



TERMS OF REFERENCE (TOR) FOR INVESTIGATION

In response to allegations of non-compliance with
UNDP's Social and Environmental Standards and other relevant policies in the context of the *“Ridge to Reef: Integrated Protected Area Land and Seascape Management in Tanintharyi”* Project in Myanmar.

Case No. SECU0010

24 June 2019

For more information about SECU and this case, visit www.undp.org/secu.

Basic Data

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 Tananthari (CAT)
Eligibility assessment conducted by:	Richard Bissell, Lead Compliance Officer
Compliance Officer assigned:	Anne Perrault, Compliance Officer
Other investigators assigned:	Paul Goodwin, Head of Unit
Related Case(s):	N/A

Signatures:

Prepared by: _____ Date: _____
Richard Bissell, Lead Compliance Officer, SECU

Approved by: _____ Date: _____
Brett Simpson, Deputy Director, OAI, Head of Investigations

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 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.
3. According to the Ridge to Reef project document (herein 'prodoc'), for the Ridge to Reef: Integrated Protected Area Land and Seascape Management in Tanintharyi (Atlas Award ID: 00089107), 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, Auckland Bay mangroves and coastal waters, and marine ecosystems from Thayawthatangyi Island group in the north to Langann Islands in the south. The prodoc states that the project 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.'
4. The project's objective is described as follows: 'to secure the long-term protection of Key Biodiversity Areas through integrated planning and management of the projected 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.' The project's planned duration is 6 years – the planned start date was October 2017, and the planned end date is September 2023. The total cost of investment in the project is estimated to be 21,788,116 USD, of which 5,250,000 USD

constitutes grant funding from GEF.

5. According to the same project document, the project is under a 'Direct Implementation Modality' (DIM). UNDP is the Implementing Partner and, the Ministry of Natural Resources and Environmental Conservation is the Lead National Ministry. The total budget administered by UNDP includes 5,250,000 USD of Global Environment Facility (herein 'GEF') funding. Entities additionally noted in the ProDoc as "Responsible parties" include the Forestry Department (FD), the Department of Fisheries (DoF), the Smithsonian Institution (SI), and Fauna and Flora International (FI).
6. On 20 September 2018, CAT confirmed to SECU 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 its communication, CAT additionally requested that SECU recommended 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.'
7. On 26 September 2018, SECU registered the case on its online case registry. SECU then made document and information requests of the UNDP Myanmar Country Office in order to determine eligibility of the complaint.
8. On 27 October 2018, the UNDP Myanmar Country Office (herein 'UNDP Myanmar CO') submitted documents and a statement establishing that the 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)'.
9. From the date of registration, SECU had 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.
10. On 13 December 2018, SECU determined that the complaint met the eligibility criteria for compliance review: (1) The complaint relates to a project or programme supported by UNDP; (2) raises actual or potential issues relating to compliance with UNDP's Social and Environmental Commitments, and (3) reflects that, as a result of UNDP's noncompliance with its Social and Environmental Standards, complainants may be or have been harmed.
11. 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 endorsed the Myanmar CO decision to temporarily suspend the project.
12. According to paragraph 34 of SECU's Investigation Guidelines, SECU has twenty business days to develop and publicly release a draft terms of reference and time frame for its compliance review. Due to capacity and resource constraints, SECU was unable to meet this timeline.

II. Applicable Social and Environmental Commitments in the Context of UNDP-supported Activity

13. The complaint raises issues related to the following UNDP Social and Environmental Standards (SES)-related concerns: economic and physical displacement, land and resources rights, indigenous Peoples' rights; free, prior, informed consent; access to information and consultation and human rights.
14. The complainant highlighted a lack of compliance with the following provisions:
 - a. Principle 1 – Human Rights: To recognize the centrality of human rights to sustainable development, poverty alleviation and ensure fair distribution of development opportunities and benefits.
 - b. Standard 5 - Displacement and Resettlement: To anticipate and avoid, or when avoidance is not possible, minimize adverse social and economic impacts from land or resource acquisition or restrictions on land or resource use. In exceptional circumstances and where avoidance is not possible, displacement may occur only with full justification, appropriate forms of legal protection and compensation, among other requirements.
 - c. Standard 6 - Indigenous Peoples: To recognize and foster full respect for indigenous peoples' human rights as recognized under Applicable Law, including but not limited to their rights to self-determination, their lands, resources and territories, traditional livelihoods and cultures.
 - d. Screening, Assessment and Management of Social and Environmental Risks and Impacts: To review application of the SES at each stage of the programme/project management cycle, and ensure the Social and Environmental Screening Procedure (SESP) is completed at the earliest stage of project preparation.
 - e. Stakeholder Engagement and Response Mechanisms: To ensure meaningful, effective and informed participation of stakeholders in the formulation and implementation of UNDP Programmes and Projects, that will seek to build and maintain over time a constructive relationship with stakeholders, with the purpose of avoiding or mitigating any potential risks in a timely manner.
 - f. Access to information: To ensure relevant information about UNDP Programmes and Projects will be disclosed to help affected communities and other stakeholders understand the opportunities, risks and impacts of the proposed activities in a timely manner, accessible place, and in a form and language understandable to all stakeholders.
 - g. Any other Social and Environmental Commitments raised throughout the course of the compliance review.
15. On 26 December 2018, the UNDP Myanmar CO submitted documents indicating that the complainant communities were located in the specific terrestrial component of the project, and acknowledge the consultation process had presented special challenges. As such, the project was temporarily suspended until further consultations with relevant local stakeholders and project revisions are completed.

