

**CRP Request No. 2013/1 – Request for Compliance Review on the
Loan 2419-IND: Mundra Ultra Mega Power Project**

TERMS OF REFERENCE FOR COMPLIANCE REVIEW

I. INTRODUCTION

1. These Terms of Reference (TOR) were prepared by the Compliance Review Panel (CRP) for the compliance review of Loan 2419-IND: Mundra Ultra Mega Power Project in India following a request for compliance review (the Request) (Appendix) received by the CRP on 17 October 2013.

2. On 27 December 2013, the CRP determined the Request eligible and recommended to the ADB Board of Directors (Board) that they authorize a compliance review. The Board has authorized a compliance review on 17 January 2014.

3. Per paragraph 183 of the Accountability Mechanism policy¹ and paragraph 76 of Operations Manual (OM) Section L1 Operating Procedures, these TOR, which provide the scope, methodology, estimated review time frame, budget, CRP member(s), and other necessary information for the compliance review are submitted for clearance to the Board Compliance Review Committee (BCRC). Following clearance by BCRC, the CRP will provide the TOR to the Board and Management, and post them on the website, within 10 working days of the Board's authorization of the compliance review.

II. THE REQUEST FOR COMPLIANCE REVIEW

4. Brief particulars of the Request and the Project are summarized below:

Project Name	Loan 2419-IND: Mundra Ultra Mega Power Project
Country	India
Borrower	Coastal Gujarat Power Limited
Project approval date	17 April 2008
Project closing date	15 July 2014
Requesting parties	1) Bharat Patel, General Secretary of Machimar Adhikar Sangharsh Sangathan (MASS, the Association for the Struggle for Fishworkers' Rights) representing the affected persons, 2) Gajendrasinh Bhimaji Jadeja, and 3) Harun Salemamad Kara
Allegations	<p>The complainants alleged that due to ADB's noncompliance with its operational policies and procedures, the project has caused the following direct and material harm to the affected persons:</p> <ul style="list-style-type: none">(i) failure to conduct free, prior, broad, and meaningful consultations with communities, which prevented adequate exercise of the basic right to information and participation;(ii) deeply flawed social and environmental impact assessments;(iii) significant and irreversible loss of livelihood of fisherfolk;(iv) inaccessibility of fishing grounds;(v) lack of employment of locals;(vi) impact on horticulture;

¹ ADB. 2012. *Accountability Mechanism Policy*. Manila.

	(vii) impact on groundwater; (viii) labor issues and social unrest; (ix) destruction of mangroves; (x) absence of cumulative impact studies; (xi) ash contamination and health issues; and (xii) risk to children's health.
ADB operations department responsible	Private Sector Operations Department (PSOD)
Project safeguards categorization	Category A for environmental impact Category B for resettlement impact Category C for indigenous peoples' impact
Project Description	The project involves the construction, operation, and maintenance of a coal-fired power plant with a total production capacity of 4,000 megawatts (MW) on a build-own-operate basis near Tundawanda village, Mundra Taluka, Kutch district, in the Indian state of Gujarat. The power plant, with its five 800 MW units, is among the ultra-mega-power projects (UMPPs) planned by the Government of India to meet electricity supply needs in Gujarat, Maharashtra, Punjab, Haryana, and Rajasthan. The plant uses supercritical technology—it is one of the first private sector generators in India to do so—and is expected to be more environment friendly than conventional subcritical generating units. The \$450 million loan to CGPL from the ordinary capital resources of the Asian Development Bank (ADB) is without government guarantee and is administered in ADB by the Private Sector Operations Department (PSOD). Of that amount, \$200 million is syndicated to the Export-Import Bank of Korea (KEXIM) through a risk participation agreement. On 21 March 2013, the project was fully commissioned when the last unit reached commercial operation. Currently, the project serves 2% of India's power needs. It supports India's goal of "Power for All" by 2012. The project is located next to the Adani power plant, which at full capacity operates at 4,620 MW and was commissioned between 2009 and 2012.
Project Status	On 21 March 2013, the project was fully commissioned when the last unit reached commercial operation. Currently, the project serves 2% of India's power needs. Funds disbursed amount to \$351.18 million, which is 78% of the total commitment of \$450 million.
CRP member(s)	Ms. Arntraud Hartmann, will be the Lead Reviewer for this compliance review, with assistance from Mr. Lalanath De Silva, and the Chair, CRP upon appointment and assumption of office.
Contact person:	Mr. Nirmal Ganguly Advisor, OCRP Email: crp@adb.org Tel: (+63 2) 632 6764

5. In accordance with paragraph 14 (iii), page 7 of the *Compliance Review Panel's Report on Eligibility on the Compliance Review Request for Loan 2419-IND : Mundra Ultra Mega Power Project* approved by the Board with effect from 17 January 2014, Mr. Bharat Patel submitted an authorization letter to the CRP on 20 January 2014 with signature and thumb print from 52 members of Machimar Adhikar Sangharsh Sangathan (MASS, the Association for the Struggle for Fishworkers' Rights), 12 of whom are from Tragadi Bander. CRP has considered the said document and decided to treat Mr. Patel also as a complainant.

