



OMBUDSMAN ASSESSMENT REPORT

Regarding Community and Civil Society Concerns in Relation to
IFC's Tata Ultra Mega Project (#25797)

January 2012

*Office of the Compliance Advisor Ombudsman (CAO)
for the International Finance Corporation &
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org*

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LIST OF ACRONYMS

CAO	Compliance Advisor Ombudsman
CGPL	Coastal Gujarat Power Limited
IFC	International Finance Corporation
MASS	Machimar Adhikar Sangharsh Sangathan
MIGA	Multilateral Investment Guarantee Agency
PPA	Power Purchase Agreement
SEIA	Social and Environmental Impact Assessment
SIA	Social Impact Assessment

1. Introduction

The Office of the Compliance Advisor Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. The CAO reports directly to the President of the World Bank Group. Its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The CAO's first response to complaints from affected communities is an assessment of the situation carried out by its dispute resolution team. The aim of this assessment is two-fold: first, to listen to, and learn from, the complainants, the wider local community, the company, and other relevant stakeholders about their perspectives on the complaint, and to gauge whether there may be room to address the concerns through a collaborative process. Second, the aim of the assessment is to explain the different roles of the CAO, its mandate, and where its limitations lie, with the aim to enable an informed decision by the complainants and relevant stakeholders whether or not to engage in a dispute resolution process.

This document is a summary of the views heard by the CAO team and an explanation of the next steps in CAO's process. This assessment report does not claim to present a comprehensive picture of all of the issues raised in the complaint or input received from relevant stakeholders. Further, the CAO does not make any judgment on the merits of the complaint.

2. The Complaint

In July 2011, the CAO received a complaint from four members of Machimar Adhikar Sangharsh Sangathan (MASS – Association for the Struggle for Fishworkers' Rights). This group represents interests of fishing communities in the areas of Mundra and Anjar in the Kutch district of Gujarat, India.

The complaint raises a number of concerns about the project's environmental and social impact on the local community of migratory fisher folk. The fishing community lives and fishes on the *Tragadi bander* (fishing harbor) that is located directly outside the project for eight to nine months out of the year during the fishing season. The complaint further questions the quality of the environmental and social impact assessment and the company's community consultation activities, the project's adherence to IFC's Performance Standards, as well as its compliance with national legislation. Finally, the fisherfolk believe that the project, when seen in the context of industrial development more generally along the Mundra coast, ultimately threatens to displace their activities entirely, thus fundamentally threatening their livelihoods. The complaint is posted in full on the CAO's website.

3. The Project

Coastal Gujarat Power Limited ("CGPL" or the "company") will build, own and operate a 4,000MW (5 units of 800 MW each) 'ultra mega' supercritical technology based power plant at the port city of Mundra in the Kutch district of Gujarat, India (the "project"). CGPL is sponsored by Tata Power Company Limited ("Tata Power") who owns 100 percent of CGPL. In May 2011, CGPL announced the successful completion of the steam blowing process at Unit 1. The four remaining units will be commissioned at subsequent intervals of four months each.

The total project cost is estimated at about US\$4.14 billion. IFC invested \$450 million of its own capital in this project, which IFC has classified as a category A project, signifying that IFC

believes there are potentially significant adverse social and environmental impacts that may be diverse or irreversible¹.

4. Project Context

The project is being developed in the context of India's larger energy strategy, which calls for a 160,000 megawatt (MW) increase in power generation capacity through 2017, in order to sustain a growth rate of 8-9 percent. CGPL is one of several large power projects that are being promoted in the country. As a national priority project, the national and state governments of India and Gujarat selected the project site and continue to monitor the project's development. The project will establish the first 800 MW unit supercritical technology thermal power plant in India, and was awarded to Tata Power by India's Ministry of Power through tariff-based competitive bidding. The project is intended to generate electricity for sale to the utilities of five different states in regions of western and northern India through a long term 25 year take-or-pay Power Purchase Agreement ("PPA").

