

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



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**ELIGIBILITY DETERMINATION:**

**Complainant: Indigenous Communities represented by the Conservation Alliance Tanawthari (CAT)<sup>1</sup>**

**Regarding the “Ridge to Reef: Integrated Protected Area Land and Seascape Management in Tanintharyi” Project in Myanmar**

**Case No. SECU0010**

**Date: 13 December 2018**

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<sup>1</sup> A coalition of six Karen civil society organisations working with communities in the Tanintharyi Region of Myanmar.

**Basic Data**

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|--------------------------------------|---|
| Case No.                             | SECU0010  |
| Category of Non-Compliance:          | Environmental and Social                          |
| Location:                            | Tanintharyi Region of Myanmar                     |
| Date Complaint received:             | 20 September 2018                                 |
| Source of Complaint:                 | Conservation Alliance Tanawthari (CAT)            |
| Eligibility assessment conducted by: | Richard Bissell, Lead Compliance Officer          |
| Compliance Officer assigned:         | Anne Perrault, Compliance Officer                 |
| Other investigators assigned:        | Paul Goodwin, Unit Coordinator / Research Analyst |
| Related Case(s):                     | N/A   |

Signatures:

Prepared by:

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Richard Bissell, Lead Compliance Officer, SECU

Approved by:

\_\_\_\_\_  
Brett Simpson, Deputy Director, Head of Investigations,  
OAI

## I. Overview

1. On 2 August 2018 the UNDP Social and Environmental Compliance Unit (SECU), received a forwarded communication from the Global Environment Facility (herein 'GEF'). The communication was from the civil society organization 'Conservation Alliance Tanawthari (CAT), and included a complaint on behalf of indigenous communities in the Tanintharyi Region of Myanmar regarding the UNDP-implemented, GEF-funded 'Ridge to Reef: Integrated Protected Area Land and Seascape Management in Tanintharyi' project (herein 'Ridge to Reef' project).
2. The Ridge to Reef project document (herein 'prodoc'), provides the following brief description of the project: the 'project focuses on the conservation and sustainable use of the marine, coastal and terrestrial resources of Tanintharyi Region, the southernmost region of Myanmar. The region is of outstanding significance for biodiversity conservation - approximately 20% of Myanmar's Key Biodiversity Areas (KBAs) are in Tanintharyi, grouped under the Tanintharyi Range and Tanintharyi Marine Corridors. The region includes the largest areas of lowland wet evergreen forest remaining in the Indo-Myanmar Hotspot, some of the largest blocks of mangrove forest in mainland SE Asia, and some 800 islands and diverse marine ecosystems of the Myeik Archipelago in the Andaman Sea Marine Ecoregion. The project embraces all of these ecosystems, through connected land and seascapes that cover key portions of the Tanintharyi Range, Aukland Bay mangroves and coastal waters, and marine ecosystems from Thayawthatangyi Island group in the north to Langann Islands in the south. It will demonstrate community based natural resource management, participatory conservation area management and integrated land use planning and management in line with a ridge to reef approach that connects terrestrial, coastal and marine resource management.'
3. The complaint advances several claims, including the following: (1) In the development and inception phases of the project, UNDP is violating complainants' right to free, prior, informed consent (FPIC); (2) the project violates the rights of Internally Displaced Persons (IDPs) and refugees to return to areas from which they were displaced by armed conflict; (3) the project threatens to contravene the 'interim arrangements' of the National Ceasefire Accords agreed by the Government of Myanmar and Ethnic Armed Organizations; (4) the project violates the UN Declaration on the Rights of Indigenous Peoples (herein 'UNDRIP') and the land and resource rights of the indigenous Karen Communities in the Tanintharyi Region of Myanmar; and (5) the project fails to recognise and support indigenous community-driven initiatives to protect indigenous territories, strengthen local institutions and practices, and protect forests and resources in the project area.
4. On 20 September 2018, CAT confirmed to SECU through email that complainants wished to pursue a compliance review process through SECU prior to engaging with the Stakeholder Response Mechanism of UNDP's Accountability Mechanism. In this email, CAT additionally requested that SECU recommend to UNDP that it 'enact temporary and pre-emptive measures, suspending financial disbursements pending completion of the compliance process due to imminent, significant and irreversible harm to communities.... [including] the loss of community access to land and forests, the compromising of the rights of refugees to return and resettle their lands, and possible repercussions to peace and stability in the region.'
5. On 26 September 2018, SECU registered the case on its online case registry, and subsequently made document and information requests of the UNDP Myanmar Office to assess the eligibility of the complaint.