III. SCOPE OF THE COMPLIANCE REVIEW

6. The compliance review will investigate alleged violations by ADB of its operational policies and procedures in the Project that directly, materially and adversely harm project-affected persons in the course of the formulation, processing, or implementation of the Project. It will probe whether ADB has or has not complied with its operational policies and procedures (especially those relating to safeguards) in connection with the Project. It is not intended to investigate the borrower or the government. After carrying out a compliance review, the CRP will issue to the Board its findings and recommendations. The compliance review will be conducted in accordance with the 2012 Accountability Mechanism Policy.

7. Based on the allegations by the complainants of ADB's noncompliance with specific ADB operational policies and procedures and the CRP's findings in its eligibility review, the CRP will consider ADB's operational policies and procedures that were in effect at the time of Board approval of the loan regarding project formulation, processing and implementation. These include, among others, the following:

- (i) Environment Policy (2002);
- (ii) OM Section F1 (Environmental Considerations in ADB Operations) issued on 29 October 2003; and
- (iii) OM Section C3 (Incorporation of Social Dimensions into ADB Operations) issued on April 2007.

IV. CONDUCT OF COMPLIANCE REVIEW AND METHODOLOGY

8. Throughout the compliance review process, the CRP will consult, as appropriate, all relevant parties concerned, including the complainants, the borrower, the Board member representing the country concerned, Management, and staff.

9. The compliance review will include the following:

- (i) a review of relevant project files;
- (ii) the conduct of site visits with prior consent of the Government of India;
- (iii) consultation, including interviews, with:
 - ADB Management, staff and consultants;
 - complainants;
 - other project affected persons;
 - the borrower;
 - officials from relevant government regulatory agencies; and
 - the Board member representing the country concerned;
- (iv) the engagement of consultants or technical experts, as appropriate, to assist the CRP in carrying out its work; and
- (v) any other review or investigatory methods that the CRP considers appropriate in carrying out its work;
- (vi) CRP has obtained information from the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) with respect to a completed investigation on the same project. Efforts to obtain further information will be continued during the investigation phase. Information will also be obtained from other relevant institutions and agencies. These information will be duly taken into account.

V. TIMEFRAME

10. The CRP plans to complete the compliance review process for this project within 10 months from clearance of this TOR by the BCRC. Below is the estimated timeframe of the review.

Step	Event	Timeframe
4	Conducting compliance review (Contingent on the issuance of mission concurrence by the government, site visit is planned by 3rd to 4th week of May.)	February-June 2014
5	Compliance Review Panel's draft report. CRP will issue its draft report with findings and recommendations to the Management, the borrower, and the complainants for comments, with copy to BCRC. (Comments/responses to CRP draft report are expected by 3 October 2014.)	31 July 2014 (comment period is 45 working days)
6	CRP Final Report. After considering the Management's, borrower's and complainants' comments, CRP finalizes its report and submits a Final Report to the Board, including the responses from the complainants, the borrower, and Management; and a matrix prepared by the CRP summarizing how it has responded to such responses.	24 October 2014 (within 14 working days from receipt of responses from Management, borrower and complainants)
7	Board consideration of Compliance Review Panel's Report.	within 21 calendar days from receipt of CRP Final Report by the Board

11. This timeline does not take into account any additional time required for translation; requested extensions for filing of responses; or other significant local political events that may delay the site visit. If the CRP deems it necessary to alter the above timeframe, the CRP will first seek BCRC's clearance of the revised timeframe.

V. BUDGET FOR THE COMPLIANCE REVIEW

12. Below is the proposed budget for the compliance review.

Budget Items	Amount
Business Travel	\$ 42,000.00
Professional Fees of CRP part-time members	\$ 155,000.00
Consultants	\$ 95,000.00
Translators/Editors of Reports	\$ 8,000.00
TOTAL	\$ 300,000.00

/S/ Arntraud Hartmann
Compliance Review Panel Member
31 January 2014

Appendix: Request for Compliance Review



ADB Accountability Mechanism Complaint Form

The ADB Accountability Mechanism aims to provide an independent and effective forum for people adversely affected by ADB-assisted projects to voice their concerns and seek solutions to their problems, and to request compliance review of alleged noncompliance by ADB with its operational policies and procedures that may have caused, or is likely to cause them direct and material harm.