5. Assessment

A CAO team visited the site three times during August 15-19, October 8 and October 17-23, 2011, holding meetings with the complainants and other fisher folk at the site and in the vicinity, as well as with company representatives. An additional meeting was held with two MASS representatives in Delhi on September 1, 2011.

Summary of Issues and Stakeholder Inputs

The overarching issue of concern for local fisher folk is the sustainability of their livelihoods in the context of significant industrialization along the larger coastline that increasingly encroaches on their traditional activities, most recently through the development of the CGPL plant on the Mundra coast.

As their fishing harbors, or *bandars*, are increasingly surrounded by these projects, the fisher folk express concern about a number of ways in which they fear their livelihoods are threatened, including that they may not be allowed back on a *bandar* from one year to the next; that industrialization will impact the quality and quantity of their catch; and that their health may be affected negatively by industrial pollution.

The company understands that the industrialization of the larger coastline puts increasing pressure on the *bandars* and their users. Already, the number of families using the *Tragadi bandar* grows with every fishing season. The company has expressed that this is a result of displacement of fisher folk from other parts of the coastline by other industries, and that any effort to protect the fisher folk's livelihoods along the wider coast in a sustainable way would need to involve other industrial players and the state government.. CGPL has expressed that it would be willing to play a role in such a wider effort.

The specific concerns expressed in the complaint, and shared with CAO during the course of the assessment, relate both to impacts currently felt during construction activities and to potential future impacts from operations. Some impacts are strictly local to the project, others relate to the project as seen in the context of wider industrial development and in particular its relationship with the neighbouring Adani power plant. These different aspects will be summarized in turn below.

¹ IFC's Summary of Proposed Investment:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/0/EAB8E042D643A6EC852576BA000E2B15>

Access to harbor:

Fisher folk expressed that a key point of contention is that construction of the project outflow channel has cut off the access road for the *Pagadias* (foot fishermen). *Pagadias* walk from the village (Tragadi primarily) to the coast to fish and return with their find. The company has constructed a road around the outflow channel, which is an additional 3.8 kilometers (km) walk for the *Pagadias* (or 7.6 km total per outing).

The company agrees that the project fence has added travel time to the fisher folk's journey to and from the *bandar*. The company states that it has learnt from the villagers that the original users of the *bandar* are largely from the village of Tragadi. CGPL notes that, based on consultations with the *sarpanch* (the elected village head), these families have been compensated for adverse impacts (such as the additional trip) to the order of Rs. 1 lakh each (approximately \$ 2,000 each). The complainants point out that some families from other villages have equally used the *bandar* for generations. The company expressed that should additional studies reveal that any gaps in compensation have occurred they would be open to addressing any such gaps.

Marine life and impact on catch:

There is widespread concern among the communities regarding the plant's open cooling system, and the fact that the water coming out of the plant's outfall channel (after flowing through the plant) will be of an elevated temperature and therefore impact marine life, and cause a long term decline in the fish population.

The company holds an environmental permit which sets a seven degree increase threshold, and contends that the design of the plant and outfall channel was based on detailed modelling studies, which predict that the water temperature increase is expected to be in the range of five degrees due to the widening and lengthening of the outfall channel.

The complainants further expressed concern that destruction of mangrove forests along the coastline will adversely impact marine life. The parties disagree on the project's impact on mangroves: the company notes that the area of construction is devoid of mangroves and points to scientific studies that foresee no negative impact on mangroves from project operations. However, the complainants note that this contradicts their past experience of other industrial developments in the region.

Fly ash:

The communities discussed their concern of coal ash flying out of the plant's conveyer belts when coal is being moved from the port to the plant. The conveyer belt is shared with the neighboring Adani power plant. They argue that ash is already flying from the Adani plant, and that this affects 'dry' fish (fish that is laid or hung out to dry in the sun) and even some agricultural produce—especially certain fruits specific to Kutch.

The company believes that fly ash will not impact the dry fish as they will employ technical solutions to contain ash and coal dust throughout its handling, including use of a closed conveyer belt, use of imported coal from Indonesia with little ash content, collection of ash generated for further use, and a chimney that is 275 meters high.

