased by 2.2 degrees over last two years. Slowly the area is becoming unsuitable for cardamom cultivation itself.'
43. In response to a question about what percentage of the cardamom is now sun-loving, an interviewee involved in the design of the project stated that '90% [of cardamom in the CHR] is sun-loving, and the [farmers] are using the most amount of

pesticide here as well – they are using 2.7kg of pesticide per hectare which raises issues of human health because of this [excessive] pesticide use.’

44. The prodoc, additionally, cites a number of studies in support of the idea that new varieties of cardamom and cultivation practices are environmentally harmful. For example, the prodoc cites a National Institute of Advanced Studies study from 2011 which concluded that reckless use of chemical pesticides aggravates the environmental issues of the CHR, and cites two other studies which suggest that pesticide use (among other causes) is having a negative impact on pollinators and insectivorous birds. The prodoc also cites the same study in support of the notion that the increased use of pesticides is having direct and negative effects on the human population, with increased reports of dermatitis, asthma, cancer and reproductive disorders.
45. The prodoc also cites an unpublished PhD thesis from the National Institute of Advanced Studies in Bangalore to substantiate assertions that canopy density has been reduced to 35-50 percent from an original condition of 80-90 percent. The prodoc suggests that this reduction is caused, at least in part, by the adoption of sun-loving cardamom varieties and a need to cut the trees for fuel consumption.

Technical nature and accessibility of project document

Complainants’ concerns:

46. Complainants additionally find the document too technically difficult to understand and inaccessible due to the fact that it is not available in a relevant language other than English. Many of the farmers and other stakeholders speak primarily, or only, in local languages, including Malayalam, the principal language of the state of Kerala.

Response to concerns:

47. UNDP staff acknowledged that the prodoc was in English only, and provided to SECU (upon SECU’s request for all powerpoint presentations) a powerpoint presentation in English, but explained that consultations at the field level were in the local language and that ‘A film was also being made in Malayalam and Tamil for dissemination purposes which had to be stalled as the project was put on hold.’
48. *Attention to development needs relative to conservation needs*

Complainants’ concerns:

49. Complainants express a belief that the project's primary orientation is toward conservation, without adequate attention to the livelihood needs of local communities.

Response to concerns:

50. Kerala Forest Department representatives indicated to SECU, 'This is a way to establish forest protections from within. Right at the beginning, this is not a conservation project – it's sustainable development. Livelihood, conservation, sustainable development. We thought we needed to expand the concept of national parks. It was sustainable development – it was a radical break from the traditional [conservation] approach.'

Adequacy of Information and Assessment of Impacts: Findings

51. SECU finds that concerns of complainants and other stakeholders relate to, and are exacerbated by, shortcomings of the prodoc with respect to information and assessment of impacts. Although UNDP staff and Indian government officials provided substantive responses to key concerns of complainants after (and apparently before) the complaint was filed, these responses are not embedded in the project document. For UNDP, the project document is key; it describes the activities and commitments for which UNDP can be held accountable, and it must reflect how UNDP is meeting its social and environmental commitments. Shortcomings of this document are described below.

Description of potential implications/impacts, individuals potentially impacted, and the processes through which decisions are made and potentially-impacted individuals are/can be engaged

52. The project document does not provide a clear description of what has been decided already, and by whom, how, and when future decisions will be made. Most significantly, it does not clearly describe in adequate detail the opportunities for potentially-impacted individuals and communities to engage effectively in identifying, discussing, and agreeing to measures to protect biodiversity – including opportunities related to a new protected area system, high value biodiversity areas, and possible restrictions in these areas.
53. Regarding what has been decided already, for example: The project document reflects an apparent commitment to establish an additional 11,650 hectares of protected areas. Given the specific number, one might reasonably wonder if specific areas had already been identified and measured. The document usefully lists the existing protected areas adjacent to/near which the new protected areas would be located, but does not provide specific possible locations, e.g., specific alternative locations that are being considered for PA status. Although UNDP is not required to

identify in the project document *final* locations of areas to be protected, to the extent *options* for – or even a clear list of criteria to define – specific areas to be protected are known during project development, these should be shared in this document. The prodoc should also describe the process under Indian law to declare and establish new protected areas. This is important information for potentially-impacted individuals.

54. This additional information about protected areas may have been useful for some concerned individuals and may have assuaged some fears – although perhaps not all fears of those concerned about the CHR; the prodoc clearly indicates no intention of creating a protected area in the CHR.
55. The bigger issue for the CHR relates, perhaps, to a few other uncertainties: (1) what the implications of the proposed HVBA of 1800 hectares and land use/sector plans are for individuals in the CHR; and (2) the legal status of the CHR and its implications for the project.
56. Although Kerala Forest Department officials described the HVBA designation as a label only – one that denotes an area as highly biodiverse but does not necessitate restrictions, the prodoc does not clearly reflect this.
57. Instead, the project document provides a convoluted picture of (1) whether activities will be restricted in HVBAs, and whether agreement on restrictions is necessary for implementing them; and (2) how potentially-impacted individuals and communities would participate in these decisions, including through the HRSDS.
58. The prodoc explains that prescriptions are to be included in a ‘cross-sectoral land-use management framework’ that includes a Landscape Level Land Use plan (LP) and, under this, Sector Plans (SPs).
59. The LP ‘will provide a road map for streamlining land use thus avoiding, reducing, and/or mitigating impacts from physical development in major production sectors....’ (para. 181). And, together, the LP and SPs will, in addition to improving the management of existing Pas, identify ‘areas of high value biodiversity to be afforded higher protection status,’ and ‘prescribe appropriate land uses and management practices in the adjacent production landscape.’ (para. 171)
60. The document does not detail, specifically, how the Landscape Plan or SPs will be developed – including by whom, or through what type of consultation process, etc.
61. It notes, regarding development of the LP, ‘The preparation of the LP will be anchored within the proposed High Range Sustainable Development Society (HRSDS).... Based on extensive consultations with government, research institutions

and local communities so that a pragmatic and effective conservation strategy is prepared. Particular emphasis will be placed on strategies that do not compromise local livelihoods and economic production but rather support the rights of traditional communities and other sustainable production and consumption practices in the region. The Landscape Plan will be more 'enabling' rather than 'restrictive' in nature with clear short and long-term goals for the landscape. After obtaining the concurrence of the HRSDS, the Plan shall finally be placed before the State Government for its approval.' (para. 185)

