



**EMBARGOED UNTIL SEPTEMBER 28, 2017**

**September 26, 2017**

*Office of the Compliance Advisor Ombudsman (CAO)*

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## **COMPLIANCE APPRAISAL: SUMMARY OF RESULTS**

*Coastal Gujarat Power Limited: Tata Ultra Mega (Project # 25797)  
India*

*Complaint 02 - Tragadi Village*

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In April 2016, residents of Tragadi village and members of the *Tragadi Sea Shore Development Committee* (“the complainants”) filed a complaint with CAO raising concerns about the impacts of an Ultra Mega Power Plant (“the project”) near the port city of Mundra in the state of Gujarat, India. The project is built, owned and operated by Coastal Gujarat Power Limited (“CGPL” or “the client”). The complainants raised concerns about the project-induced impacts on the marine environment, loss of structures, loss of livelihoods of local fisher people, and concerns related to security and safety. This is the second complaint received by CAO regarding the project (“CGPL-02”).

The first complaint in relation to the project was filed with CAO in 2011 (“CGPL-01”) on behalf of a different group of fisher people who are seasonally resident on fishing harbors adjacent to the project. The CGPL-01 complaint resulted in a compliance audit, which was published in 2013. In that case, CAO made findings regarding the adequacy of IFC’s review of the client’s assessment of E&S impacts and regarding IFC’s supervision of the client’s efforts to identify, avoid, and mitigate E&S risks. CAO is currently monitoring IFC’s response to these audit findings.

This report presents the findings of the CAO compliance appraisal of CGPL-02. The purpose of the appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the environmental and social (E&S) concerns raised by the complaint, results of a preliminary review of IFC’s E&S performance in relation to these issues, and a general assessment of whether a compliance investigation is the appropriate response.

In the process of conducting this appraisal of the CGPL-02 complaint, CAO has identified concerns regarding E&S outcomes that would ordinarily merit a CAO compliance investigation. However, CAO’s ongoing compliance monitoring process of IFC’s response to the CGPL-01 audit addresses substantially similar compliance issues. For this reason, CAO has decided that a separate compliance investigation is not required. CAO will merge the two cases and consider the issues raised in this complaint as part of its ongoing monitoring of IFC’s response to the audit findings. CAO expects to publish its next monitoring report no later than February 2018.

## **About CAO**

*CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.*

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

## Table of Contents

<b>Acronyms .....</b>	<b>4</b>
<b>I. Overview of the Compliance Appraisal Process .....</b>	<b>5</b>
<b>II. Background.....</b>	<b>6</b>
IFC Investment and Project Context .....	6
Summary of the CGPL-02 Complaint .....	8
<b>III. Analysis.....</b>	<b>10</b>
Project-induced impacts on the marine environment .....	10
Project-induced loss of structure / physical displacement .....	12
Project-induced impacts to livelihoods / economic displacement .....	13
Safety of project infrastructure .....	15
Use of security forces .....	16
Adequacy of consultation and engagement with local community members .....	18
<b>IV. CAO Decision.....</b>	<b>21</b>

## Acronyms

<b>Acronym</b>	<b>Definition</b>
ADB	Asian Development Bank
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
CGPL	Coastal Gujarat Power Limited
CISF	Central Industrial Security Force
E&S	Environmental and Social
ERM	Environmental Resources Management
FPIC	Free, Prior and Informed Consent
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
MPEDA	Marine Products Export Development Authority
MW	Megawatt
PS	IFC Performance Standards

## I. Overview of the Compliance Appraisal Process

The CAO compliance function assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of relevant policy provisions. The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. In assessing the performance of a project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it may also be necessary for CAO to review the actions of the client and verify outcomes in the field.

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

While CAO does not place prescriptive limits to a compliance appraisal, CAO applies several basic criteria to guide the process. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response.

A summary of all appraisal results is made public. If CAO decides to initiate a compliance investigation, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

## II. Background

### **IFC Investment and Project Context**

The Mundra Ultra Mega Power Plant (“the project”) is a 4,000 megawatt (MW) supercritical technology coal-powered thermal plant located near the port town of Mundra in the Kutch district of Gujarat, India.<sup>1</sup> The project is built, owned, and operated by Coastal Gujarat Power Limited (“CGPL” or “the client”), a wholly-owned subsidiary of Tata Power Company Limited. CGPL was awarded the contract by India’s Ministry of Power through tariff-based competitive bidding. The project generates electricity for sale to utilities in five states in western and northern India through a 25-year take-or-pay power purchase agreement.

The project is located approximately 1.5 km inland from the coast of the Gulf of Kutch in an area with vast intertidal mudflats (see *Figure 1*).<sup>2</sup> The power plant was constructed using a once-through seawater cooling system. Seawater is withdrawn from the ocean through a 6.5 km intake channel at a rate of up to 630,000 cubic meters per hour (m<sup>3</sup>/h).<sup>3</sup> The project uses a shared intake channel that was originally constructed to serve a neighboring coal-fired power plant, the Adani Mundra Thermal Power Station. Warmer effluent water is released from the CGPL plant back into the ocean at a rate of approximately 628,000 m<sup>3</sup>/h through an outfall channel. The outfall channel consists of a reinforced concrete channel (2.9 km and 84m wide), a pre-cooling channel (1.9km long and 250m wide), a weir, and dredged outfall channel that leads from the inshore area to the Gulf of Kutch (3km long and 100m wide).<sup>4</sup> As the warm effluent water disperses into the cooler sea water, it mixes to generate a thermal plume.

The project is IFC E&S category A, signifying that it has the potential for significant adverse social and environmental impacts that are diverse, irreversible, or unprecedented.<sup>5</sup> The total project cost is estimated at about US \$4.14 billion. IFC disclosed its investment in the project as a straight senior loan of US \$450 million.<sup>6</sup> The loan was approved in April 2008. IFC E&S policies applicable to the loan include the 2006 *Policy on Environmental and Social Sustainability* (“the Sustainability Policy”), the *Performance Standards on Social & Environmental Sustainability* (“Performance Standards”), and the *Access to Information Policy*.<sup>7</sup> At the time of the investment, Version 2.0 of IFC’s *Environmental and Social Review Procedures* was in effect. Technical requirements for the plant are set out in the 2007 *Environmental, Health, and Safety General Guidelines* (“EHS Guidelines”) and the 1998 *Thermal Power: Guidelines for New Plants*.<sup>8</sup>

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<sup>1</sup> International Finance Corporation (IFC). 2007. “Tata Ultra Mega: Project Overview [November 27, 2007],” *IFC Project Information Portal*. Available at: <https://goo.gl/DZTDup>

<sup>2</sup> Coastal Gujarat Power Limited (CGPL). 2007. *Environmental Assessment Report, India: Mundra Ultra Mega Power Project*: page 11. Available at: <https://goo.gl/YLtvxi>

<sup>3</sup> CGPL. 2007. *Environmental Assessment Report*: page 2.