The Accountability Mechanism is a "LAST RESORT" Mechanism and covers only ADB-assisted projects. As such, it is encouraged that complainants first seek a fair resolution of their case with available grievance mechanisms at the project level or within the relevant Operations Department of ADB.

A. Complainants' Choice and Contact Information

1. Complainants' Choice

a. Please forward complaint to: *(Please choose only one and DO NOT leave this BLANK)*




☐ **Special Project Facilitator** *(Assists people directly, materially, and adversely affected by specific problems caused by ADB-assisted projects through informal, flexible, and consensus-based methods with the consent and participation of all parties concerned)*

☒ **Compliance Review Panel** *(Investigates alleged noncompliance by ADB with its operational policies and procedures in any ADB-assisted project in the course of the formulation, processing, or implementation of the project that directly, materially, and adversely affects local people.)*

b. Do you want your identities to be kept confidential?

☐ Yes

☒ No

2. Information on the Complainants <i>(The identities of complainants will be kept confidential unless the complainants agree to disclose their identities, but anonymous complaints will not be accepted.)</i>					
Names and designations (Mr., Ms., Mrs.)	Signatures	Positions/Organizations (If any)	Addresses	Contact numbers	E-mail addresses
Mr. Gajendrasinh Bhimaji Jadeja		Member	At PO Navinal, Tal Mundra, Kutch, Gujarat, India		gajendrasinhjadeja544@gmail.com
Mr. Harun Saleemamad Kara		Member	Village: Badreshwar, Taluka: Mundra Kutch District, Gujarat, India		
Mr. Bharat Patel		General Secretary, Machimar Adhikar Sangharsh Sangathan	Bhadreshwar, Mundra Taluka, Kutch District, Gujarat, India	+91.9426469803	bharatp1977@gmail.com

3. Information on Authorized Representative <i>(If any). (The identities of representatives who are not at the same time complainants will be disclosed to ensure transparency).</i>					
Please provide evidence of the authority to represent the complainants.					
Names and designations	Signatures	Positions/Organizations (If any)	Addresses	Contact numbers	E-mail addresses
NA					

B. Project Information

Project name	Tata Mundra Ultra Mega Power Project
Project Number	41946-014
Project location	Tundawanda village, Mundra Taluka, Kutch district, Gujarat, India
Brief description of the project	<p>Tata Mundra Project is the first super critical, 4,000-megawatt (5 units of 800 MW each) power plant that was approved by the Government of India and is being developed by Coastal Gujarat Power Limited (CGPL) Mundra, Kutch district in Gujarat state.</p> <p>A consortium of Banks including multilateral agencies and Export Credit Agencies invest in this project which costs US \$4.14billion. Financing comprises of equity of INR 42.50 billion, External Commercial Borrowings (ECB) of up to USD 1.8 billion and Rupee Loans of up to INR 55.50 billion. The ECBs include the Asian Development Bank, the International Finance Corporation, the Export-Import Bank of Korea, Korea Export Insurance Corporation, and BNP Paribas. National financial institutions (FIs) involved are State Bank of India, the India Infrastructure Finance Company Ltd., Housing and Urban Development Corporation Ltd., Oriental Bank of Commerce, Vijaya Bank, State Bank of Bikaner & Jaipur, State Bank of Hyderabad, State Bank of Travancore and State Bank of Indore.</p>

C. The Complaint**1. What direct and material harm has the ADB-financed project caused to the complainants?****SOCIAL****1. Failure to conduct free, prior, broad and meaningful consultations with communities prevented us from adequately exercising our basic right to information and participation**

The company failed in consulting most of the affected communities before the project started. Neither was relevant information provided, nor was it translated into local languages. Despite the significant adverse project impacts to affected communities, the consultation process did not demonstrate free, prior and informed consultation and did not facilitate informed participation. As such, our views as affected communities were never incorporated into the project decision.

2. Deeply flawed social and environmental impact assessments

The EIA of Tata Mundra UMPP says – “The project area covers 1,254 hectares (ha) of vacant land near the villages of Tunda and Wandh, including 202 ha of right of way outside the project boundary, and is about 2 km from the first-phase development area of the Mundra Special Economic Zone (MSEZ), where a 660 MW power plant project, the Adani Power Project, is being implemented by Adani Power Limited.”¹

However the areas has a high rural population density, and the land having multiple rural economic activities (fishing, fish drying, animal grazing being the main ones) for the last many decades at least. This was either a failure to recognize or an act of willful ignorance.

Far from being vacant, this land is being used for decades by the fisherfolk for various fishing related activities. They use this land for their hutments for 8-9 months a year, since they practice seasonal fishing, and also for boat landing, fish drying, net mending and a multitude of other related activities.