62. Regarding the SPs, it describes that 'conservation sector and key production sectors (e.g., tea, cardamom, tourism, etc.) will develop / revise Sector Plans (SPs) that outline sector-specific biodiversity-friendly practices for integration into respective sectoral operations' (para. 186), and further notes 'SPs will be prepared by technical experts after extensive consultations with respective stakeholders. Preparation of Sector Plans would follow a rigorous scientific process anchored strongly in participatory approaches. The HRSDS in close association with the respective sectors shall spearhead the preparation of the SPs. After obtaining the concurrence of the HRSDS, the SPs shall finally be placed before the concerned Sectoral Department for approval.' (para. 190)
63. It is not clear how those potentially impacted would actually be involved in the development of sector plans, and how the HRSDS would ensure that voices of stakeholders, including those individuals likely impacted by the project, would be heard and receive a response.
64. The following prodoc provisions describe the HRSDS as a platform that will involve all possible stakeholders in making both landscape-level and sector-level land-use decisions, as well as monitor and enforce such decisions. But how HRSDS will be composed and reach decisions has not yet been decided. Even the research to inform the composition and decision-making process of HRSDS has yet to be undertaken.
65. Referencing the composition of HRSDS, the document notes, 'The proposed HRSDS will have representation from relevant government agencies (Department of Forests, Revenue, Tourism, Agriculture, Industries, Electricity Board etc.); Local Self Governments; private sector (representatives of key production sectors – tea, cardamom etc.); communities (functionaries of traditional community institutions, Kudumbasree, EDCs, JFMCs, CRC, BMCs, agriculture associations, commerce and trade organizations); research institutions (e.g., KFRI, Periya Foundation, Cardamom Research Station etc.) and representatives of NGOs (e.g. HRWEPA, WWF, WTI, etc.) The primary mandate of HRSDS will be to provide for a formal institutional platform by which government policies, programs and resources, as well as non-government activities can be better mobilized/channeled/harmonized to ensure the long-term sustainable use of resources in HRML, even while individual sectors continue to

pursue own sector objectives.... A senior level officer (at least the rank of Chief Conservator of Forests/Secretary to state government) may head this institution.’ (para. 192)

66. The process for designing and constructing the HRSDS is described as follows, “As a preparatory process to the formation of HRSDS, an assessment will be conducted of existing international and national experience with such institutional mechanisms to articulate issues such as mandate, operating principles, bye-laws, and rules ... The assessment will be followed by extensive consultations at various levels involving stakeholders (government, community, academia, civil society etc.) and the Society will be established through a Government Order within the 1st year of the project. HRSDS will be a cross-sectoral platform with enough convening power representing various stakeholders in the landscape....The Society will also have the mandate of compliance monitoring of sectoral operations that have a bearing on biodiversity. Towards this, HRSDS shall be vested with appropriate powers under the Environmental Protection Act, 1986. Further, the Society will also develop a financial sustainability strategy for post-project functioning. (para. 193)
67. Other paragraphs reflect that in addition to advancing a ‘proactive engagement approach’ with production sectors, e.g., encouraging these sectors to factor biodiversity considerations into their operations, the project is also ‘partly about giving the appropriate ‘push’ by enshrining this thinking in the legal and policy framework.’ (para. 168) This appears to imply that not all measures within Sector Plans will be voluntary, but the implications are not clear.
68. In summary: The prodoc language referenced in the above paragraphs does not clearly indicate that SPs will be voluntary, e.g., not required for those not wanting to implement them. And it does not clearly indicate how individuals who might be directly impacted, e.g., cardamom and tea farmers who may need to change practices, would be involved in creating the SPs – nor what consultations would produce. Instead, the prodoc indicates that experts will develop the SPs after ‘extensive consultations’ with stakeholders, and through a not-yet-developed high-level platform that includes all stakeholders. With such broad representation, it is not clear how the HRSDS platform will ensure that the voices, needs, and rights of these individuals will be understood.
69. How will those potentially impacted be involved in this platform and SP-related decisions? Will they simply be sent an invitation to a consultation? What happens if they do not respond? Will they be informed adequately about what is proposed, possible impacts to them, the alternatives, their rights? What happens if they disagree?

70. With unclear answers to these questions, it is understandable that individuals potentially impacted by the project would wonder about possible restrictions and be concerned about the process available to them to secure their rights.
71. UNDP's screening summary appears to corroborate concerns about possible restrictions, while also confirming that the project will rely on the HRSDS to address these concerns.
72. The final version of UNDP's Environmental and Social Screening Summary (signed by Srinivasan Iyer, Assistance Country Director & Head-EEU-UNDP-India, on 7 August 2013) acknowledges that the project will, through the various plans, dictate land use permitting decisions and restrict choices regarding land use. This summary states, 'Land tenure issues: the elaboration of the landscape level land use plan will inadvertently affect the land use patterns in the project landscape, at the least insofar as the plan will dictate land use permitting decisions. In addition the decisions on setting aside areas for biodiversity conservation will alter access and rights of different stakeholders in the area, in particular those of local communities. These will alter the pattern of resource use and the ability to put their land to land uses of their choice.'
73. The summary additionally reflects, however, the intention to avoid impacts to rights of potentially-impacted individuals and communities, noting that the HRSDS will 'ensure that land use planning and permitting decisions taken are acceptable to all and importantly that they preserve the security of access/use rights of local communities. Where it is necessary to halt those rights in critical areas, the project will identify alternative areas or alternatives and promote them in close consultation with communities.'
74. The prodoc reflects an apparent commitment to land use prescriptions in protected areas and high value biodiversity areas, and a high likelihood that individuals in production sectors will face increased restrictions relating to land and resource use, but also uncertainty relating to the process through which these individuals can participate in decisions relating to these restrictions and possible adverse impacts.