Fresh water source:

When they arrive for the fishing season, residents dig up a small hole on the *bandar*. The water coming out of this hole has traditionally been used to cover all the residents' water needs—for example, drinking water, water for cleaning, bathing, and cleaning of fish, among others. According to the communities, the water that comes out of this hole is “sweet,” and they fear it will be contaminated as a result of the salinity of water in the output channel, which they expect will increase once the power plant is operational. The complainants state that already this water source is no longer usable since the company started operations.

The company states that it has proactively taken steps to mitigate negative impacts by providing fresh water to the communities in tanks, and benefits such as medical attention.

Some local fisher folk expressed satisfaction at these company efforts. These fisher folk are most interested in engaging the company to discuss how to improve such activities. Others view these activities as a form of charity that they feel turns them into beggars, which they contrast with a history of self-sufficiency and great dignity.

Social and Environmental Impact Assessment/“Project Affected People”:

The complainants argue that the social and environmental impact assessment (SEIA) did not adequately identify the migratory fishing communities as project affected people, which they maintain has exposed these communities to risks and adverse impacts.

The company highlights that the SEIA was carried out before Tata Power was involved in the project, and maintains that they have fulfilled all requirements set out in the SEIA.

Disclosure of information regarding legal clearances:

In the complainants view, there has been a lack of publicly available information regarding the project, for example with regard to environmental licenses for its cooling system. Further, the complainants contend that the company does not hold all required licences and is in violation of the Coastal Regulation Zone.

The company maintains that it holds all relevant legal clearances and has agreed to provide copies of relevant licenses to the CAO to share with the complainants. It was the company's preference to explain these licenses, and answer any other questions, in a meeting with the complainants in order to elaborate on the context and rationale for project design choices.

Associated facilities and cumulative impact assessment:

The complainants contend that both the Mundra Port, which is owned and operated by the neighboring Adani plant, and the dedicated railway line are associated facilities of the project. As such, they feel the company bears some responsibility for the environmental and social impacts of these facilities. Further, the complainants maintain that a cumulative impact assessment should have been carried out for the project.

The company states that it is the responsibility of the Mundra Port Special Economic Zone—as owner of the port and railway line—to obtain the relevant clearances for these facilities. The company notes that cumulative impact assessments are carried out as part of the regulatory and permitting process for each new development project under the government's responsibility.

6. Conclusions and Next Steps

A dispute resolution process is voluntary both for affected communities and for the company. After a series of meetings and discussions with the CAO's dispute resolution team, the complainants decided against a collaborative process and requested that the complaint be transferred to CAO's compliance function to appraise whether an audit of IFC's handling of its investment in the project is merited.

It is CAO's view that a collaborative process may have been helpful in this case to address many of the concerns of the fisher folk. Specifically, the company and the users of the *Tragari bandar* could work together to identify who among the *bandar's* users may not have been adequately compensated and may require additional assistance or compensation. Open dialogue between the company and the fisher folk could equally help enhance benefits, such as provision of health services or schooling for the fishing communities.

Dispute resolution tools ranging from information sharing, to a review of company documentation by mutually agreed independent experts, to participatory monitoring are the types of approaches that can be used to assist parties to address such concerns jointly. These tools may have been helpful in addressing concerns expressed by the fisher folk regarding the medium and long term impacts of plant operations on marine life and their fish stock.

Finally, both parties understand that part of the threat to the livelihoods of the wider Mundra coast's fisher folk stems from sources beyond Tata Power in the wider industrialization of the coast, and thus cannot be resolved by the company and community alone. A larger effort involving other industry players along the Mundra coast and the state government could help generate a sustainable solution to securing the fishing communities' livelihoods.

Assessment Outcome and Next Steps

At the request of the complainants, and in accordance with the CAO's Operational Guidelines, CAO's dispute resolution team will conclude their involvement in this case and transfer it to CAO's compliance function to appraise whether an audit of IFC's handling of its investment in the project is warranted.