Apart from failing in recognizing the fishing communities as affected in the impact assessments, it also failed to recognize salt-pan workers/owners and pastoralists as affected communities.

Both the Rapid and Comprehensive Environmental Impact Assessment (EIA) reports are also questionable, as the impact assessments were carried out by TCE Consulting Engineers – a Tata-owned venture. The credibility of such documents is, therefore, highly questionable.

For us, ADB failed to analyze the multitude of risks and impacts of the project during the key stages including pre-construction, construction, operations, and decommissioning or closure.

3. Significant and irreversible loss of livelihoods of fisherfolks

The loss destruction of mangroves and creeks resulted in drastic reduction in fish availability in the region, pushing the fishing communities to extreme social and economic difficulties. The Independent Expert Fact Finding Report in 2012² shows that:

“Possible factors contributing to the drastically reducing fish catch in this area over the last few years are as follows –

- *One of the major factors identified by almost all, was the **destruction of creeks and mangroves** (with the Adanis contributing in a much larger scale) – nurseries of marine life, as described earlier in this report. Both the Kothdi and Mudhwa creeks have been badly damaged by Tata’s dredging, widening and denudation.*
- *Another major factor identified by the fishing community is the **thermal pollution from the power plants – the warm cooling water coming out of their outfall channels**. This is a very large volume of warm water mixing with the gulf water here. The CGPL claimed*

¹Environmental Assessment Report – Mundra Ultra Mega Power Project”, prepared by CGPL for ADB, 2007.

²Full report appended

that they have permission from Ministry of Environment and Forests to discharge cooling water at 7°C above ambient, but even on request, no such permission/clearance was shown.

- ***In such a sensitive area, this will have a huge negative impact. This is also a violation of their environmental clearance, which was for a closed cycle cooling system. The adjacent Adani super mega coal power plant is building its so-called closed cycle cooling system – with an array of forced-draft cooling towers visible, reducing required cooling water volume by nearly 90%. The failure of the Tata-Mundra plant to adopt a closed-cycle cooling system, as cleared, raises concerns as to whether they are cutting corners in order to increase profits. Further, no cumulative impact studies were done to ascertain the impacts of warm water from all these power plants in this small area.***
- ***The other likely impact of warm water is de-oxygenation – as a result of the increased temperature in the areas around the cooling water discharge, the dissolved oxygen level in the water is likely to go down, affecting all kinds of marine life very badly. This has a direct consequence for communities dependent on marine resources in these coastal areas. This has not been taken into account by the company.***
- ***Another possibility pointed out by the marine scientist in the fact finding team, was the possible death of large nos. of fish seedling with the pumped intake water, unless high technology special filters are used. The fact finding team specifically asked the CGPL management about this on their meeting on 19th May afternoon, during our meeting at their office, but the CGPL could not give any specific information, giving us the impression that in all likelihood they are not using any such screening device. It may be noted here that while in most countries IFIs insist on such safeguards – with US EPA documents indicating that any intake rate over 2 million gallons/day should follow those safeguards – no such conditions were set forth by them here. “...2 million gallons per day intake threshold, over which facilities fall under this rule. The literature indicates that the mortality due to impingement and entrainment increase dramatically above this threshold.”³ The CGPL’s proposed intake rate at full capacity is 15.12 million M³/day, or about 3994 million gallons/day, or about 2000 times the high-damage threshold! Even with just one unit operational, this is higher than the high-mortality threshold by nearly 400 times!***
- ***The possibility that chemical pollution is also being discharged along with the cooling water, causing change in the chemical property of the water, as detailed later. This is indicated, as stated, by the persistent frothiness.***
- ***The highly saline brine, discharged from the desalination plant of the power project, might also be increasing the salinity / changing pH of the water, driving fish away. As the Tata EIA says, “Rejects from the desalination plant will be discharged into the sea through the discharge channel of the cooling water system”, and this is a substantial volume of brine (reject) added to the gulf shores everyday.” (emphasis as in the original)***

³“National Pollution Discharge Elimination System – Regulations Addressing Cooling Water Intake Structures for New Facilities”, US-Environment Protection Agency, <http://water.epa.gov/lawsregs/lawsguidance>

4. Fishing grounds became highly inaccessible

Access routes to fishing and grazing grounds have either been blocked or unusually lengthened by the Tata's water channels. What was once a shorter route, has become lengthier by nearly 4 KMs, and the fisher-folk are now forced to shell out Rs.450 for each trip by an auto-rickshaw, in place of the earlier Rs.150 per trip. The route is also not maintained well and the women folk often are delayed when returning from the markets after selling the fish.

5. No employment for locals

While the project is in part premised on improving the living standard of local communities, only very few locals are employed by the company. That this project is pushing people out of their fishing and other livelihood activities and who are not absorbed in the project's workforce only proves that the project failed to generate secure and sustainable employment and failed to improving the living condition of the economically-displaced local population.