Incomplete description of risks

75. The project document does not include a full and accurate assessment of risks to local communities and the environment. This shortcoming relates partly to the lack of information described above, i.e., it is difficult to assess risks fully if options/alternatives have not been described clearly. It relates, as well, however, to two other factors: (1) incomplete application of UNDP's Environmental and Social Screening Procedure (ESSP) – a tool through which UNDP endeavors to meet its obligations to seek to avoid harm to communities, individuals, and the environment; (2) incomplete incorporation into the project document of results of the ESSP.

76. As required, UNDP applied the Environmental and Social Screening Procedure to project activities, producing a version completed retroactively for the Project Information Form (PIF), and (building on the first version) a second version (quoted and cited above) during the Project Preparation Grant phase of the project.

Screening Checklist – Issues

77. For both versions, responses to the Screening Checklist were the same. Relevant sections of the screening checklist with responses, including both the ‘yes’ and ‘no’ responses, are included below. Several questions correctly received a ‘yes’ response, indicating possible environmental and social impacts. For some questions, however, the ‘no’ response does not appear to correspond to project document information and/or information from other sources. These include questions 4.3, 4.6, 5.2, and 8.2.

4. Social Equity and Equality	
4.1 Would the proposed project have environmental and social impacts that could negatively affect indigenous people or other vulnerable groups?	Yes
4.2 Is the project likely to significantly impact gender equality and women’s empowerment?	Yes
4.3 Is the proposed project likely to directly or indirectly increase social inequalities now or in the future?	No
4.4 Will the proposed project have variable impacts on women and men, different ethnic groups, social classes?	Yes
4.5 Have there been challenges in engaging women and other certain key groups of stakeholders in the project design process?	Yes
4.6 Will the project have specific human rights implications for vulnerable groups?	No
5. Demographics	
5.1 Is the project likely to result in a substantial influx of people into the affected community (ies)?	No
5.2 Would the proposed project result in substantial voluntary or involuntary resettlement of populations? For example, projects with environmental and social benefits (e.g. protected areas, climate change adaptation) that impact human settlements, and certain disadvantaged groups within these settlements in particular.	No
5.3 Would the proposed project lead to significant population density increase which could affect the environmental and social sustainability of the project? For example, a project aiming at financing tourism infrastructure in a specific area (e.g. coastal zone, mountain) could lead to significant population density increase which could have serious environmental and social impacts (e.g. destruction of the area’s ecology, noise pollution, waste management problems, greater work burden on women).	Yes
6. Culture	
6.1 Is the project likely to significantly affect the cultural traditions of affected communities, including gender-based roles?	Yes

6.2 Will the proposed project result in physical interventions (during construction or implementation) that would affect areas that have known physical or cultural significance to indigenous groups and other communities with settled recognized cultural claims?	No
6.3 Would the proposed project produce a physical “splintering” of a community? For example, through the construction of a road, powerline, or dam that divides a community.	No
8. Socio-Economics	
8.1 Is the proposed project likely to have impacts that could affect women’s and men’s ability to use, develop and protect natural resources and other natural capital assets? For example, activities that could lead to natural resources degradation or depletion in communities who depend on these resources for their development, livelihoods, and well-being?	Yes
8.2 Is the proposed project likely to significantly affect land tenure arrangements and/or traditional cultural ownership patterns?	No
8.3 Is the proposed project likely to negatively affect the income levels or employment opportunities of vulnerable groups?	No
9. Cumulative and/or Secondary Impacts	
9.1 Is the proposed project location subject to currently approved land use plans (e.g. roads, settlements) which could affect the environmental and social sustainability of the project? For example, future plans for urban growth, industrial development, transportation infrastructure, etc.	Yes

<p>9.2 Would the proposed project result in secondary or consequential development which could lead to environmental and social effects, or would it have potential to generate cumulative impacts with other known existing or planned activities in the area? For example, a new road through forested land will generate direct environmental and social impacts through the cutting of forest and earthworks associated with construction and potential relocation of inhabitants. These are direct impacts. In addition, however, the new road would likely also bring new commercial and domestic development (houses, shops, businesses). In turn, these will generate indirect impacts. (Sometimes these are termed “secondary” or “consequential” impacts). Or if there are similar developments planned in the same forested area then cumulative impacts need to be considered.</p>	<p>No</p>
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- 78. Regarding Question 4.3, ‘Is the proposed project likely to directly or indirectly increase social inequalities now or in the future?’ it appears difficult to reconcile a ‘no’ response with ‘yes’ responses to the following questions: “8.1 Is the proposed project likely to have impacts that could affect women’s and men’s ability to use, develop and protect natural resources and other natural capital assets?...” and “4.1 Would the proposed project have environmental and social impacts that could negatively affect indigenous people or other vulnerable groups?” Positive responses to the latter questions suggest that at least certain groups would not have the same access they currently enjoy to ‘natural resources and other natural capital assets’ and/or will be adversely impacted by project activities. It is possible, perhaps even likely, given these possible impacts, that project activities could increase inequalities *in the absence of mitigation measures*.
- 79. Project staff may have inappropriately based their ‘no’ responses to these questions on assumptions the project *once implemented* would be a net positive. That is, project benefits such as other employment opportunities for cardamom growers, would address existing and future risks external to the project, such as reduced or fluctuating market prices for cardamom. The project document heavily emphasizes these external risks to cardamom and spice growers, and project measures that would benefit these groups in light of these risks. It notes, for example, ‘Cardamom industry is highly prone to persistent market risks and failures along with increasing cost of production... Markets show vast fluctuations that spread signals of distress and uncertainty in the sector...’ The report describes how project capacity building activities could help the industry.
- 80. The project’s attention to such external risks may well be useful for these communities. However, risks posed to communities *in the absence of mitigation*

measures or project results must also be examined and explored with communities potentially impacted.