<sup>4</sup> National Institute of Oceanography (NIO). 2016. *Model Conformity Study and Monitoring for Condenser Cooling Water Discharge from CGPL in the Coastal Waters of Mundra During Premonsoon* [‘Model Conformity Study’]: page 8. Available at: <https://goo.gl/RyyNSU>

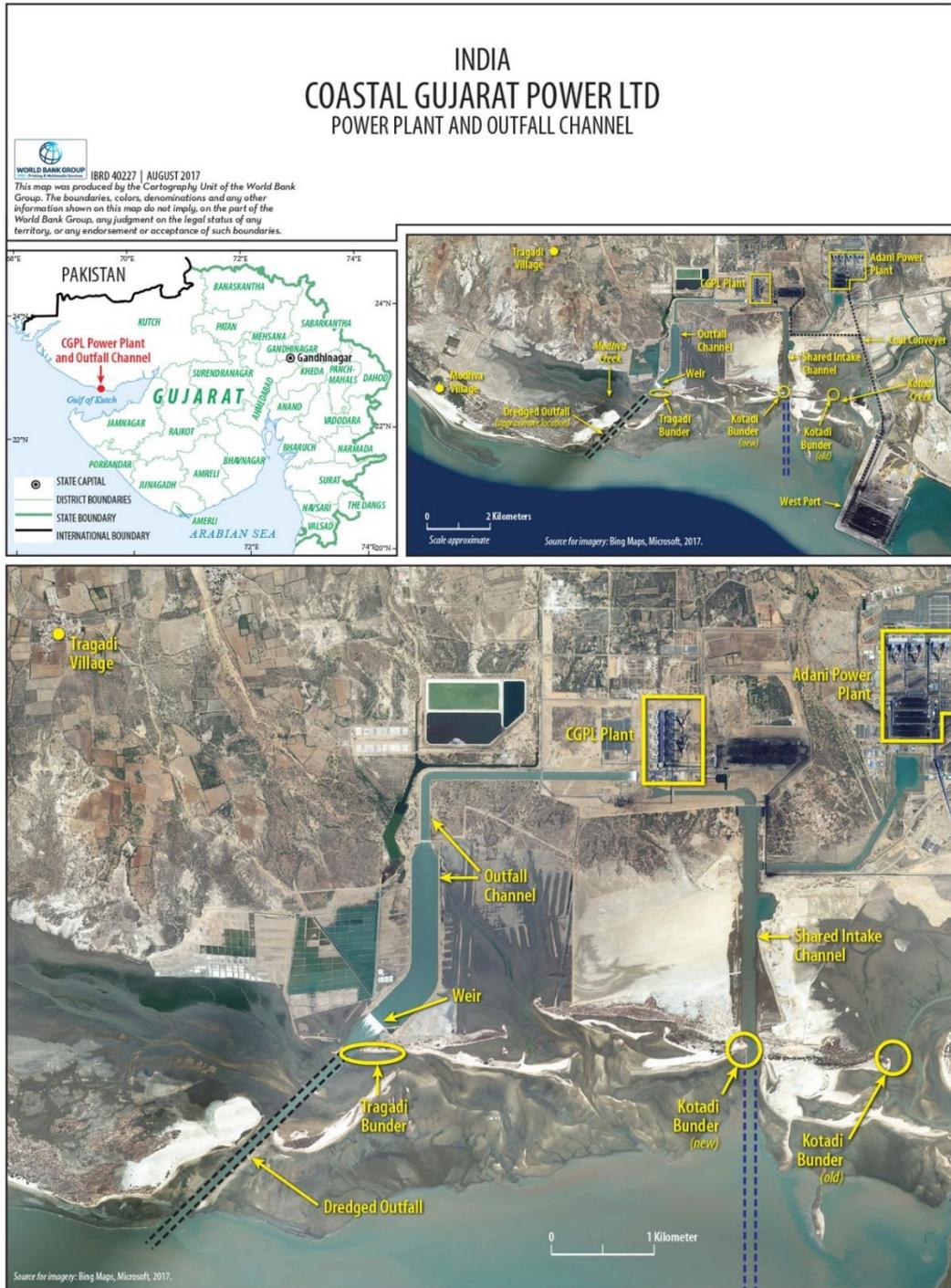
<sup>5</sup> IFC. 2006. *Policy on Social & Environmental Sustainability*: paragraph 18. Available at: <https://goo.gl/gg3Qna> -and- IFC. 2007. *E&S Review Procedures (Version 2.0: July 31, 2007)*.

<sup>6</sup> IFC. 2007 “Tata Ultra Mega: Total Project Cost and Amount and Nature of IFC’s Investment [December 04, 2008],” *IFC Project Information Portal*. Available at: <https://goo.gl/DZTDup>

<sup>7</sup> For more information about IFC’s sustainability policy framework, please refer to the IFC website: <https://goo.gl/Sqixea>

<sup>8</sup> IFC. 2007. *Environmental, Health, and Safety General Guidelines* (EHS Guidelines). Available at: <https://goo.gl/A6Jdg8>; IFC. 1998. *Thermal Power: Guidelines for New Plants* (Thermal Power Guidelines). Available at: <https://goo.gl/TnQyYE>.

**Figure 1: CGPL Project Area and Location**



## **Compliance Processes in Relation to the Project**

The first complaint in relation to the project (“CGPL-01”) was filed in 2011 by a group of fisher people who are seasonally resident on fishing harbors adjacent to the project – Tragadi and Kotadi bunders.<sup>9</sup> The CGPL-01 complaint raised concerns about actual and anticipated impacts on the environment and on livelihoods of the complainants. CAO completed a compliance audit in relation to CGPL-01 in August 2013 (the “CGPL-01 audit”).<sup>10</sup> The CGPL-01 audit acknowledged that much diligent work had been done by IFC and CGPL in relation to E&S aspects of what is a large and complex project. The audit also validated key aspects of the CGPL-01 complaint. CAO is currently monitoring IFC’s actions to address non-compliance findings from the CGPL-01 audit.<sup>11</sup> Relevant audit and monitoring findings are identified below.

CAO notes that the client is involved in ongoing work with the Asian Development Bank (ADB) as part of the implementation of a Remedial Action Plan approved following a Compliance Review Panel process.<sup>12</sup> Several aspects of the ADB Remedial Action Plan overlap with issues identified in the CGPL-01 audit.<sup>13</sup>

## **Summary of the CGPL-02 Complaint**

In April 2016, CAO received a second complaint in relation to the project (CGPL-02). The CGPL-02 complaint was filed by residents of Tragadi village and members of the Tragadi Sea Shore Development Committee. The client and complainants did not agree to pursue a CAO-facilitated dispute resolution process, and the case was referred to CAO’s compliance function on May 12, 2017.