6. Impact on horticulture

Since Adani and Tata power plants started (even before all units were operational), some crops like "Chiku" ('Safeda') has drastically fallen in yield (similar reports came from other locations close to coal power plants, like Dahanu in Maharashtra). Many Chiku farmers have cut down their plants and gone to other crops. Economically important Date Palms – those coming under many of the power transmission lines – withering away.

In 2012, the date production was very poor in Jarapra, Navinal, Dhrab – all within five kilo-meters from these two gigantic thermal plants. Last year the rains didn't come early to reduce any impacts that these two plants are causing – both by their heat and coal dust/ash emissions, unlike this year, when the rains came early. Even with a 'good natural climate', date farmers – as well as the local Krishi Vigyan Kendra worker we met and discussed with - said that the production is just about 60% of what it used to be earlier. Date being one of the main cash crops in many villages in the area, the huge adverse impact can easily be imagined.

7. Impact on ground water

Another impact reported is that of ground water table having gone down fast in the last few years. In an area with little rain, the gigantic construction projects, along with port & other factories, have withdrawn massive amounts of water from the precious aquifers, depleting them extensively.

8. Labour Issues and Social Unrest

The large number of stressed out migrant labour, who often indulges in alcoholic drinks and the associated ills. As a result, the illegal production and sell of liquor in the area, in a dry state like Gujarat, has sharply increased. The local men folk are now being impacted directly,

getting hooked onto this, and domestic violence has increased sharply after the entry of these two mega coal plants (and port etc) in this area. Local women's groups are forced to organize themselves and protest against this.

II. ENVIRONMENTAL

1. Destruction of mangroves

Large tracts of mangroves, dry-land forests and creeks, rich in biodiversity, and mud-flats were destroyed by the company in the course of its construction activities. The construction of associated facilities like port (which is being shared with that of the adjacent Adani power project), the inlet water channel (also shared with Adani project) and the outlet water channel caused irreversible damage to the fragile environment. These mangroves also serve as protection to the estuaries, which are acts as a nursery for a variety of marine animals.

2. Absence of Cumulative Impact Studies

In a small stretch of the Kutch coast there are a number of projects coming up. The real impact of the Tata Mundra can be determined only when a cumulative impact assessment is done, which was never done. In the absence of cumulative impact assessment, companies will dodge the responsibility by passing it on to the other industry while the people will suffer endlessly.

III. HEALTH

1. Ash Contamination and health issues

Fly ash emanated from the project falls on the fish put out for drying, making it inedible and non-marketable. The fish also will get contaminated with the toxic fly ash falling on it, making it highly unsafe to consume, particularly for women of child bearing age. Exposure to mercury during pregnancy can cause a range of health effects including developmental disabilities. Apart from fishes, the ash also falls on the salt pans around the project, which is one of the highest salt producing areas of India. Fly ash falling on fields and its grass consumed by the animals put them in danger of serious illness, in some cases, fatal. Exposure to such toxic particles in the air, and the high pollution resulting out of the Tata and the adjacent Adani project put the people at high health risks.

A recent study – Coal Kills – estimate about 100-120 people are killed every year within this region only because of the impact of the thermal power projects in this area.

The full operational CGPL is invading houses all around the plant with coal dust. Coal dust has engulfed all walks of life, whether food, drinking water or even their houses. Fly-ash is intense. As per their own admission, the CGPL plant is burning anything between 12-13 million tons of