81. A 'no' response to Question 4.6 'Will the project have specific human rights implications for vulnerable groups?' similarly appears to conflict with affirmative responses to other questions. A 'yes' response to the following questions: 4.1 Would the proposed project have environmental and social impacts that could negatively affect indigenous people or other vulnerable groups?, 4.2 Is the project likely to significantly impact gender equality and women's empowerment?, 6.1 Is the project likely to significantly affect the cultural traditions of affected communities, including gender-based roles? And 8.1 Is the proposed project likely to have impacts that could affect women's and men's ability to use, develop and protect natural resources and other natural capital assets?, point to the possibility the project will have specific human rights implications for vulnerable groups. Human rights implicated by 'yes' responses to these questions include, for example, the right to property, the right to culture, the right to livelihood, the right to be free from all forms of discrimination, among other rights.
82. Regarding Question 5.2 'Would the proposed project result in substantial voluntary or involuntary resettlement of populations? For example, projects with environmental and social benefits (e.g. protected areas, climate change adaptation) that impact human settlements, and certain disadvantaged groups within these settlements in particular' the project document reflects an intent to expand protected areas by nearly 11,650 hectares, and increase protections in high value biodiversity areas of more than 84,600 hectares. As indicated earlier, a significant shortcoming of the project document is the lack of information related to where these increased protections could occur and who might be impacted. The summary does indicate, however, that land use patterns and access to resources will be altered. If restrictions on use are significant, including, for example, if they occur where farmers and growers and other local communities live or use resources for their livelihood, these restrictions could compel communities to move. Alternatively, restrictions may lead to economic displacement, which, while not clearly covered in question 5.2, is covered under question 4.6 (via concerns related to rights noted above and others). The significant omission of information related to possible specific locations of protected areas and land use restrictions constrains an ability to answer this question accurately. Screening results will remain inadequate without this information.
83. The 'no' response to Question 8.2 'Is the proposed project likely to significantly affect land tenure arrangements and/or traditional cultural ownership patterns?' appears inconsistent with project information. As noted in the previous paragraph, the final Environmental and Social Screening Summary provides acknowledgement that the project will impair abilities to 'put land to land uses of their choice.' This could significantly affect land tenure and/or traditional cultural ownership patterns.

84. What are the implications of ‘no’ responses to these questions and deficiencies in the Environmental and Social Screening Summary? Screening questions prompt consideration of all angles of possible impact. When these angles are not acknowledged risks go unexamined. If risks are missed, the checklist may incorrectly point to a need for a lower level of assessment than actually required. In this instance, ‘yes’ responses to 8 questions, and not just 4, more clearly indicate a need for a robust assessment of potential impacts.

Environmental and Screening Summary – Issues

85. An Environmental and Screening Summary should briefly describe risks identified in the checklist, the possible significance of these risks (as reflected in the risk category chosen) and next steps – including in particular any additional review necessary and how to approach this review. As noted in the Environmental and Social Screening Procedure for UNDP Projects Guidance Note (2012), ‘The outcome of the environmental and social screening process is to determine *if* and *what* environmental and social review and management is required.’ (Guidance, pg. 3)
86. The summary for the India project importantly notes most key risks checked ‘yes’ in the checklist – including land tenure issues, rights of tribal groups, and gender equality issues. However, it does not clearly describe these risks, note the possible significance of the risks, or describe how these risks will be further reviewed and assessed.
87. For example, while a brief paragraph on ‘rights of tribal groups’ acknowledges ‘impacts that could negatively affect indigenous people or other vulnerable groups’ and another paragraph on ‘land tenure issues’ reflects that ‘decisions on ... conservation will alter access rights’ the summary fails to provide any additional detail. It fails to describe, for example, how many tribal communities/individuals might be impacted, where these impacts could occur, how access might be restricted and how likely this is to occur, etc. The potential significance of the impacts and risks are, therefore, impossible to ascertain. The paragraphs do not clearly indicate that any additional review or assessment of these potential impacts to tribal communities will occur prior to approval of the project. Instead, the summary suggests that *after* project approval the project will ‘work on developing a resource governance approach that will effectively implement tribal peoples forest rights under the Forest Rights Act (FRA)... And ‘any potential risk that may arise that could threaten their tradition and culture as a result of the management model *will be identified and mitigated.*’ This language suggests an intention by UNDP to move key risk identification and mitigation processes to the project implementation stage – after key decisions have already been made.

88. Similarly, while the summary acknowledges gender concerns and notes 'The project team has ascertained the views, concerns and interests of women, poor and disadvantaged groups...' it does not summarize these views, concerns, and interests, nor indicate whether and /or how they should be explored in additional reviews. Mention is made of a rapid gender impact assessment, but this assessment is not obviously in or attached to the project document.
89. The brief description of land tenure issues acknowledges many issues noted in the checklist, including possible impacts to indigenous peoples and vulnerable groups, cultural traditions, and abilities to use and access natural resources, as well as several not noted, including impacts to land tenure and traditional cultural ownership patterns. However, the description does not indicate where, how, and to whom land tenure impacts will occur, and information provided appears to be contradictory. For example, while the summary notes in one instance that access and rights and land use pattern *will be* altered by the project (noted above), it indicates, as well, 'The project will through the HRSDS, a multi-sectoral collaborative coordination mechanism, ensure that land use planning and permitting decisions taken are acceptable to all and importantly that they *preserve the security of access/use rights of local communities.*' And then, 'Where it is necessary to halt those rights in critical areas, the project will identify alternative areas or alternatives and promote them in close consultation with communities.' The summary does not describe any additional review or assessment prior to project approval, despite the potential gravity of impacts described.
90. Finally, it is not clear why Category 3a was chosen instead of 3b. Category 3a includes 'impacts and risks that are limited in scale and can be identified with a reasonable degree of certainty and can often be handled through application of standard best practice but require some minimal or targeted further review and assessment to identify and evaluate whether there is a need for a full environmental and social assessment (in which case the project would move to Category 3b). '
91. UNDP's Guidance provides ten steps for determining whether the category should be 3a or 3b. Not all steps appear to have been taken for this project. Step 1. Is to 'Identify if Potential Environmental and Social Impacts Can be Readily Addressed through Minor Modifications to Project' and Step 2. Is to 'Determine Need for Additional Scoping and Assessment' and further indicates the following 'Determine if the key environmental and social issues relating to the proposed project have been adequately identified and addressed and the project revised accordingly. For projects where there are potentially significant impacts, or where these may be controversial in nature, or where there remains debate about whether environmental and social impacts have been adequately addressed, then further scoping and assessment will be needed.'