The complainants practice traditional forms of hand- and gill-net fishing, known as *pagadiya* or foot fishing, in nearby intertidal areas as well as boat fishing in the Gulf of Kutch. The complainants have requested that CAO keep confidential the names of the 120 Tragadi villagers who are signatories to the complaint. The complainants are concerned about the project’s environmental and social impacts on Tragadi village and its fisher people. The issues raised are summarized below:

- *Project-induced impacts on the marine environment:* Complainants allege that project-induced changes to the marine environment are adversely affecting traditional fishing practices and potential aquaculture projects.
- *Project-induced loss of structure / physical displacement:* Complainants allege that the company destroyed houses built by fishermen of Tragadi village that were located on *Tragadi bunder* without adequate compensation.
- *Project-induced impacts to livelihoods / economic displacement:* Complainants allege that project-induced environmental impacts are disrupting the livelihood practices of *pagadiya*

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<sup>9</sup> Complaint from Machimar Adhikar Sangharsh Sangathan (MASS) to CAO VP [June 11, 2011]. Available at: <https://goo.gl/Li6kYu>

<sup>10</sup> CAO. 2013. *CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India*: 38. Available at: <https://goo.gl/jBNkQf>

<sup>11</sup> CAO. 2015. *Monitoring of IFC’s Response to CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India*. Available at: <https://goo.gl/syk3LB>; CAO. 2017. *Second Monitoring Report of IFC’s Response to CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India*. Available at: <https://goo.gl/5jELPg>.

<sup>12</sup> For details of the complaint made to the ADB Compliance Review Panel, please refer to the ADB website: <https://goo.gl/L7swUq>

<sup>13</sup> ADB’s ‘Quarterly Progress Reports on Remedial Actions’ are available at: <https://goo.gl/bAFFbb>

fisher people of Tragadi. The CGPL-02 complaint further alleges that livelihood enhancement measures sponsored by the company are not viable.

- *Safety of project infrastructure:* The CGPL-02 complaint identifies concerns for safety, including the death of animals falling into the outfall channel.
- *Use of security forces:* Complainants allege that government security forces assigned to the project beat two Tragadi villagers as they were *pagadiya* fishing.
- *Adequacy of consultation and engagement with local community members:* A cross-cutting issue raised in the CGPL-02 complaint is concern for perceived shortcomings in the client's engagement with affected community members. The complainants allege that committees formed by CGPL that purport to represent fisher people do not fairly represent the interests of local fishermen.

### III. Analysis

CAO notes that several concerns raised by community members of Tragadi village in the CGPL-02 complaint correspond to issues considered in the CGPL-01 audit. In some instances, concerns were expressed in essentially the same terms, while other concerns relate to project implementation. The appraisal also considered the concerns around security forces at the project as a new issue.

#### **Project-induced impacts on the marine environment**

The CGPL-02 complaint conveys concerns about the project's impact on the marine environment. Complainants allege that fish and fish eggs are drawn into the project's intake channel and killed. The complaint claims that the company has disposed of dead fish in pits on company land. The complainants also allege that, due to the flow of warm water from the outfall channel, fish are not coming near the sea shore. Complainants are concerned for the resulting livelihood impacts to the approximately 150 fishing families of Tragadi village. The complainants allege that the outfall channel is affecting oxygen levels in surrounding waters and negatively impacting environmental capacity for potential aquaculture projects. The complainants allege that dredging and cutting of two sand dunes to construct the outfall channel caused increased erosion at the sea shore and the *bunder*, destroying *pagadiya* fishing grounds. The complainants further allege that the construction of the outfall channel violates a Government of India 2011 'Coastal Regulation Zone Notification' (CRZ) that protects sand dunes.

The Sustainability Policy provides that its efforts to carry out investments in a manner that "do no harm" to people or the environment are central to IFC's development mission.<sup>14</sup> The policy establishes a framework to ensure that negative impacts are avoided where possible and where unavoidable they are reduced, mitigated, or compensated for appropriately.<sup>15</sup> To this end, IFC Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts (PS1) requires that the client conduct a process of E&S assessment that will consider in an integrated manner the potential E&S risks and impacts of the project.<sup>16</sup> The assessment is required to be an "adequate, accurate, and objective evaluation and presentation of the issues, prepared by qualified and experienced persons."<sup>17</sup> IFC is required to conduct an E&S review of the project commensurate to the risk, including a review of the client's E&S assessment documentation.<sup>18</sup> IFC does not finance new business activity that cannot be expected to meet the Performance Standards over a reasonable period of time.<sup>19</sup>

Requirements relating to pollution and biodiversity conservation are set out in Performance Standard 3: Resource Efficiency and Pollution Prevention and Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources. Clients are required to apply pollution prevention and control techniques that are consistent with good international industry practice.<sup>20</sup> An E&S assessment must take into account the differing values attached to biodiversity by specific stakeholders and must identify impacts on ecosystem

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<sup>14</sup> IFC. 2006. *Policy on Social and Environmental Sustainability*: paragraph 8. Available at: <https://goo.gl/qg3Qna>

<sup>15</sup> *Ibid.* paragraph 8.

<sup>16</sup> IFC. 2006. "Performance Standard 1": paragraph 4. *Performance Standards on Social & Environmental Sustainability*. Available at: <https://goo.gl/EUZpic>

<sup>17</sup> *Ibid.* paragraph 7.

<sup>18</sup> IFC. 2006. *Policy on Social and Environmental Sustainability*: paragraph 13.

<sup>19</sup> *Ibid.* paragraph 17.

<sup>20</sup> IFC. 2006. "Performance Standard 3": paragraph 3. *Performance Standards on Social & Environmental Sustainability*. Available at: <https://goo.gl/EUZpic>

services.<sup>21</sup> Technical requirements in relation to water effluent and marine impacts are set out in the Thermal Power Guidelines and EHS Guidelines.<sup>22</sup> Clients are required to set project-specific performance levels for wastewater effluent taking into consideration that the temperature of wastewater prior to discharge should not result in an increase greater than 3°C of ambient temperature at the edge of a scientifically established mixing zone.<sup>23</sup>

The issue of CRZ notification was addressed in CAO's appraisal of the CGPL-01 complaint.<sup>24</sup> CAO reviewed the project's E&S assessment documentation and an amended CRZ clearance for the outfall channel.<sup>25</sup> CAO confirmed that IFC adequately assured itself that regulatory clearance was obtained in relation to the construction of the outfall channel.<sup>26</sup>

In response to the CGPL-01 audit, IFC reported that its client would commission model confirmation studies of the marine impact of the project and have those studies independently verified.<sup>27</sup> The client also agreed to collect fish catch data and experimental fishing data, and to conduct sea turtle monitoring and broader biodiversity monitoring.<sup>28</sup> Where adverse impact was found from these studies, the client agreed to develop appropriate mitigation measures in accordance with the PSs. The client commissioned the National Institute of Oceanography ("NIO") to undertake the model confirmation studies and to collect experimental fishing data. The first NIO study was completed in September 2014, and a follow-up study was completed in February 2016.<sup>29</sup> CAO notes the client's position that these studies address the complainants' concerns about impacts of the channel.<sup>30</sup> CAO reviewed the NIO studies in the course of monitoring IFC's response to the CGPL-01 audit.<sup>31</sup> CAO noted that the studies map temperature readings in the water of the outflow channel and in the area around the channel mouth. However, CAO found

