



## Conclusion Report *India Infrastructure Fund-01/Dhenkanal District*

*This report summarizes the CAO Ombudsman's handling of the complaint filed by local and national NGOs and members of the affected communities regarding GMR's Kamalanga Energy Limited, a portfolio project of the IFC-supported India Infrastructure Fund.*

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### **BACKGROUND**

#### **The IFC investment**

The IFC-supported India Infrastructure Fund (IIF) is based in Mumbai and makes equity investments in infrastructure projects solely in India. The size of the Fund is approximately US\$927 million and IFC's equity investment is \$50 million. The IIF is managed by the Infrastructure Development and Finance Company Limited (IDFC)'s Project Equity Company, a wholly owned subsidiary of IDFC.

#### **The sub-project**

One of IIF's portfolio investments is GMR Kamalanga Energy Limited (GKEL), a part of the GMR Group. Kamalanga Energy is a special purpose vehicle that was set up by GMR Energy Limited to develop and operate a 1400 MW coal based power plant near Kamalanga village in Dhenkanal, a district of Odisha state.

The plant is surrounded by nine communities located in Dhenkanal District: Kamalanga (a big village with seven hamlets including Kamalanga, Durgapur, Bhagamunda, Maniabada, Achalkot, Kaliataila, and Barashahi); Mangalpur (a village with the two hamlets Mangalpur and Manpur); Senapathi Berena and Bhaghatpur.

#### **The complaint**

In April 2011, Odisha Chas Parivesh Surekhsa Parishad (Odisha Agriculture and Environmental Protection Council), a local organization, together with the Delhi Forum, a Delhi-based advocacy and research organization, filed a complaint with the CAO

on behalf of people affected by the project. The complaint voices a series of concerns about the project's impacts on local people and the environment, including that local communities are not being involved in decisions that affect them, that there were irregularities in the land acquisition process, that villagers suffered from police misconduct, and that neither information about potential environmental and social risks and impacts of the project, nor IFC's financing role was disclosed.



The GKEL coal-fired power plant under construction

### **CAO ASSESSMENT**

After determining the case eligible, the CAO began its assessment in May 2011. The purpose of this process, which does not make any judgments on the merits of the complaint, is to listen to the different stakeholders' views and perspectives on the issues raised by the complaint, to explain to the parties the different roles that CAO can play, and to help them determine what type of CAO intervention—dispute resolution or compliance—would best meet their interests. A dispute resolution process is voluntary and proceeds only with the agreement of all parties.

Between September 2011 and March 2012, the CAO team conducted four trips to meet with and hold numerous conversations with the complainants, the communities, the sponsor and operator, IFC's client, a relevant government official, civil society organizations and NGOs.



CAO's first assessment visit to affected communities

During this assessment phase, many community members shared their concern about project impacts, which they feel pose a threat to the sustainability of their livelihoods. Many expressed a desire to see justice for what they perceive as illegal actions by the company; and for the project to generate more benefits for the communities, particularly jobs, to help secure their livelihoods and future.

The company maintains that the project has been set up after obtaining all the required clearances from the Government of India and the Government of Odisha. Company representatives have noted the company's commitment to good relations with its host communities, as exemplified in the GMR Varalakshmi Foundation activities aimed at supporting local livelihoods through a variety of means.

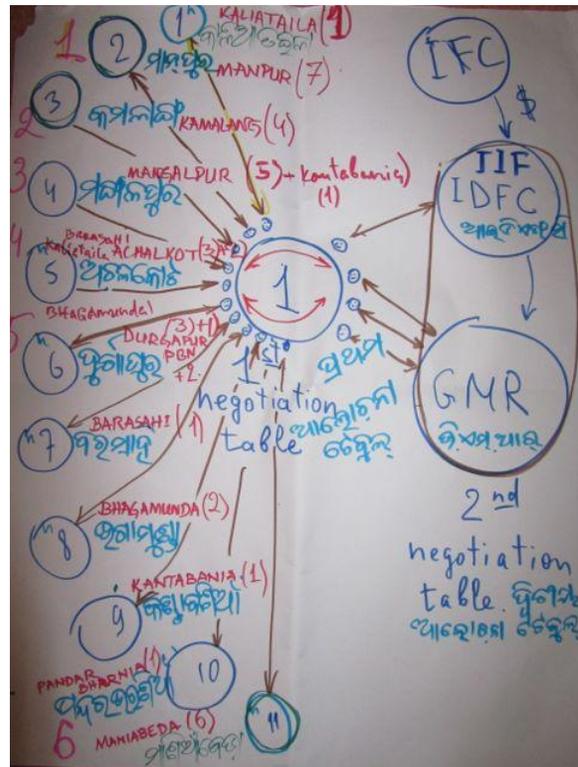
In December 2011, GMR's Board expressed their support for CAO's proposed dialogue process to help address the concerns of the affected communities.