92. 'If potential environmental and social impacts are easily addressed through the application of best management practices and minor adjustments to the Project Document, then the project falls within Category 3a and no additional review is required. If further review is necessary then the project falls with Category 3b and an environmental and social assessment is required.'
93. It is not difficult to imagine that if a large number of local communities face the prospect of reduced access to natural resources upon which they depend, impacts may be controversial, if not significant, and likely to lead to debate about whether impacts have been adequately addressed. It seems clear that such impacts likely cannot be easily addressed through application of best management practices and minor adjustments to the project document. All of this suggests the most appropriate Category likely would have been 3b, which would have required a full assessment and identification of ways to prevent, minimize, mitigate or compensate for adverse consequences and enhancing positive ones.
94. Other relevant steps not clearly met include Step 4., which is one of the most important parts of a screening and assessment process – identifying potential alternatives. The Summary provides no indication that alternatives were developed and considered. Step 6., identify environmental and social impacts, is, as mentioned earlier, lacking – specific impacts to communities before mitigation measures were not clearly considered. Step 7. – preliminarily identify potentially applicable environmental and social mitigation, monitoring and capacity development measures to be included in the environmental and social management plan, would not have been possible without an assessment of risks. Step 8. Is to identify the types of assessment – including a gender assessment. Documents make reference to such an assessment, but it is not clearly in the project document. Step 10 is to develop a stakeholder engagement plan. As described earlier, the Project Document identifies a need to engage stakeholders more comprehensively, particularly through the HRSDS. However, the structure and process for accomplishing this outreach remains unclear. Extensive engagement to understand and address concerns during project development did not obviously occur based on a review of the project documentation and our interviews with project complainants and stakeholders.
95. Approaching categorization through these steps likely would have pointed to Category 3b and preparation of a full assessment. However, even for Category 3a, given risks identified, additional review and assessment should have been performed. As noted in the Guidance, 'Key objectives' to be met by a review and management process **regardless** of whether Category 3a or 3b is chosen, include the following:
- (1) Applying the precautionary principle – ensure the burden of proof falls to those wanting to take action,

- (2) Ensure environmental and social impacts are identified and addressed
- (3) Engage stakeholders in the process of identifying, reviewing and managing impacts and risks
- (4) With respect to indigenous communities, consultation should be mutually acceptable to project proponents and to the communities, and there should be evidence of agreement between the parties as to the outcome of the consultations
- (5) Anticipate and avoid, minimize or offset any significant adverse impacts
- (6) Promote development that is environmental and socially sustainable
- (7) Ensure environmental and social benefits, impacts and risks are factored into project design and execution.

Results of Screening and Assessment Process – Issues

96. As noted in the Guidance, ‘Determining the significance of impacts will require varying degrees of environmental and social review which, in turn, *will lead to the identification of specific environmental and social management measures that need to be incorporated into the project.*’
97. Inexplicably, neither the results of the screening nor specific detailed measures to address identified risks to communities appear to be incorporated into the project document or are otherwise publicly available. The section that would most obviously reflect risks identified during screening, the ‘Risks and Assumptions’ section within the ‘Strategy’ section of the project document, is a brief (just over one page) description of risks that are focused entirely on risks to project success.² Six out of seven of the risks identified in the final project document are exactly the same risks identified in the earlier project document draft. One additional risk – insufficient resources – is included in the 2014 document. Although the project document identifies the need for a platform to discuss and address concerns with communities it does not, for example, indicate how restricted access concerns might be addressed.
98. Clearly, the project document provides useful baseline information, including information related to ‘socio-economic’ context. But specific identified risks to communities are not covered well.

² Risks identified include: Limited support from production sector due to apprehension that their economic interests would be jeopardized due to participation in the planned conservation interventions; Policy amendments and regulations for addressing biodiversity conservation in sector practices may not receive government and political support; Local communities may not be willing to participate in the project unless the project addressed their livelihood needs; The benefits generated by the project may be offset by the impacts of climate change; Stakeholders may perceive the project as restrictive rather than enabling due to its focus on biodiversity; The history of the landscape is replete with efforts to establish rights over land and the idea of a landscape level plan may appear to be pitted against existing tenurial interests; Resources of the project are insufficient for meeting the objectives over the large area of the landscape

Missing Context and Legal Status of Lands

99. The prodoc fails to provide a full picture of the broader context within which UNDP is supporting efforts to advance conservation in the Western Ghats. This missing context includes the relationship of the proposed project to previous conservation initiatives as well as to conflicts related to land, forests, and other natural resources in the area targeted for protection, particularly the Cardamom Hill Reserve (CHR) area. This void in information caused suspicions that the project, as approved, was an attempt to quietly advance conservation-related recommendations and positions previously promoted and disputed.
100. Although project staff indicated in the February 2013 meeting that the project had nothing to do with the Gadgil report, only a relatively small number of individuals were at the meeting and able to hear this information.
101. Similarly, although the prodoc alludes to different perceptions of rights to land, forests, and other natural resources in CHR, it does not clearly note the longstanding, significant legal disputes resulting from these different perceptions, and implications for the project. The uncertainty related to the legal status of CHR – Is it ‘revenue’ land? Or is it forest reserve land already controlled primarily by the Kerala Forest Department (and not needing ‘protected area’ status for possible restrictions)? – is a clear source of anxiety. The prodoc indicates in paragraph 98, ‘Cardamom Hill Reserve (CHR) is a tenurial enigma with a multitude of landholding patterns, often nebulous and highly ambiguous land tenure systems and overlapping jurisdictions that have adversely affected effective management of biodiversity.’ Existing legal disputes include a case pending before the Indian Supreme Court. In the absence of a clear understanding of how and/or whether the project supports (or not) a given legal position – or does not intend to reflect a position – those concerned about restrictions believed the UNDP project document (particularly through paragraph 98) was an attempt to support the position that most of CHR is a forest reserve area controlled primarily by the Forest Department. When told, for example, that Annexure 17 did not include any new protected area status for CHR, complainants responded that this was because the prodoc assumes the area is – as a forest reserve area – already subject to comparable protections.
102. The prodoc also fails to describe and note evidence of illegal land use, particularly in CHR. Concerns about such use appear to be project undercurrents.