<p>coal every year, and that coal is coming in (post landing after a long sea voyage) through a nearly 15 KMs long coal conveyor from the landing jetty in Mundra. And this is creating havoc in the Tunda-Vandh village, whenever the wind blows from the conveyor side to their side (which is quite often). There are layers of coal dust covering their floors, their bodies when they sleep outside on the terrace (something which is normal in summer). Villagers from Tunda-Vandh also reported breathing difficulties, whenever the coal conveyor runs “at speed”.</p> <p>2. Children’s Health at Risk</p> <p>There is a roughly 20% increase in children’s respiratory diseases in the past two years, since the CGPL is functioning. It is a startling figure, never seen in “normal” change situations, but this was expected by all normal logic of exposure to heavy air pollution, where young children are impacted first. The huge injustice of the situation is that the CGPL plant is sending overwhelming part of its generated power to five states, including far off Maharashtra, whereas the health cost (totally un-compensated in any way) is being borne by the young children of this area the most.</p> <p>The question of adverse health impacts due to both huge amounts of coal dust from CGPL and fly-ash from CGPL (& Adani power), is a critical one, as these two together are bringing in and burning nearly 28 million tons of coal every year in that small area. If one take a close look at the satellite image of the location of the villages Tunda, Vandh, Navinal, Mota Kandagra and Nana Bhadiya – one is struck by the closeness of all these to both the mega coal plants. In fact Tunda-Vandh is sandwiched between the two mega polluters, as has been written earlier. The huge amounts of dust and ash are spreading in the area, damaging health, crops and more.</p>	<p>2. Have the complainants made prior good faith efforts to solve the problem(s) and issue(s) with the concerned ADB operations department?</p> <p>✓ Yes If YES, please provide the following: when, how, by whom, and with whom the good faith efforts were made.</p> <p>On November 30 2012, a good faith letter was sent to Michael Barrow, ADB Director for Infrastructure Finance Division Fund 1. Copied in the letter were Takeo Koike, Investment Specialist and Sujata Gupta, Head of Private Sector Operations Department at ADB’s India Resident Mission. It was sent thru email by MASS representatives including Bharat Patel, Harun Sale Kara and Gajedrasinh Jadeja.⁴</p> <p>Please describe any response the complainants may have received from or any actions taken by ADB</p> <p>Here are the important dates of our communication with the ADB following the November 23, 2012 letter.</p> <ol style="list-style-type: none"> 1. On 11 December 2012, we received an acknowledgment from Mr. Takeo Koike. He wrote “Sorry for taking a bit of time for me to
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⁴Copy of the correspondence is annexed.

respond to your email below. We are currently looking into the points you have shared with us by the email, and will try to get back to you shortly. Meanwhile, we would appreciate your patience."

2. On 15 February 2013 (more than 2 months after acknowledging), Mr. Koike wrote back asking to meet us "during the 4 week of March 2013". Bharat Patel replied saying that since he was in Delhi on the 4th, he could meet them in Delhi. That did not materialize.
3. On 19 February 2013, Mr. Koike proposed 6 or 7th meeting in Mundra and Bharat Patel confirmed in an email dated 5 March 2013 that MASS will meet Mr. Koike on March 7 meeting. Again, that planned meeting did not materialize.
4. On 09 April 2013, we emailed Mr. Toike (Mr. Lubis and DeSilva from CRP were included in the email) expressing our disappointment with the significantly delayed and meaningless response of the ADB.
5. On 11 April, Mr. Koike replied, stating the "we continue to communicate..." and confirming that "we will visit Mundra later this [April]..."
6. On April 14, we emailed Mr. Koike confirming our meeting with him and his team on 26 April 2013.

In the meeting people explained their concerns to the team. The team, in some cases, explained the steps taken / facilities started by the company ostensibly to improve our situation. We explained the situation developed after company's 'divide and rule' policy, with some people in a village getting benefits and others left out, resulting in tension among people. The team heard the people.

Few days after this meeting we received the following letter from Michael Barrow:

From: <mpbarrow@adb.org>
 Date: May 2, 2013 9:01 AM
 Subject: CGPL
 To: "Bharat patel" <bharatp1977@gmail.com>

Dear Mr. Patel,

It was a pleasure for my colleagues and I to meet with you and fellow members of MASS last week. Takeo and our team will be following up with you on a regular basis, but I wanted to also personally assure you that we take very seriously all concerns that are raised by people from communities located close to infrastructure projects that we help to fund. We very much value the chance to interact with MASS and the very frank and detailed discussion last week helped me to better understand your concerns. We are looking into all of these, though some of the impacts relate to wider development along the coast of the Gulf of Kutch. We are working with CGPL to identify and implement additional mitigation measures which can be taken by CGPL to further address the concerns directly related to their operations. These measures are expected to include additional monitoring, design measures within the plant

and enhanced engagement with, and more focused assistance to, project affected people. These possible additional measures are being investigated now with a view to ensuring that they are realistic, optimal and well-directed. As we develop these measures with CGPL we will be communicating them to you and others close to the project. We will engage with you on a regular basis and I personally look forward to visiting Mundra and the surrounding villages very soon.

With kind regards,
Mike

Michael Barrow
Director

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Private Sector Operations Department
Asian Development Bank
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email: mpbarrow@adb.org

Since then we have not heard from the Operations department.

☐ No

3. Have the complainants contacted the Office of the Special Project Facilitator or the Compliance Review Panel about their concerns?