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<sup>21</sup> IFC. 2006. "Performance 6 [paragraph 4]", *Performance Standards on Social & Environmental Sustainability*. Available at: <https://goo.gl/EUZpjc>. According to IFC's 2006 *Guidance Notes: Performance Standards on Social & Environmental Sustainability*, ecosystem services are the benefits that people obtain from ecosystems, and include provisioning services (such as food, fiber, fresh water, fuel wood, (biochemical, genetic resources); regulating services (such as climate regulation, disease regulation, water regulation, water purification, degradation of pollutants, carbon sequestration and storage, nutrient cycling); and cultural services (spiritual and religious aspects, recreation and ecotourism, aesthetics, inspiration, educational values, sense of place, cultural heritage) [GN6 paragraph G4].

<sup>22</sup> Available at: <https://goo.gl/TnQyYE>. IFC. 1998. *Thermal Power Guidelines*: 415-420 Available at: <https://goo.gl/A6Jdq8>; IFC. 2007. *EHS Guidelines*: page 25. Available at: <https://goo.gl/TnQyYE>

<sup>23</sup> The mixing zone should be determined taking into account ambient water quality, receiving water use and assimilative capacity among other considerations [General EHS Guidelines: page 26].

<sup>24</sup> CAO. 2012. *CAO Appraisal for Audit of IFC Coastal Gujarat Power Limited India – Case of Machimar Adhikar Sangharsh Sangathan (MASS)*: page 9. Available at: <https://goo.gl/QCY7pg>

<sup>25</sup> Gol, Ministry of Environment and Forests. 2010. "Amendment to CRZ clearance for revised location of discharge channel... [March 9, 2010]". Available at: <https://goo.gl/aacagT>

<sup>26</sup> *Ibid.*: page 9.

<sup>27</sup> IFC. 2013. *Statement by Jin-Yong Cai regarding CAO Audit of Tata Mundra*. [November 25, 2013]. Available at: <https://goo.gl/Jr1qSZ>. Note that the CGPL-01 audit found that IFC's review of the client's marine impact assessments was not commensurate to risk: CAO. 2013. *CAO Audit of IFC Investment in Coastal Gujarat Power Limited India*: page 29.

<sup>28</sup> The client committed to the following: (i) Bombay Natural History Society ("BNHS") to undertake turtle monitoring; (ii) require BNHS or other reputed third party agency to follow up its biodiversity assessment study with broader biodiversity monitoring in the area impacted by cooling water discharge; (iii) Collect fish catch data from authorities; and (iv) Commence directly collecting primary fish catch data from the seasonally resident fishing community/traders.

<sup>29</sup> NIO. 2016. *Model Conformity Study*. Available at: <https://goo.gl/RyyNSU>

<sup>30</sup> CAO. 2017. *CAO Assessment Report: Second Complaint Regarding IFC's investment in Tata Ultra Mega (Project # 25797) Tragadi Village, India*: page 9. Available at: <https://goo.gl/3TWRSE>

<sup>31</sup> CAO. 2017. *Second Monitoring Report of IFC's Response to CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India*: page 10. Available at: <https://goo.gl/5jELPg>

that the study did not address CAO's findings regarding gaps in IFC's review of the original marine impact assessment, nor did it address the requirement to establish a scientifically defined mixing zone. The NIO studies do not measure water temperatures across the inshore areas where *pagadiya* fishing is practiced.

CAO notes that the client has responded directly to concerns about the oxygen levels of water in the project area and measures taken to prevent fish death in the intake channel.<sup>32</sup> The client states that it continuously monitors water temperature along the outfall channel, and that it regularly monitors oxygen levels, quality of sea water and marine ecology. The client carries out experimental cage fishing in the outfall channel.<sup>33</sup> The client also claims that there is a water screen in place at the entry point of the intake channel, and that it is cleaned every 15 days. In discussion with CAO, the IFC project team noted that the mesh screen was included during project design and construction, and that IFC was not aware of any incidents of mass fish death.

CAO will consider the client's reported activities and their potential relevance to the concerns raised by the complainants in the course of its ongoing monitoring work. The complainants' concerns regarding the reported erosion and adverse impacts on *pagadiya* fishing grounds will also be considered as part of CAO's monitoring.

### **Project-induced loss of structure / physical displacement**

The CGPL-02 complaint alleges that the company destroyed houses built by fishermen of Tragadi village that were located on the *bunder* without adequate compensation. In discussion with CAO, the complainants stated that these were permanent structures and distinct from the temporary structures that are erected on the *bunder* for seasonal use.

Performance Standard 5: Land acquisition and Involuntary Resettlement (PS5) defines involuntary resettlement as referring both to physical displacement (relocation or loss of shelter) and economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition.<sup>34</sup> PS5 aims to avoid or at least minimize involuntary resettlement wherever feasible by exploring alternative project designs.<sup>35</sup> Where involuntary resettlement is unavoidable, the client must carry out a census with appropriate socio-economic baseline data to identify the persons who will be displaced by the project, to determine who will be eligible for compensation and assistance, and to discourage inflow of people who are ineligible for these benefits.<sup>36</sup> Displaced persons include those who do not have formal or recognizable legal rights or claims to the land they occupy.<sup>37</sup>

The project's E&S assessment triggered and considered PS5 in relation to the main project site that formed the footprint of the power plant. The construction of the power plant also necessitated the taking of land to build the outlet channel and expand the joint intake channel. In relation to these areas, the project's Resettlement Plan noted that rights of way would need to be acquired

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<sup>32</sup> CAO. 2017. *CAO Assessment Report: Second Complaint Regarding IFC's investment in Tata Ultra Mega (Project # 25797) Tragadi Village, India*: page 9.

<sup>33</sup> *Ibid.*: page 9.

<sup>34</sup> Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that results in displacement. Land acquisition includes both outright purchases of property and purchases of access rights, such as rights-of-way. PS5 applies in cases of lawful expropriation or restrictions on land use based on eminent domain. IFC. 2006. Performance Standard 5: 'Introduction': paragraph 1.

<sup>35</sup> IFC. 2006. "Performance 5 ['Objectives']", *Performance Standards on Social & Environmental Sustainability*. Available at: <https://goo.gl/EUZpic>

<sup>36</sup> *Ibid.* paragraph 10.

<sup>37</sup> *Ibid.* paragraph 14.

to 102ha of land.<sup>38</sup> The Resettlement Plan noted that “there are no local fishing activities in the coastal waters directly fronting the project area” and that “the provision of a culvert over the intake channel” would ensure access for the fishing community to the fish drying areas on the coastline.<sup>39</sup> The Resettlement Plan does not include any further discussion of the impact of land acquisition on fisher people, and the Plan was not updated when the final location of the intake and outlet channels was determined in 2008.