In March 2012, the complainants gave their verbal commitment to a CAO-facilitated dialogue process, thereby triggering the dispute resolution function of the CAO.

An Assessment Report, which is equally available on CAO's website, sets out the assessment process and issues of concern in more detail.

## DISPUTE RESOLUTION PROCESS

**Capacity building, May 2012:** To prepare the parties for the dialogue process, CAO carried out two separate capacity building workshops in May 2012—one for company representatives and a second for the complainants and a group of community representatives—to train them in dispute resolution skills. At this point, the parties confirmed in writing their commitment to a cooperative problem-solving process and its underlying principles.



Flipchart – capacity building workshop with community representatives

**Planning the process, July 2012:** A further set of meetings with the parties in July 2012 focused on designing the dispute resolution process and on discussing the parameters and ground rules for the parties' future engagement. One of the main issues of discussion was representation in a future dialogue process: who should be sitting at the table, who should be in the room, and in what capacity.



Engagement with company staff

**A joint meeting, January 2013:** CAO convened a first joint meeting between the company, the complainants and community representatives to discuss the representation issues and other parameters for dialogue. The parties engaged positively, and started to experience an ability to find common ground, for example by agreeing on communications guidelines for the meeting. When discussing parameters for the forthcoming dialogue, however, the parties reached an impasse on the issue of representation that ultimately proved insurmountable after lengthy deliberations.

After consultation with the parties, CAO concluded that this deadlock signified an end of the CAO-convened dispute resolution process, and the case was transferred to CAO's Compliance function, as per the CAO Operational Guidelines.

## DIALOGUE PROCESS OUTCOMES

With real dialogue only starting to take place during the first joint meeting in January 2013, it is difficult to gauge the impact of CAO's dispute resolution process. However, there are some outcomes of the process that were fruitful:

- **Capacity Building:** As a result of the pre-mediation process, the company and the complainants, including representatives of the affected populations, participated in separate capacity building sessions that presented alternative models for understanding disputes, and provided participants with different frameworks for communicating their interests and needs.

Since the capacity building was provided to a broad group of company officials, as well as to community representatives and NGO participants, the training provided for broader learning opportunities beyond the CAO process itself.

- **Change in the tenor of the conversation:** The joint session in January 2013, which marked the end of the dialogue process, did generate an opportunity for the parties to interact in a facilitated environment, and led to some mutually respected exchanges. While the parties' interactions had previously been marked by tension on both sides, CAO witnessed positive engagement between the participants and an ability to identify common ground and reach agreements on specific items.

While the representation impasse did not allow the process to continue, the new tenor of the conversation could open opportunities for more collaborative interactions between the company, the NGOs and community leaders.

## LESSONS AND INSIGHTS

A number of lessons and insights can be distilled from CAO's Ombudsman process during assessment of the complaint and in attempting to convene a dispute resolution process:

### **Perception of CAO as a power broker**

CAO plays a neutral role in a dispute resolution process, and as such its leverage stems from the parties' willingness to engage in any subsequent dialogue or mediation. In this case, the parties appeared to have expectations that CAO would play the role of a power broker or enforcer in pressuring one or the other party toward a certain action point. This expectation often made it difficult for stakeholders to understand and accept CAO's neutral role, and may have led to frustration that CAO did not (and could not) actively intervene to stop one or other activity by a party.