Consultation and Effective Participation of Stakeholders in Decision-Making: Concerns Expressed and Responses Provided

103. The complaint and related documents submitted to SECU indicate that complainants believe they were not adequately consulted and provided opportunities to participate in decisions related to project activities. Through in-person meetings

with listed complainants and other stakeholders supporting the complaint, SECU identified the following more specific key concerns of complainants relating to consultations and participation in decision-making and responses to these concerns by UNDP CO and Indian government representatives:

Consultations and support for the project

Complainants' concerns:

104. Complainants believe the project document was prepared largely on the basis of only one stakeholder workshop at Munnar on 12 March 2013, and assert that it was a workshop to which relatively few key stakeholders were invited. SECU discussions with complainants and other associated stakeholders reflect concern that there was no systematic approach to engaging Panchayat representatives, registered growers/agricultural organizations, other local self-government organizations, and other key stakeholders.
105. More specifically, in in-person meetings with six individuals representing Panchayats (Presidents from the Marayoor, Munnar, Devikulam, Vattavada, and Kanthalloor Grama Panchayaths and the President of the Devikulam Block Panchayath), SECU was told that only two of the thirty four Panchayats in the project area – the Munnar Panchayat and the Edamalakudy Panchayat – received invitations (as reflected in Panchayat records), and only those two attended the 2013 Munnar meeting. In in-person meetings with twelve individuals representing five farmer (primarily Cardamom) organizations registered with the government, SECU was told that only two individuals from only one of the five registered organizations – the Cardamom Growers Association – were invited. One of the invitees was from a local branch of the larger Cardamom Growers Association, and he indicated to SECU that he attended because the association was under the impression the meeting was not significant enough to warrant attention from the larger association and the attendee was closest in proximity to the meeting location. This invitee indicated that he sensed the consultation was primarily to discuss funds available to farmers for pursuing approaches, such as organic farming, to protect biodiversity in the area. SECU was told there is no record of invitation to the Spices Board (a board organized and recognized by the central government). The sign-in sheet for the meeting appears to reflect that an individual from the Spice Growers Association attended the 2013 meeting in Munnar.
106. Complainants claimed that 60 of the 144 individuals attending the workshop were not actual participants but, instead, 'forest watchers, drivers and KFD officials.' They also expressed concern that numbers on the sign-in sheet were changed after people signed. They note, more specifically, that the number 1, positioned next to the President of the Munnar Grama Panchayath, was crossed out and changed to 13, to reflect 12 people signed in prior to the Munnar Grama Panchayath. This was

perceived as a breach in protocol, a 'fabrication' and an offense; that the Grama Panchayath should have been retained as the first signatory and administer of the meeting. Claim that 60 of 144 attending were 'forest watchers, drivers, etc.

107. Complainants and associated stakeholders indicated that during the years of project planning attempts at robust consultations with Panchayats, growers'/farmers' organizations, or other local community organizations did not occur.
108. Complainants and associated stakeholders stated a belief that inadequate information was provided either during the formal consultations or in other venues or locations where they lived. One attendee to the Munnar consultation indicated that he did not receive any written documents describing the project prior to or during the meeting. SECU was told that the powerpoint presentation at the 2013 Munnar meeting was in English only.
109. Complainants indicate 'strong reservations' against, and 'huge apprehensions' about, the project. They claim, specifically, that the project 'was finalized without the involvement, participation, free, prior, informed consent of the people of the project area.' Tensions between farmers/growers and the Kerala Forest Department appear to have exacerbated these feelings.

Responses to concerns:

110. Contrary to claims of complainants, UNDP staff indicated that 30 Panchayat Presidents were sent invitations, as well as 63 additional individuals/entities who attended the main consultation in Munnar.
111. The summary of the logframe meeting provided by project staff (Annexure 9 of the prodoc) indicates that 144 people attended the meeting on 12 March 2013, including 12 Cardamom farmers and 2 from the Spices Board. The summary indicates a more robust turnout for other sectors, including 37 individuals representing eco-development committees comprised of scheduled caste members of local communities, 16 members from tribal communities, and 18 individuals from the forest department. Project staff indicated that the forest watchers and drivers were also important stakeholders, many from tribal and Dalit communities.
112. Project staff also described other efforts to ensure robust consultations, noting in written documents, 'Forty field visits were made to cover various sectors such as the Protected Areas, high value biodiversity areas, tribal settlement (Edamalakkudy in particular), Human-wildlife conflict areas like Chinnakanal (Anayirangal) and Marayur, tea plantations, cardamom plantations, reed breaks, tea plantations and other components of the landscape. The focus was on assessing the status of biodiversity management practices in the landscape and understanding the level of existing and emerging threats. Fruitful discussions were also held with individuals

like State Planning Board member (C.P. John), Member of legislative assembly Devikulam (S. Rajendran), Vice Chancellor Mahatma Gandhi University (Dr. Rajan Gurukkal, prominent Social Scientist), Chairman Kerala State Electricity Board (T.M. Manoharan), P. Balan (Director Kerala Institute of Local Administration), Director Rubber Research Institute (Dr. James Jacob), Dr. M. Murugan (Cardamom scientist), Dr. K T Rammohan (Social Scientist), M. Balan (Tourism Expert), Dr. Eugene Pandala (Architect), P. Venugopal (prominent journalist from the region), forest officers, district collector, other department officials, panchayat functionaries, tea managers, cardamom farmers, scientists, tribal, eco-restoration experts, political workers, NGOs, resort owners, tour operators, taxi drivers, NGIs, professors, academics etc. Consultations were also conducted with various stakeholders explaining the basic objectives of the project to them. The details of the consultations are briefly mentioned below.'