Noting the absence of a baseline study or impact assessment that pays detailed attention to the circumstances of these communities, the CGPL-01 audit found that IFC did not take the steps necessary to ensure that the application of PS5 was properly assessed. In response to the CGPL-01 audit, IFC restated its view that there has been no displacement of households on the *bunder* as a result of construction of the project and therefore that PS5 does not apply. Neither IFC nor the client has produced a social assessment that supports this position. In discussions with CAO, IFC has stated that there were no permanent structures on the *bunder* at the time of project construction. IFC has emphasized that there is continued easy access to the land on the *bunder*, and that access has not been denied to any family that was using the *bunder* prior to the project.

As noted previously by CAO, the Performance Standards require a client to ensure that the impact of the project on affected communities is assessed in a comprehensive and participatory manner, and that the application of PS5 is considered on the basis of appropriate baseline data. Work done to date during the project’s due diligence and in response to the CGPL-01 audit has not resolved information gaps about the various uses of land and assets present on the *bunder* prior to construction of the outfall channel. CAO has questions in relation to the complainants’ allegations about structures that were present on the *bunder*, and about IFC’s approach to supervising its client’s application of PS5. These questions are closely related to the concerns raised by seasonal residents of the *bunder* and will be incorporated into CAO’s monitoring of IFC’s response to the PS5 finding in the CGPL-01 audit.

### **Project-induced impacts to livelihoods / economic displacement**

The CGPL-02 complaint alleges that project-induced environmental impacts are disrupting the livelihood practices of *pagadiya* fisher people of Tragadi village. According to the complainants, construction of the outfall channel involved the demolition of an access road to the seashore previously used by Tragadi villagers, for which they were promised a new access road and compensation for the added time and distance necessary to reach the *bunder* while the road was being constructed, which was to last 6 months. Complainants claim that this new access road has been only partially re-built and that their livelihoods are being negatively affected. The complaint also states that fishermen are not able to use the access road at night when they customarily collect fish for sale at the morning markets.

The CGPL-02 complaint also alleges that, due to the diversion of a river flowing through Mota Bhadiya for construction of the outfall channel, fishermen of Tragadi village are no longer able to park their boats. The complainants allege that during the monsoon their belongings are dragged into the river water and that *pagadiya* fishermen are also suffering losses. The complainants state that they were assured by the company that alternative arrangements would be made, but that this has not occurred.

The CGPL-02 complaint further alleges that livelihood improvement measures sponsored by the company are not viable. Specifically, the complainants allege that the company is arranging training on alternative fishing practices together with Marine Products Exports Development

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<sup>38</sup> CGPL. 2008. *Short Resettlement Plan: India: Mundra Ultra Mega Power Project*. Available at: <https://goo.gl/fdhJ9X>

<sup>39</sup> *Ibid.* paragraph 18.

Authority (MPEDA), which they assert is not possible because no land is available for aquaculture on the Kutch coastline. As noted above in relation to marine impacts, the complainants also allege that fishermen of Tragadi village did water sampling to determine the suitability of the area for lobster nurture under a World Bank-aided Integrated Coastal Zone Management (ICZM) initiatives and found that oxygen levels in the water are too low due to the outflow channel.

The Performance Standards provide that where livelihood impacts result from project-related land acquisition, they should be addressed through PS5 and that where impacts result from other project activities, they should be addressed through PS1.

PS5 applies when land acquisition for the project causes loss of income or livelihood, regardless of whether the affected people are physically displaced. PS5 also applies where there is a restriction on access to commonly held resources, and where those impacted do not have any legal title or legally recognizable claim to land.<sup>40</sup> In such cases, the client must provide displaced persons with compensation, targeted assistance (including to offset the loss of communal resources), and opportunities to improve or at least restore their income-earning capacity, production levels, and standards of living.<sup>41</sup>

As discussed in the CGPL-01 audit, the project's E&S assessment identified "fishing communities" among "project-affected community resource users" and acknowledged that their "livelihood [...] may be impacted due to project operations."<sup>42</sup> The E&S assessment documentation, however, did not incorporate adequate analysis of project impacts on fisher people and did not provide detailed mitigation measures.<sup>43</sup>

As part of its Remedial Action Plan approved by the ADB board, the client prepared a Livelihood Improvement Plan in relation to *pagadiya* fisher people.<sup>44</sup> Beginning in May 2014, the client contracted an NGO to monitor the *pagadiyas* that were regularly practicing foot fishing in the vicinity of the outfall channel. The NGO also carried out consultations with *pagadiyas* and other stakeholders to develop the 2017 *Livelihood Improvement Plan for Identified Pagadiya Fishermen* ("Livelihood Improvement Plan").<sup>45</sup> The draft plan was reviewed by ADB and discussed in the ADB Compliance Review Panel's September 2016 monitoring report.<sup>46</sup> CAO has not conducted a review the Livelihood Improvement Plan in the course of its monitoring. For the purposes of this appraisal, CAO notes that the ADB Compliance Review Panel raised questions about the number of impacted *pagadiyas* identified in a draft version of the plan, about disclosure of the plan, and about the adequacy of proposed compensation. IFC has reported to CAO that the Livelihood Improvement Plan is currently being implemented.

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<sup>40</sup> IFC. 2006. "Guidance Note 5," *Guidance Notes: Performance Standards on Social & Environmental Sustainability* updated 2007": paragraph GN39.

<sup>41</sup> IFC. 2006. "Performance 5": paragraph 20. *Performance Standards on Social & Environmental Sustainability*. Available at: <https://goo.gl/EUZpic>

<sup>42</sup> Saline Area Vitalisation Enterprise Limited (SAVE). 2007. *Report on Baseline Social Impact Assessment: Ultra Mega Power Project, Mundra Taluka, Kutch District, Gujarat, India*: page 7.

<sup>43</sup> CAO. 2013. CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India: 17. Available at: <https://goo.gl/XGzA1f>

<sup>44</sup> Swadeep, 2017. *Livelihood Improvement Plan for Identified Pagadiya Fishermen* ["Livelihood Improvement Plan"]. Available at: <https://goo.gl/JUKDAw>

<sup>45</sup> *Ibid.* page 4.

<sup>46</sup> Asian Development Bank Compliance Review Panel. 2016. *First Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Mundra Ultra Mega Power Project in India (Asian Development Bank Loan 2419)* [paragraph 24]. Available at: <https://goo.gl/MLLwnE>

In response to the CGPL-01 audit, IFC and its client committed to contracting a third party to undertake a household level socio-economic survey of 21 villages in the project area.<sup>47</sup> CGPL commissioned Environmental Resources Management (ERM) for this purpose. IFC advised CAO that it envisaged the resulting study (the “ERM Study”) would effectively address the gaps of earlier studies and enable an effective E&S assessment.<sup>48</sup> The ERM Study was completed in January 2016.