CAO compliance appraisals and audits focus on the actions of IFC—not IFC's client company—and whether IFC has followed its own rules and procedures. All appraisal reports are public documents. A case will go to a full audit if the CAO finds evidence that that IFC provisions failed to provide adequate protections at the project level; that policies have not been applied properly; or that there may be potentially adverse environmental and social outcomes in the future.

Where the CAO goes on to conduct a full audit of IFC, the office issues a public audit report with findings about IFC. It is then IFC's responsibility to respond to the CAO's findings. Both the audit and IFC's response are presented to the World Bank Group President for consideration, and upon his clearance are publicly disclosed.

Annex I: CAO Process

CAO's Complaints Response

As per the CAO's Operational Guidelines, the following steps are typically followed once a complaint is received:

- Step 1: Acknowledgement of receipt of the complaint.
- Step 2: Eligibility: Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).
- Step 3: Dispute resolution assessment: Assessment of opportunities for collaborative resolution of the issues raised in the complaint (no more than 120 working days). If the assessment determines that a collaborative resolution is not possible, the CAO Ombudsman will refer the complaint to CAO Compliance for a compliance appraisal of IFC's/MIGA's social and environmental performance.
- Step 4: Facilitating settlement: If the CAO Ombudsman process continues, this phase involves implementation of next steps through facilitation/mediation, joint fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the problem-solving process, in a way that is acceptable to the parties.
- Compliance Appraisal/Audit: If either of the parties does not agree to pursue a dispute resolution process, CAO Compliance will initiate an appraisal of IFC's/MIGA's social and environmental due diligence of the project in question to determine whether a compliance audit of IFC's/MIGA's intervention of the project is merited.
- Step 5: Monitoring and follow-up.
- Step 6: Conclusion and case closure.

Annex II: Field Visit Itineraries

First visit: August 16-19, 2011

Meetings with:

1. A variety of office bearers from CGPL, Kutch and Tata Power, Mumbai
2. MASS office bearers
3. MASS advisors Joe Athialy (Bank Information Center) and Shalini Randeria (researcher)
4. Villagers and MASS members affected by the project

Date	Time	Meeting/Event
August 16, 2011	Morning	<ul style="list-style-type: none"> • Meeting with CGPL/Tata Power officials
	Afternoon	<ul style="list-style-type: none"> • Visit to Villages (Tragadi and Modwa)
	Late Afternoon	<ul style="list-style-type: none"> • Visit to Project Site
August 17, 2011	Morning	<ul style="list-style-type: none"> • Meeting with MASS
	Late Morning and Afternoon	<ul style="list-style-type: none"> • Visits with MASS to Wandi village (with communities from neighboring villages present)
	Evening	<ul style="list-style-type: none"> • Meeting with MASS
August 18, 2011	Early Morning	<ul style="list-style-type: none"> • Breakfast with Tata Power
	Morning	<ul style="list-style-type: none"> • Meeting with MASS • Visit to Project Site and Tragadi Bandar
	Afternoon	<ul style="list-style-type: none"> • Visit to Mandvi villages
	Evening	<ul style="list-style-type: none"> • Meeting with MASS
August 19, 2011	Morning	<ul style="list-style-type: none"> • Exit Meeting with CGPL/Tata Power • Exit Meeting with MASS

Second Visit: October 8, 2011

In August 2011, when CAO representatives visited Kutch, the fishing season had not started. The purpose of this visit was to meet the fisher-folk directly to learn about their realities and grievances.

Date	Time	Meeting/Event
October 8, 2011	Daytime	<ul style="list-style-type: none"> • About 20 fisher-folk living on the <i>bandar</i>

Third Visit: October 20-21, 2011

Date	Time	Meeting/Event
October 20, 2011	Morning	<ul style="list-style-type: none">• Visit to Tata Project Site (Kutch District)• Meeting with company staff
	Afternoon	<ul style="list-style-type: none">• Meeting with fishermen/women living on the <i>bandar</i> (approx. 15 men and 20 women)• Meeting with local MASS members
October 21, 2011	Daytime	<ul style="list-style-type: none">• Meeting with MASS (approx. 30 fishermen and some NGO representatives).
	Evening	<ul style="list-style-type: none">• Meeting with company representatives