113. They also provided lists of additional meetings held prior to the 2013 meeting in Munnar, including three days of meetings with cardamom farmers, two meetings with tea-estate managers, a three-day meeting with tribal communities in the tribal panchayat of Edamalakudy, a meeting with scientists, a meeting with forest officers, and one with the tourism industry. Documents provided to SECU indicate that individuals attending consultation meetings held prior to the final logframe meeting included approximately a dozen individuals in the cardamom sector, one representative from the spice growers association, and approximately 30 individuals from other sectors such as tribal, tourism, and tea. Many of the other attendees at the meetings were experts, academics, or members of related committees/associations. It is difficult to ascertain, from the meeting minutes and attendance records, the overall representation and precise numbers of the various stakeholders and interests in the region. See Annex 2 for a summary of each meeting and its attendees held during the project's consultation phase.
114. Project staff further noted in interviews, 'There are 600,000 people in this landscape. The approach which we have taken to consult people was based on focus group discussions – the aim is to find focus groups in each sector because you can't consult 600,000 people. We find people we think are representative of the various groups so we can talk to them sectorally.' UNDP project staff further noted, 'These indicative activities [identified in the prodoc] came from people we consulted with during preparatory phase. During the course of the project, plans needed to be created and the prodoc does not give prescriptive provisions for sector plans. It only says the plans need to be prepared through a scientific and consultative process.'

Inadequate consultation and participation in decisions adversely impacting communities: Findings

115. Through a review of documentation and in-person meetings with stakeholders, SECU made the following findings:

Consultations

116. It is not clear who received invitations to the primary consultation meeting in Munnar. Accounts differed and could not be verified. Nevertheless, it is clear that only a very small fraction of Panchayat representatives and representatives of farmers' and growers' organizations attended. These are identified in the prodoc as key stakeholders; ensuring their engagement through outreach in addition to invitations would have been prudent.
117. Documentation of the meetings with the primary complainants – cardamom farmers – in Munnar on 21 and 22 July 2012 and at Vandanmedu on 14 February 2013, including 'Annexure 7: Details of the consultations with Cardamom sector representatives' indicates that nineteen people, including consultants, attended the three meetings – a relatively small number. In the written document provided by project staff, only one person appeared to represent a growers association – the Spices Growers Association. Written documents associated with the meetings do not allow for an understanding of the extent to which the project was discussed. Although one attendee indicated that a detailed powerpoint presentation described the project, other attendees indicated that the powerpoint was not focused on project details, but rather the current ecological situation in cardamom areas and possible responses to this situation.
118. Written materials in understandable and non-technical language were lacking.
119. Given the lack of Panchayat representation, lack of information in a local non-technical language, lack of evidence of clear understanding of and support for the project by local communities, SECU finds that consultations and information provided were inadequate.
120. The Indian government clearly has a right and an obligation to protect public interest concerns, including protecting biodiversity in the public interest. When such actions might impinge upon the rights of individuals – including their rights to property and access to natural resources upon which they depend – these actions must occur through a transparent participatory process that fairly balances concerns and ensures due compensation for impacts. Complainants believe decisions impacting their rights have already been made outside of such a process. Project staff have indicated a commitment to ensuring consistency with laws and rights. Although it is not clear if decisions impacting rights have actually already been made, it seems clear the previous consultation process was inadequate, and the proposed process for future decisions is not adequately explained (and, as such, it is not clear that the process will ensure respect for and protection of rights).

VII. Advancing Compliance with Policies: Advice

The Country Office should consider the following advice on three issues in order to ensure compliance of the project with UNDP policies and procedures.

Advice 1: The Project Document

121. Perform a substantive revision to the prodoc to more clearly indicate what has been decided about possible locations of high value biodiversity areas and protected areas within HVBA, and how potentially-impacted individuals/communities can participate in decisions relating to locations of these areas and possible restrictions within them.
122. Describe more clearly in the prodoc the relationship of the proposed project to previous conservation initiatives as well as to conflicts related to land, forests, and other natural resources in the area targeted for protection, particularly the Cardamom Hill Reserve (CHR) and surrounding areas.
123. Make the prodoc available in at least the primary local language, Malayalam, in addition to English, and written in more easily understandable terms. The technical nature of the document, and its availability only in English, has impeded the understanding of how individuals and local communities might be involved in the decision-making processes. Make other brief accessible materials describing the project available to the broader public in relevant local languages.
124. To avoid or mitigate disagreement related to prodoc information, adequately document statements, including by referencing specific findings and statements that support assertions, e.g., assertions that cardamom farmers are using new varieties of plants that are sun-loving.

Advice 2: Screening and Assessment

125. Rescreen the document, with attention to risks to communities and the environment. Importantly, risks to be identified must be those posed *prior* to planned mitigation measures; the idea is that mitigation measures may or may not effectively address identified risks, and as a result, relying on assumptions that measures will be effective is not a prudent course of action. This screening should involve local communities likely to be impacted and/or benefit from the project.
126. If the project remains focused on creating a new protected area system and strengthening biodiversity protection in high value biodiversity areas occupied by individuals, perform a more robust assessment. As noted earlier, the project document appears to support a more robust assessment of impacts *after* project

approval – likely because funds were not available for extensive consultations and assessment prior to project approval.

Advice 3: Consultations with and/or engagement of stakeholders

127. Based on the more specific and better described protected areas and high value biodiversity areas, identify, notify, and initiate consultations with individuals and communities potentially impacted by possible restrictions, particularly through local community institutions and organizations – a strong recommendation by most stakeholders interviewed.
128. These stakeholders, including farmers, conservationists and others, suggested that a process that *begins* with the Kudumbasree and local self-governments – particularly the various levels of Panchayats – would be a more effective and sustainable approach to identifying and implementing conservation-friendly development practices than an approach that begins from a high-level platform that has not yet been created and does not yet have a mandate for making decisions. One interviewee suggested that meetings with the Kudumbasree and various levels of the Panchayats would number in the twenties.
129. One repeated suggestion was to allow the State Biodiversity Board to take a lead role in the process – generally, it appears these boards have a better sense of on-the-ground conservation and development needs, a better sense of local politics, and, to at least some extent, better relations with local individuals and communities than the Kerala Forest Department.
130. In the future, to ensure meaningful stakeholder engagement at the early design phase, UNDP could/should take a staged approach to stakeholder engagement – one that secures adequate funds for the identification of stakeholders and meaningful engagement with them before the project is approved (in this instance, this would have been during the Project Preparation Grant stage). Additional engagements will be necessary post approval, but almost all community engagements cannot occur after key decisions that may impact communities have been made.