The ERM Study set out to conduct a socio-economic assessment of the communities around the project, to “assess the current socio-economic status in the context of cumulative industrial growth of the area as well as indicators of change that could be attributed to the impact of the project.”<sup>49</sup> Among the objectives of the ERM Study was to “prepare a narrative report that documents the socio-economic baseline and social impacts of the project in Mundra.”<sup>50</sup> Toward these ends, the ERM Study compiled a variety of existing data, such as data from the Indian census, records of the Gram Panchayat, and prior socio-economic studies conducted by CGPL, which ERM augmented with primary source material collected through household surveys, focus group discussions and interviews.<sup>51</sup> The ERM Study also offered an analysis of these, including an analysis of trends relating to fishing practices.<sup>52</sup> Among the findings presented, the ERM study notes that the reported data from the Kutch Department of Fisheries shows fish catch from Tragadi *bunder* in the period from 2014-2015 to be greater than 2006-2007. During CAO’s appraisal interview, IFC cited the ERM Study as evidence in support of their decision that PS5 should not have been triggered for reasons of economic displacement.

CAO has questions as to IFC’s review of the ERM Study with respect to the conclusions drawn from available data regarding the project impacts on livelihoods. CAO will consider the alleged impacts on complainants’ livelihoods as part of its ongoing monitoring of IFC’s response to the CGPL-01 audit findings. This may incorporate a review of the baseline data available in relation to fisher people of Tragadi village, the 2015 survey carried out as part of the ERM Study, and the analysis of changes in socio-economic conditions in the project area. As noted in CAO monitoring reports for the CGPL-01 complaint, in the absence of reliable baseline data, CAO considers that there is an outstanding need for a participatory approach to identifying and addressing impacts on vulnerable communities. CAO will consider the relevance of the Livelihood Improvement Plan for *pagadiya* fisher people in the context of the complainants’ concerns.

### **Safety of project infrastructure**

The CGPL-02 complaint identifies concerns pertaining to the safety of project infrastructure. Specifically, complainants are concerned by the risk of animals falling into the outfall channel. They raise an incident where this occurred.

Performance Standard 1 requires clients to conduct a process of E&S assessment that will consider in an integrated manner the potential E&S (including labor, health, and safety) risks and

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<sup>47</sup> IFC. 2013. *Statement by Jin-Yong Cai regarding CAO Audit of Tata Mundra* [November 25, 2013]. Available at: <https://goo.gl/Jr1qSZ>

<sup>48</sup> CAO. 2015. *Monitoring of IFC’s Response to: CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India*. Available at: <https://goo.gl/HpXZ9i>

<sup>49</sup> ERM. 2016. *Socio-Economic Assessment of the Communities around the 4000 MW Mundra Ultra Mega Power Project: Mundra Gujarat*: page 1.

<sup>50</sup> *Ibid.* page 2 [Chapter 1: ‘Introduction’].

<sup>51</sup> ERM. 2016. *Socio-Economic Assessment of the Communities around the 4000 MW Mundra Ultra Mega Power Project: Mundra Gujarat*: 18-29 [Chapter 2: ‘Approach and Methodology’].

<sup>52</sup> *Ibid.* page 93-107 [Chapter 5.6: ‘Fishing Practices’].

impacts of the project.<sup>53</sup> Where the client identifies specific mitigation measures and actions necessary for the project to comply with applicable laws and regulations and to meet the requirements of the Performance Standards, the client will prepare an Action Plan. These measures and actions will reflect the outcomes of consultation on social and environmental risks and adverse impacts and the proposed measures and actions to address them.<sup>54</sup>

Performance Standard 4: Community Health, Safety and Security (PS4) requires clients to evaluate the risks and impacts to the health and safety of the affected community during the design, construction, operation, and decommissioning of the project and to establish preventive measures to address them in a manner commensurate with the identified risks and impacts. These measures will favor the prevention or avoidance of risks and impacts over minimization and reduction.<sup>55</sup> PS4 also requires clients will design, construct, and operate and decommission the structural elements or components of the project in accordance with good international industry practice.<sup>56</sup>

This issue was not addressed specifically in the CGPL-01 audit, and has not been covered in CAO's monitoring of the IFC response. CAO conferred with IFC regarding the reported livestock deaths. IFC acknowledged that it is aware of this issue, which it attributes to the challenges of maintaining the integrity of fencing around the outfall channel. IFC reported to CAO that it is actively working with CGPL to ensure that project fencing is adequately maintained.

CAO has determined that this issue does not require separate investigation, but will consider the safety of the channel as part of monitoring IFC's supervision of the client's E&S assessment and monitoring.

### **Use of security forces**

The CGPL-02 complaint raises new concerns about the actions of security personnel assigned to the project, and referred to a specific incident that occurred in late 2015. The Central Industrial Security Force (CISF) is an Indian Government security force that provides security cover to public sector infrastructure, such as airports, and select private sector infrastructure installations.<sup>57</sup> The complainants allege that CISF personnel assigned to CGPL beat two members of Tragadi village. They allege that these men went for *pagadiya* fishing in an area that they normally use, near to the outfall channel. Allegedly, the CISF personnel asked the two fishers to leave the area, and beat them when they refused. The complaint alleges that the individuals filed a complaint with the police in relation to the incident. The complaint states that, due to this harassment, the two fishermen no longer practice *pagadiya* fishing.

PS4 aims: (i) "to avoid or minimize risks to and impacts on the health and safety of the local community during the project life cycle from both routine and non-routine circumstances;" and (ii) "to ensure that the safeguarding of personnel and property is carried out in a legitimate manner that avoids or minimizes risks to the community's safety and security."<sup>58</sup>

PS4 requires that a client evaluate the risks and impacts to the health and safety of the affected community for the entire project lifecycle: during the design, construction, operation, and

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<sup>53</sup> IFC. 2006. "Performance Standard 1": paragraph 4. *Performance Standards on Social & Environmental Sustainability*. Available at: <https://goo.gl/EUZpic>

<sup>54</sup> *Ibid.* paragraph 16.

<sup>55</sup> *Ibid.* paragraph 4.

<sup>56</sup> *Ibid.* paragraph 6.