6. The UNDP Myanmar Country Office (herein 'UNDP Myanmar CO') provided a response to this request on 27 October 2018, and submitted documents and a statement that Ridge to Reef project activities 'have been put on hold indefinitely since August 2018 by UNDP in response to issues and concerns highlighted by Karen National Union (KNU) and Conservation Alliance of Tanintharyi (CAT)... UNDP has proactively engaged in a systematic outreach and engagement with KNU and CAT to unconditionally discuss all aspects of project design and implementation. UNDP remains open to making adjustments.'
7. According to SECU Investigation Guidelines, from the date of Complaint Registration, SECU has 20 working days to issue its eligibility determination. Due to capacity and resource limitations, SECU was unable to issue its eligibility determination within that time frame.
8. As required by SECU's Investigation Guidelines (<http://www.undp.org/content/undp/en/home/librarypage/operations1/secu-investigation-guidelines/>), this memo provides SECU's assessment of whether the complaint is eligible for an investigation by SECU.

## II. Project Details

9. The Ridge to Reef project document was signed by UNDP on 11 December 2017, with a planned start date of October 2017, and a planned end date of September 2023. It is a Direct Implementation Modality (DIM) project, with UNDP as the Implementing Partner and the Ministry of Natural Resources and Environmental Conservation as the Lead National Ministry. The Atlas Project ID/Award ID number is 00089107, and the Atlas Output ID/Project ID number is 00095489. The total budget administered by UNDP includes USD\$5,250,000 of Global Environment Facility (herein 'GEF') funding. Other co-financing is provided by donors that include UNDP, the Myanmar National government, the Regional Government, the civil society organisation Fauna and Flora International, and the Smithsonian Institution. Total financing for the project is USD\$21,788,116.
10. The 'Project Objective' is 'to secure the long-term protection of Key Biodiversity Areas through integrated planning and management of the protected area land/seascape in Tanintharyi through the following outcomes: 1: Land and seascapes rich in biodiversity in Tanintharyi are connected and their planning and management are integrated; 2: Strengthened management and threat reduction in target proposed PAs, smallholder zones and corridors; 3: Prototype National Biodiversity Survey framework and geospatial platform operational within Tanintharyi Regional Government; and 4: Enhanced knowledge management, monitoring and evaluation support biodiversity conservation in Tanintharyi.'

## III. Summary of Process to Date

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

12. SECU registered the complaint on 26 September 2018 and posted it on its case registry, available at [www.undp.org/secu](http://www.undp.org/secu).
13. **Section 8.1, Determining Eligibility of a Complaint**, indicates that within twenty business days after registering the complaint, SECU will determine if the complaint meets the eligibility criteria specified in Section 8.2. To be eligible a complaint must: (1) Relate to a project or programme supported by UNDP; (2) Raise actual or potential issues relating to compliance with UNDP's social and environmental commitments; and (3) Reflect that, as a result of UNDP's noncompliance with its social and environmental commitments, complainants may be or have been harmed.
14. Due to delays outside of SECU's control, SECU was not able to conduct an eligibility determination on this case within the required 20 business days. As per **Section 1. Purpose** of the investigation guidelines, Compliance Review Investigations circumstances "may require a deviation from guidelines in the interest of a fair process to the complainants..." In this circumstance, SECU's operational requirements prevented it from being able to conduct an eligibility determination within the required timeframe. However, this delay will not delay the timeline for its field mission and thus should not prolong the overall duration of the compliance review.

#### IV. Determination of Eligibility

15. **Criterion 1: Relates to a project or programme supported by UNDP.** The UNDP Myanmar CO acknowledges that activities of concern are supported through a UNDP project. The complaint therefore relates to a project supported by UNDP and, as such, meets the first criterion under Section 8.1.
16. **Criterion 2: Raises actual or potential issues relating to compliance with UNDP's social and environmental commitments.** The complaint raises issues related to indigenous peoples' rights, free, prior, informed consent, access to information and consultation, human rights, economic and physical displacement, and land and resources rights - as well as UNDP's Indigenous Peoples Plans, Stakeholder Analyses, Risk Assessments, and requirements to identify and adopt measures to avoid and mitigate harmful impacts of UNDP projects. Thus, the complaint raises issues of compliance with UNDP's social and environmental commitments, and meets the second criterion under Section 8.1.
17. **Criterion 3: Reflect that, as a result of UNDP's noncompliance with its social and environmental commitments, complainants may be or have been harmed.** The complainants describe various ways they may have been or may be harmed by Ridge to Reef project activity, including those relating to the following: lack of free, prior, and informed consent for project activities; an inability to resettle on community lands; increased risks of conflict; violations of land and resource rights; and inadequate recognition of community-driven initiatives to protect indigenous territories.
18. SECU has, therefore, determined that the complaint is eligible for a social and environmental compliance review.

#### V. Next Steps

19. SECU will initiate the review with discussions with the Complainants and relevant UNDP Staff, including the Project Manager. A complete description of investigative steps will be available in the terms of reference for the investigation.
20. Consistent with paragraph 55 of SECU's Investigation Guidelines, which allows SECU to recommend temporary suspension of a project due to imminent, significant and irreversible harm to communities, SECU endorses the Myanmar CO decision to temporarily suspend the project.