☐ Yes, Office of the Special Project Facilitator☒ Yes, Compliance Review Panel

☐ No

<p>If YES, please provide information on when the contact was made, how, by whom and with whom.</p> <p>On the first week of December, Mr. Rusdian Lubis, Chair, Compliance Review Panel concurrently Head, Office of the Compliance Review Panel (OCR), and Mr. Geoffrey Crooks, Principal Compliance Coordination Specialist, OCRP gave a briefing session in Washington DC about the ADB's Accountability Mechanism Policy 2012. Our support organization, Bank Information Center, subsequently arranged a meeting between us (represented by Bharat Patel) and Mr. Crooks and Mr. Lubis via phone. The purpose of the meeting was to understand the updated OSPF and CRP functions and how each process works under the new policy. It was an initial presentation of the Tata project issues at the time and was an opportunity to clarify the AM guideline and requirements should a project complaint be lodged. The initial interactions of MASS and with the ADB operations team were also described, noting that we were aware of such procedural requirement before considering filing an official complaint.</p> <p>Please describe any response the complainants may have received or actions taken by the Office of the Special Project Facilitator or the Compliance Review Panel.</p>	<p>4. Please include any other information that you consider relevant.</p> <ol style="list-style-type: none"> 1. While the issues related to the Mundra Project is yet to be settled, the company is planning further expansion. Apart from this being threatening to the communities and a tactic to intimidate, if this is carried out without mitigating the damages which is already inflicted on the people, their livelihood and environment, we will be heading to an irreversible situation, if we are not there yet. http://articles.economictimes.indiatimes.com/2013-05-28/news/39580190_1_mundra-umpp-coastal-gujarat-power-ltd-egpl 2. While ADB classifies this as an environment category A project, having "significant adverse environmental impacts that are irreversible, diverse, or unprecedented", the involuntary resettlement category is B, assuming that the issues related to displacement of people form their land or livelihood is not significant. With thousands of families dependent on the sea and fishing for their livelihood and the project having a direct negative impact on their livelihood, this classification is erroneous. 3. Four out of a total six assessment of the Project's environmental and social impacts, mentioned in the 'Report and Recommendation of the President to the Board of Directors', were conducted by the subsidiaries of the Tata company or the owner of the project, Tata Power Company itself. Not only did ADB miss to see the conflict of interest here but ignored the fact that the promoters of the company would conceal or understate the magnitude of negative impacts. ADB failed to do any independent assessment of those documents, according to our knowledge.
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4. In the above mentioned document it says: "The project area is located on marginal and barren land that is not ecologically or culturally sensitive" (Pg. 13). Kutch Coast is one of the rare ecological zones in the world having rich bio-diversity. It comprises of mangroves, coral reefs, mudflats, seaweeds, Commercial Fishes and several rare marine species. The mangroves of Kutch are the second largest after the Sunderbans in the mainland of India.

A prominent feature of the Kutch Coast is the vast intertidal zone comprising a network of creeks, estuaries and mudflats. The Kutch coast provides conducive environment for several sea based traditional occupations like fishing, salt making apart from land based occupations like agriculture, horticulture and animal husbandry.

The Kutch coast is an ecologically sensitive zone as it supports vast areas of Mangroves, Corals, mudflats and the various components of the ecology are interlinked into a fragile ecosystem. The mangroves help the ecosystem by contributing to the oxygen Budget and in Soil Conservation. Mangroves and Corals are the nursing grounds for a variety of economically important fishes, exotic coral fishes and innumerable flora and fauna. The gulf also abounds in more than 210 species of algae. These algae in combination with corals and mangroves provide a conducive ecosystem for diverse flora and fauna. Gulf of Kutch is the only place left along the Indian coast after Gulf of Mannar where live corals occur. In 1982, parts of the Gulf area were declared as a Sanctuary and Marine National Park.

Despite all these, to mention the project area as barren is bizarre.

5. Likewise, in the Social Safeguards (Pg.14) of the above mentioned document it says: *"Potential involuntary resettlement impacts were minimized by selecting a site that is uninhabited, of low and unreliable productivity, and requires minimal private land acquisition. The Project is categorized as B from the perspective of involuntary resettlement since the following impacts are expected: (i) loss of agricultural land owned by 76 families, (ii) loss of temporary structures (wells, cattle sheds), (iii) restricted access to produce such as fodder from forest and grazing land, (iv) loss of access to some of the public lands used for community activities (traditional mela [fair], cricket grounds) and (v) temporary loss of access to the coastline."*

This is an area where thousands of fishworkers' families stay for nearly 8 months a year and do fishing and related activities. This was noted as "uninhabited". And the fishworkers were never considered as project affected, while they are the ones who are badly affected the most. Having not considered them in the Social Impact Assessment, the project and its mitigation plans are drawn on wrong premises and erroneous assessments.