<sup>57</sup> The website of the Central Industrial Security Force, Ministry of Home Affairs, Government of India, is available at: <https://goo.gl/f8RH33>

<sup>58</sup> IFC. 2006. "Performance Standard 4 ['Objectives']", *Performance Standards on Social & Environmental Sustainability*. Available at: <https://goo.gl/EUZpic>

decommissioning. The client will establish preventive measures in a manner that is commensurate to risk, and that favors prevention or avoidance over minimization and reduction. The client is required to disclose relevant project-related information to enable affected communities and relevant government agencies to understand those risks and impacts. The client is required to engage affected communities and agencies on an ongoing basis consistent with the requirements of PS1.<sup>59</sup>

PS4 establishes specific requirements for the use of security personnel. When a client directly retains employees or contractors to provide security services, the client must assess risks posed by its security arrangements to those within and outside the project site.<sup>60</sup> The client must make reasonable inquiries to satisfy itself that those providing security are not implicated in past abuses, train security personnel adequately in the use of force and appropriate conduct toward workers and the local community, and require them to act within the applicable law. Affected community members should also have access to a grievance mechanism so that they may express concerns about the security arrangements and acts of security personnel.<sup>61</sup> If government security personnel are deployed to provide security services for the client, the client must assess risks arising from the use of those personnel.<sup>62</sup> The client must communicate its intent that the security personnel act in a manner consistent with PS4, and will encourage the relevant public authorities to disclose security arrangements for the client's facilities to the public, subject to overriding security concerns.<sup>63</sup> Furthermore, the client must investigate any credible allegations of unlawful or abusive acts of security personnel, take action (or urge appropriate parties to take action) to prevent recurrence, and report unlawful and abusive acts to public authorities when appropriate.<sup>64</sup>

IFC identified the applicability of PS4 to the project early on, and the client prepared a security risk assessment and management plan.<sup>65</sup> The CGPL security management plan, completed in April 2008, establishes general measures to support project compliance with PS4 with respect to CGPL's use of private security forces. The plan does not analyze potential risks and impacts related to government security forces, and it has not been amended to consider the assignment of CISF guards to the project. In discussions with CAO, IFC reported that the client maintains a grievance mechanism that can be accessed by community members.

In 2015, the Government of India approved a deployment of over 250 CISF security personnel to the project, to provide anti-terrorist and anti-sabotage duties.<sup>66</sup> A July 2016 report by India's Minister for Home Affairs stated that 99 CISF personnel had been approved for deployment to the project.<sup>67</sup> The cost of this deployment is covered by the client.<sup>68</sup> IFC's documentation does not indicate whether CGPL analyzed the potential risks arising from the presence of CISF personnel at the project. In discussions with CAO, IFC staff noted that CISF personnel were stationed at the project because of its status as a strategic facility. IFC reported that the client's Head of Security would typically be responsible for deciding whether to request assistance from

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<sup>59</sup> *Ibid.* paragraph 5.

<sup>60</sup> *Ibid.* paragraph 13.

<sup>61</sup> *Ibid.* paragraph 13.

<sup>62</sup> *Ibid.* paragraph 14.

<sup>63</sup> IFC. 2006. "Performance Standard 4 [paragraph 14]", *Performance Standards on Social & Environmental Sustainability*. Available at: <https://goo.gl/EUZpic>

<sup>64</sup> *Ibid.* [paragraphs 13-15].

<sup>65</sup> Coastal Gujarat Power Limited. 2008. *Security Management Plan for Ultra Mega Power Project: Mundra, District Kutch, Gujarat, India*. Available at: <https://goo.gl/CmXUot>

<sup>66</sup> "Government sanctions 500 CISF men for Tata projects in Gujarat, Odisha," *The Economic Times* (September 24, 2015). Available online at: <https://goo.gl/qVAKD6>

<sup>67</sup> Ministry of Home Affairs, Government of India (GoI). 2016. *Lok Sabha Unstarred Question No. 450 to be Answered on the 19th July, 2016/ Ashadha 28, 1938 (Saka): 2*. Available online at: <https://goo.gl/qm6Dj5>

<sup>68</sup> *Ibid.* page 2.

CISF in response to a security incident. IFC was not aware of whether the client had shared with CISF the requirements of PS4. IFC also has no documented assurance that CGPL's security plan has been disclosed to local communities.

In relation to the specific incident discussed in the CGPL-02 complaint, IFC reported that it had discussed the matter with its client. IFC reported that, in accordance with company protocol, the client's social team had sought to resolve the matter with the village *Panchayat* acting as mediator. IFC reported that, following discussions with the *Panchayat*, the two individuals had agreed to withdraw their police complaint in relation to the incident. IFC reported that the client had taken efforts to inform the community about dangers of fishing in the area of the outfall channel, and had erected a barbed wire fence to discourage access. IFC also reported that in a recent meeting with a group of *pagadiya* fisher people, there was no indication of concerns about security. IFC were not aware of whether the client had documented the incident or had taken any decisions to adapt its security plan as a result of the incident.

During discussions with CAO, the complainants reported that CISF personnel had apologized to the individuals. The complainants emphasized that their primary concerns related to the project's impacts on livelihoods dependent on fishing.

CAO has concerns in relation to IFC's supervision of the client's compliance with PS4. CAO notes that the company's security plan appears not to have been updated since it was first prepared in 2008. CAO also has questions about the client's approach to documenting, responding to, and resolving security incidents that involve members of the local community. However, CAO has decided that the security issue does not merit a separate compliance investigation in relation to PS4. In reaching this decision, CAO recognized: (i) the confrontation between CISF personnel and villagers appears to have been an isolated incident, and not a repeated occurrence; (ii) the complainants' primary concern remains the project's alleged impacts on their livelihoods and not the security arrangements of the plant. CAO may address concerns about safety and access to fishing grounds as part of its ongoing monitoring work.

### **Adequacy of consultation and engagement with local community members**

Several issues raised in the complaint convey concerns about perceived shortcomings in the client's engagement with affected community members. The complainants allege they have not been adequately engaged in relation to CGPL's livelihood improvement initiatives. They allege that the training program on alternative fishing practices, developed in partnership with MPEDA, is a false demonstration. Further discussion with the complainants during CAO appraisal clarifies that this complaint stems from the sentiment that CGPL does not adequately involve the fisher people from Tragadi village in the design and implementation of these livelihood enhancement initiatives. The complainants further allege that committees formed by CGPL that purport to represent fisher people do not fairly represent the interests of local fishermen. The complaint alleges that these committees mislead representatives of ADB and IFC when they conduct visits to the project. The allegations of villagers' abuse by security forces are similarly framed in terms of inadequate engagement and information sharing. During CAO appraisal interviews, complainants shared their perception that the alleged altercation between two *pagadiya* fishers and CISF was prompted by the fishers asking why they were not allowed to access areas that they regularly use for fishing. The complainants also state that no company personnel followed-up with the *pagadiya* fishers involved in the altercation.