III. Scope of Work

16. The aim of this compliance review is to establish a background factual record through the objective gathering of evidence, make findings based on this record, and if necessary, make recommendations to bring UNDP-supported activity into compliance with the SES and other relevant policies and procedures.
17. The compliance review carried out by SECU will involve the following key activities:

- a. Based on an initial desk-based examination of accessible documents, e.g., project document(s), country programme documents and related workplans, UNDP Myanmar programme documentation, relevant evaluation and quality assurance reports, Indigenous Peoples' plans, stakeholder analyses, Social and Environmental Screening Procedure (SESP), news articles, UNDP-generated records, government-generated documents, documents related to ceasefire agreements, documents related to national sustainable development plans, and other relevant documents, develop a more detailed analysis of issues in light of the SES and other relevant UNDP commitments.
- b. Maintain updated awareness of the project's status, including whether any project activity is taking place and what the regional and national political, social, and environmental context is. This is accomplished by regularly checking media accounts, maintaining an open dialogue with the country office and complainants, and seeking out feedback from other interested stakeholders.
- c. Using these analyses, identify initial questions for which answers need to be secured in country and otherwise (identifying questions will necessarily be an iterative process as more information is secured).
- d. Given the initial list of questions, identify individuals and groups to be interviewed. Interviews are conducted on a willing basis, and interviewees are given multiple opportunities to answer questions and provide requested documentation. Targeted interviewees include:
 - i. Current and former UNDP staff members and consultants involved in the design and implementation of relevant project activity,
 - ii. Complainants and any representatives they have, located in Myanmar
 - iii. Relevant government officials.
 - iv. Staff from the Responsible Parties who have been involved since the initiation of the project.
 - v. Other groups and individuals who are able to provide evidence regarding the existing and potential impacts of relevant UNDP-supported activity.
- e. Establish contact with those identified above, to set up interviews. Potential interviewees are informed of the general topics so the most relevant individuals can attend meetings, and SECU can answer any questions potential interviewees have about the topics to be covered. Individuals' names are not included in its public reports. If relevant individuals are unavailable for interviews, SECU welcomes submissions in writing or for meetings to take place telephonically at a later time.
- f. Travel to Myanmar to obtain evidence relating to UNDP adherence to the SES and other relevant policies.
- g. Prepare a draft compliance review report that assesses compliance of project activities with the SES and other relevant social and environmental commitments.
- h. Make publicly available for comment the draft report, and specifically request comments from complainants, the Myanmar CO, relevant Government officials, and other relevant stakeholders.
- i. Finalize the report, and submit it to the Director of OAI and the UNDP Administrator and relevant units.
- j. Post the final report on the SECU registry.
- k. Monitor the implementation of the Administrator's decisions.

IV. Anticipated Milestones and Timeframes

2. The SECU process expects to achieve the following milestones in terms of developing its report and its component steps:

Milestones	ESTIMATED COMPLETION DATE
1. Issue draft Terms of Reference on SECU website for public comment	April 2019
2. Revise Terms of Reference based on public comment	April 2019
3. Desk based document review and UNDP/HQ interviews	April – July 2019
4. Field Mission Activity (Myanmar)	July-October 2019
5. Complete and release for public comment the Draft Compliance Review Report	November/December 2019
6. Closure of public comment period	September/October 2019
7. Issue final report to the Administrator and relevant units, publish the report publicly, and circulate to all stakeholders	November/December 2019