6. The social and environmental monitoring agency, the SENES Consultants India Pvt Ltd did a very bad job. In a statement we issued on May 17, 2012 we said: *"The Annual Environmental & Social Performance Reports (April 2009-March 2010, April 2010-March 2011&July 2011-September 2011) prepared by SENES Consultants India Pvt Ltd to report on Coastal Gujarat Power Limited's (CGPL – Tata Munda*

<p>project) compliance with the Environmental and Social Performance requirements of International Finance Corporation (IFC) and Asian Development Bank (ADB) are plagued with lack of understanding of both the IFC/ADB policies and the issues, lapses in monitoring the violations, prescribing simple solutions to complex problems and taking a casual approach to these serious issues.</p> <p>IFC and ADB invest a total of US\$950 million for this US\$ 4 billion project. These reports are a major source for IFC and ADB to assess the compliance of their policies by the company. The consultants were hired by the company.</p> <p>The fact that most of the Report of April 2010 – March 2011 is a copy-paste job of the previous Report of April 2009 – March 2010 is hard to miss. That SENES got the Table of contents, and even the page numbers exactly the same in those two Reports, except in one or two, shows the great craftsmanship that they have in making such monitoring reports and exposes the fraudulent practice they are engaged in.</p> <p>Cost of such fraudulent reports is the lives and livelihood of thousands of people who are dependent on natural resources, who are deprived of their livelihood without any process worth mentioning and encouragement for the company to continue violations of IFC/ADB policies and the law of the land."</p> <p>ADB failed to independently verify the facts mentioned in the report.</p>	<p>D. Optional Information <i>(The following information is not mandatory, but would be helpful in processing your complaint)</i></p> <p>1. Have the complainants contacted the grievance redress mechanism of the project concerned?</p> <p>✓Yes If YES, please provide the following: when, how, and with whom the contact was made.</p> <p>Yes, we have met with the company a few times in the past.</p> <p>Please describe any response the complainants may have received or any actions taken.</p> <p>In 2011 we met the company representatives two times. They included Pradeep Ghosal, Public Relations Officer and Ravi Purnanik, Head – Community Relations, Tata Power. We approached them on two issues – one, requesting a bridge over the channel, in lieu of taking their traditional routes in the project, to reduce the distance for fisherfolk and cattle herders to access the sea and grazing land. Two, to request to use closed cycle cooling system than open cycle. Since when the outlet channel spews water into the sea with temperature higher than the normal sea water it will adversely affect the aquatic wealth, drastically impacting the livelihood of thousands of fisherfolk. Both the requests</p>
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<p>were turned down saying they are technically not feasible.</p> <p>Some members of the NGO Vivekanand Research training Institute were also in this meeting.</p> <p><input type="checkbox"/> No If NO, why not?</p>
<p>2. What is the complainants' desired outcome from the ADB's Accountability Mechanism?</p> <ol style="list-style-type: none"> 1. ADB uses its leverage to mitigate the impacts caused to the people and environment. 2. ADB stop the company from any further expansion of the project unless the damages already caused are mitigated. 3. ADB stop its funding to the project, until the social and environmental damages are satisfactorily mitigated. 4. ADB stop funding any more coal projects, considering the immense damages it cause and invest more on decentralized renewable projects.
<p>3. Why do complainants believe that the alleged direct and material harm is the result of ADB's failure to follow its operational policies and procedures?</p> <ol style="list-style-type: none"> 1. ADB failed to independently check the impact assessments made by the company and hence approved this project for financing on wrong assumption about impacts, which were heavily downplayed and exaggerated benefits. 2. ADB failed to put in place an independent and competent monitoring agency to monitor the impacts and recommend corrective measures. 3. ADB failed to monitor compliance of its social and environment safeguard policies. 4. ADB willfully ignored the impacts or failed to take any action even when it was alerted by an Independent Fact Finding team in July 2012 about the serious negative impacts from this project.
<p>4. Please describe the operational policies and procedures that have not been complied with by ADB.</p> <ol style="list-style-type: none"> 1. Environmental safeguards 2. Involuntary resettlement safeguards
<p>5. Do the complainants have any other relevant matters or facts (with supporting documents) that the complainants would like to share with us?</p>

Please refer to the following attached documents for more details of impacts:

1. Complaint to the Compliance Advisor Ombudsman (CAO)
2. Additional complaint to CAO
3. The Real Cost of Power: Report From The Independent Fact-Finding Team On The Social, Environmental, And Economic Impacts Of Tata Mundra Ultra Mega Power Project
4. Supplementary report of Fact Finding Team
5. Coal Kills: An Assessment of Death and Disease caused by India's Dirtiest Energy Source

Name of the person who completed this form: Bharat Patel

Signature:



Date: July 12 2013

Please send the complaint to:

Complaint Receiving Officer (CRO)

Accountability Mechanism
ADB Headquarters
6 ADB Avenue
Mandaluyong City 1550
Philippines

Telephone number: +63-2-6324444 local 70309
E-mail: amcro@adb.org

Complaints may be submitted by mail, facsimile, e-mail, or hand delivery to any resident mission of ADB or to the CRO at ADB headquarters.