The Sustainability Policy provides that effective community engagement is central to the successful management of project risks and impacts to affected communities.<sup>69</sup> IFC's Performance Standards require clients to engage with affected communities through disclosure of information, consultation, and informed participation, in a manner commensurate with the risks to and impacts on the affected communities.<sup>70</sup> PS1 requires that when local communities may be affected by risks or adverse impacts from a project, the engagement process will include consultation with them. PS1 regards community engagement as an on-going process, involving the client's disclosure of information, to build and maintain over time a constructive relationship with these communities.<sup>71</sup> Consultation should provide the affected communities with opportunities to express their views on project risks, impacts, and mitigation measures, and allow the client to consider and respond to them.<sup>72</sup>

Where the client identifies specific mitigation measures and actions necessary for the project to comply with applicable laws and regulations and to meet the PS requirements, the client is required to prepare and disclose an Action Plan.<sup>73</sup> The client must provide periodic reports that describe progress with implementation of the Action Plan on issues that involve ongoing risk to or impacts on affected communities, and on issues that the consultation process or grievance mechanism has identified as of concern to those communities.<sup>74</sup>

IFC's duty is to determine how the client has met or will meet its disclosure and consultation obligations.<sup>75</sup> For projects with significant impacts on affected communities, IFC must assure itself that the client's community engagement involves free, prior, and informed consultation and enables the informed participation of the affected communities, leading to broad community support for the project.<sup>76</sup> IFC must also ensure that the broad community support process identifies all project-affected communities, disaggregates in terms of different levels of vulnerability, and analyzes the effect of adverse project impacts and risks on each group.<sup>77</sup>

Where a project involves involuntary resettlement, PS5 requires that, following disclosure of all relevant information, clients must consult with and facilitate the informed participation of affected persons and communities in decision-making processes related to resettlement.<sup>78</sup>

The IFC project file documents a range of client consultations with affected people starting in 2006. During project due diligence, consultations were focused on three project-affected villages that would lose land to the plant.<sup>79</sup> Early consultations also included some representatives of fishing communities, although these were significantly less intensive. As the project was expected to have significant impacts on affected communities, IFC undertook due diligence in 2008 to verify

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<sup>69</sup> IFC. 2006. *Policy on Social and Environmental Sustainability*: paragraph 19. Available at: <https://goo.gl/XRdjcd>

<sup>70</sup> IFC. 2006. "Performance Standard 1": paragraphs 21-22. *Performance Standards on Social & Environmental Sustainability*. Available at: <https://goo.gl/EUZpic>

<sup>71</sup> *Ibid.* paragraph 19.

<sup>72</sup> *Ibid.* paragraph 21.

<sup>73</sup> *Ibid.* paragraph 16.

<sup>74</sup> IFC. 2006. "Performance Standard 1": paragraphs 26. *Performance Standards on Social & Environmental Sustainability*. Available at: <https://goo.gl/EUZpic>

<sup>75</sup> IFC. 2007. *E&S Review Procedures* (Version 2.0: July 31, 2007): paragraph 3.2.12.

<sup>76</sup> IFC. 2006. *Policy on Social & Environmental Sustainability*: paragraph 20. Available at: <https://goo.gl/gg3Qna>

<sup>77</sup> IFC. 2007. *E&S Review Procedures* (Version 2.0: July 31, 2007): paragraph 3.5.1.

<sup>78</sup> IFC. 2006. "Performance Standard 5": paragraph 9. *Performance Standards on Social & Environmental Sustainability*. Available at: <https://goo.gl/EUZpic>

<sup>79</sup> SAVE. 2007. *Report on Baseline Social Impact Assessment: Ultra Mega Power Project, Mundra Taluka, Kutch District, Gujarat, India*. Available at: <https://goo.gl/CmXUot>

that CGPL's engagement process met its standards for free, prior and informed consultation leading to broad community support. Tragadi village residents were not included in IFC's verification process, however, IFC asserted that their concerns were taken into account by "requiring CGPL to undertake an assessment of impacts once the location of the outfall channel was finalized."<sup>80</sup>

Beginning in April 2009, CGPL undertook a series of more intensive engagements with fishing communities, focusing on the households of Tragadi and Modhva villages.<sup>81</sup> These consultations led CGPL to provide grants and development support activities.

The CGPL-01 audit found that IFC's verification did not pay adequate attention to verifying whether pre-project consultation and broad community support requirements were met in relation to those groups (including fisher people) that lived outside the area of the plant but that had been identified in the E&S assessment process as project affected community resource users.<sup>82</sup> In its response to the CGPL-01 audit, the client committed to ensuring that relevant stakeholders, including fishing communities, would be appropriately consulted in accordance with the PS.<sup>83</sup> In January 2014, the client prepared a "Key Stakeholder" consultation plan to discuss the outcome of studies undertaken in response to the audit. The consultation plan identified different modes of communication to discuss study outcomes and action plans with Village Development Advisory Committees (VDACs), and with residents of communities in the project area. For example, the client planned to meet with residents of Tragadi village in September 2014 to discuss findings of the NIO study, and again in September 2016 to discuss collection of fish catch data.<sup>84</sup>

In 2014 IFC reported that some planned engagements had to be postponed as studies took a longer time to be completed. In 2016, the client reported on town hall style meetings conducted in the project area to present the findings of its studies, including in Tragadi village in March of that year.

IFC has reported that the livelihood enhancement activities being undertaken by the client are not intended as remedial measures in response to project-induced impacts, but instead are part of the company's greater commitment to corporate social responsibility (CSR). IFC noted that the CSR activities are carried out in consultation with VDACs, and that these committees are appointed in accordance with local practices (not by the company). IFC also notes that the client is regularly working in nearby villages and that the project has open communication with villagers about issues that affect them.

As noted in CAO's February 2017 monitoring report, CAO considers that there is an outstanding need for a rapid, participatory and expressly remedial approach to assessing and addressing project impacts raised by the complainants. As part of its ongoing monitoring, CAO will consider how IFC is supervising its client's consultation and disclosure requirements.

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<sup>80</sup> CAO. 2013. *CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India*: page 21. Available at: <https://goo.gl/DPiruU>

<sup>81</sup> Interactive Karma India. 2011. "CGPL Stakeholder Engagement and Benefit Sharing Study": page 35ff.

<sup>82</sup> CAO. 2013. *CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India*: page 21.

<sup>83</sup> IFC. 2013. *Statement by Jin-Yong Cai regarding CAO Audit of Tata Mundra*. Available at: <https://goo.gl/Jr1qSZ>

<sup>84</sup> CGPL. 2014. *Key Stakeholder Consultation Plan: Coastal Gujarat Power Limited*.

#### **IV. CAO Decision**

In deciding whether to initiate a compliance investigation, CAO weighs factors including the magnitude of the environmental and social concerns raised, the results of a preliminary review of IFC's E&S performance in relation to these concerns, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances. CAO takes no position on the veracity of the allegations set out in the complaint, but considers instead (i) whether the issues themselves are substantial in nature, and (ii) whether the issues raised are of potentially systemic importance to IFC/MIGA.

In relation to the CGPL-02 complaint, CAO has identified concerns regarding E&S outcomes that would ordinarily merit a CAO compliance investigation. As set out in this report, the CGPL-02 complaint also raises questions as to IFC's application of its E&S requirements to the project. However, CAO's ongoing compliance monitoring process of IFC's response to the CGPL-01 audit addresses substantially similar compliance issues. For this reason, CAO has decided that a separate compliance investigation is not required. CAO will merge the two cases and consider the issues raised in this complaint as part of its ongoing monitoring of IFC's response to the audit findings. CAO expects to publish its next monitoring report no later than February 2018.