Annex 1

Timeline of Advisory Review Process

1. 7 August 2015: MP Joice George transmitted to OAI's Anti-Fraud Hotline a letter addressed (and apparently separately sent), to UNDP India Country Director Jaco Cilliers. The letter contained allegations of improper recruitment and corruption, and raised social and environmental issues as well.
2. 12 August 2015: OAI Investigations section forwarded the 7 August 2015 letter to SECU for assessment. Upon further review, SECU identified social and/or environmental issues raised in the 7 August 2015 letter, but the complainants' interest in either SECU and/or the SRM processes was not explicit.
3. 16 October 2015: UNDP India CO responded to M.P. George's 7 August 2015 letter. UNDP India CO indicated to SECU that they informed M.P. George the SECU/SRM process was available to him.
4. 28 November 2015: M.P. George replied to UNDP India CO 16 October 2015 letter stating that he wished to pursue the "options under the complaint review process".
5. 10 December 2015: UNDP India forwarded M.P. George 28 November 2015 letter to the SRM, which forwarded it to SECU.
6. 15 December 2015: SRM and SECU sent an email to M.P. Joice George seeking additional information.
7. 16 December 2015: SECU formally registered a case on the SECU registry, beginning the "eligibility determination" phase.
8. 6 January 2016: SECU sent UNDP India Country Director Jaco Cilliers questions related to the eligibility determination. Questions focused on documentation for this project, such as screenings, records of community concerns related to the project, impact assessments, etc.
9. 13 January 2016: SECU and SRM received further information from M.P. Joice, who formally requested a SRM process led by UNDP HQ and the SECU Compliance review. The form also noted the groups of directly affected

stakeholders M.P. George was claiming to represent.

10. 20 January 2016: SECU deemed the case eligible for an Advisory Review and posted the eligibility determination on SECU's public registry.
11. 29 January 2016: SECU posted the draft Investigation Plan TORs on the registry for public comment.
12. 17 February 2016: SECU extended the public comment period for the Investigation Plan TORs by 1 week to 26 February 2016 at the request of a stakeholder.
13. 26 February 2016: Public comment period for the Investigation Plan TORs closed. SECU received no feedback from stakeholders regarding the Investigation Plan TORs.
14. March/April/May 2016: After consultations with the UNDP-India Country Office and the desk review, SECU decided to delay the field visit to India due to the lead up to the local Kerala elections. The elections were originally scheduled for April and were delayed until May. SECU therefore waited until June to conduct its field work.
15. 2-11 June, 2016: SECU conducted field work in Delhi and Kerala. In Delhi, SECU met with UNDP-India staff members and relevant national government officials. In Kerala, SECU traveled to the state capital of Trivandrum where it met with relevant state ministry officials, UNDP staff/consultants involved in the project design and implementation, and other individuals. After Trivandrum, SECU traveled to Munnar, the town in the center of the project area. In Munnar SECU met with multiple groups of complainants/stakeholders and relevant individuals and groups . After Munnar, SECU traveled to Kochi, a town on the coast of Kerala. In Kochi, SECU met with relevant individuals.
16. June/July 2016: SECU drafted the advisory review report.
17. 26 July: Draft advisory review was posted to the SECU Registry. Stakeholders were informed that it was available for public comments until August 26.
18. September 2016: SECU compiled and analyzed comments received from stakeholders. After reviewing the public comments, SECU revised and finalized the Advisory Review.

19. X November 2016: Final draft of the Advisory Review was issued, including SECU's response to public comments, to all relevant stakeholders including relevant UNDP Management, UNDP India Country Office, Complainants, and other stakeholders.

Annex 2

Participant Statistics of Consultation Meetings (not including the final logframe meeting) Compiled from Meeting Minutes and Sign-In Sheets Provided by UNDP-India

Meetings with Tea Managers and Scientists on 22 September 2012 and 22 January 2013

Total # of Participants: 11

Breakdown:

- 2 UNDP consultants
- 3 Representatives from the KDHP (Kenan Devan Hills Plantation, a large tea company)
- 1 Environmentalist
- 5 with job titles that make the organization they represent impossible to know ("General Manager", "research and development", "researcher", "environmentalist")

Meetings with Tribal Communities on 9-11 October 2012

Total # of participants: 11+

Breakdown:

- 2 UNDP Consultants
- 2 from Edamalakudy Panchayath (the president and secretary)
- 2 from "Munnar" (the DFO and Range Officer). Unclear what this means.
- 2 from Vana Samrakshana Samithy (conservation group)
- 1 Kerala Forest Research Institute Sociologist
- 1 "Mud Architect"
- 1 "Researcher"

Meeting with Scientists of 5 January 2013

Total # of participants: 15

Breakdown:

- 1 UNDP Consultant
- 12 doctors/professors/experts on various topics such as entomology, taxonomy, sociology, ecology, conservation biology, zoology, hydrology, etc)
- 2 people who "also provided inputs" from Bangalore research centers

Meeting with Forest Officers on 14 January 2013

Total # of participants: 9

Breakdown:

- 1 UNDP Consultant
- 5 Divisional Forest Officers (from Munnar, Kottayam, Malayattor, Marayur, Mankulam)
- 2 Wildlife Wardens (from Munnar and Idukki)
- 1 Assistant Conservator from Munnar

Meeting with Cardamom Sector Representatives on 21 and 22 July 2012 and 14 February 2013 (3 meetings)

Total # of participants: 19

Breakdown:

- 2 UNDP Consultants
- 10 Cardamom planters from a variety of districts (Kallar, Thokkupara, Muttukad, Bodimettu, Rajakumari, Rajakkad, Vandanmedu, and a number of planters whose location was not specified)
- 1 representative from Munnar Environment and Wildlife Society
- 1 Representative from the Spices Growers Association
- 1 Representative from the Eelam Samrakshana Samithy conservation committee
- 1 Cardamom Expert
- 1 Forester from Vandanmedu
- 1 Cardamom estate superintendent
- 1 Representative from KANFED

Meeting with Tourism Sector on 16 February 2013

Total # of participants: 26

Breakdown:

- 1 UNDP Consultant
- 4 Representing hotels or resorts
- Approximately 7 representing tourism committees/associations
- 1 Tourism expert
- 2 representing wildlife and environmental associations
- A number of government officials (MLA, Member Secretary of Eravikulam national park, range officer of Devikulam)
- A number of others from the private tourism sector whose exact role is difficult to discern