Once parties are engaged in active dialogue, and have agreed to a memorandum of understanding, their engagement and willing consent would have empowered CAO to start enforcing mutually agreed ground rules. However, in the pre-mediation phase, CAO could only communicate the importance of demonstrating good faith to both sides.

A misperception about CAO as a power broker also meant that the parties had a tendency to look towards CAO to impose solutions rather than engaging in a collaborative and creative process that would allow them to work with each other towards mutually identified issues and solutions.

### **Relationship with the communities**

To be able to convene dispute resolution processes effectively, CAO needs a direct relationship with affected community members. As with other cases in which affected communities are large, dispersed and heterogeneous, establishing a direct

and vibrant relationship with the larger communities proved challenging in this case.

While CAO visited the villages in the Dhenkanal district on each visit and had conversations with many villagers throughout the process, setting up wider and inclusive representative structures that effectively included people with different perspectives, women, minorities, and other vulnerable groups was still work in progress. This would have required further attention during a dispute resolution process.

Without this direct relationship and strong representative structures, it becomes difficult for a dispute resolution team to explore the underlying interests of different groups and to organize a dispute resolution process effectively.

While different mechanisms were sought to foment a strong relationship with the communities, these had not yet been as successful as hoped at the time of transfer.

### **Local support**

This case demonstrated how important it is to be able to identify and retain appropriate support from local organizations or institutions, preferably from within Odisha state or even the Dhenkanal District. Identifying an experienced mediator who was acceptable to the parties took a significant amount of time, and similarly identifying translators who knew both the local language and English well, and had worked in a neutral capacity, was an arduous process that did not always yield the appropriate results.

Effective local resources could have played a key role in helping to communicate clearly with the parties, preparing the ground for dispute resolution—a process that people are often unfamiliar with—and helping communities to organize their engagement. Being able to identify neutral local resources earlier and with more ease could have made a significant difference in CAO

establishing a direct relationship with the communities that may have strengthened the process.

### **First complaint on a financial intermediary sub-project**

This case was CAO's first complaint on a sub-project of an IFC financial intermediary client. As such, the project operator, GMR, had not signed any contract or agreement directly with IFC that would have established an understanding of CAO's existence and mandate. Despite not being a *direct* IFC client, the company agreed to work with CAO and from this perspective the process took a similar form to other CAO cases.

It also meant that there was an additional party in the process, IFC's client, the India Infrastructure Fund (IIF). IIF participated pro-actively throughout the process by being willing and present to support a dialogue and taking an active role helping GMR understand the role of CAO.

### **Timelines**

From the time of assessing the complaint to concluding the process under CAO's Ombudsman function, this case, which ultimately never emerged from the pre-mediation stage, took significant time and resources.

CAO continued its engagement in the assessment and pre-mediation phase of this case for a lengthy period of time on the grounds that first, it was reasonable to expect a dispute in a complex environment with significant challenges to take more time and resources, and second, that the process was making steady progress towards dialogue. The company's Board expressed their support for dialogue as early as December 2011 and the complainants in March 2012, while both parties signed off on the general principles of collaborative problem solving in May

2012, all of which were viewed as positive steps toward a dispute resolution process.

In addition, some delays were caused by external factors such as local Panchayat elections in which one of the complainants was a candidate. Both parties frequently requested additional time, and such requests are typically reasonable when considering local realities and constraints. With the benefit of hindsight, greater momentum may have been generated had CAO established clearer timelines earlier in the process. Equally, greater responsiveness from the parties could have helped the process to gain more momentum and thereby make it more efficient and timely.

## **OPPORTUNITIES FOR THE FUTURE**

### **Opportunities for next steps**

Despite the fact that the process design phase did not end in a formal mediation, CAO believes there are several issues expressed by the complainants that could be discussed and substantially addressed through a facilitated dialogue. The CAO encourages the parties to look for other avenues of communication and dialogue that may enable them to substantively discuss these issues and start working on joint problem solving.

While the process ended during the pre-mediation phase, the parties' willingness to meet for a first joint session and discuss the issues with each other in a facilitated forum indicates a potential openness to dialogue among the parties. While the CAO Ombudsman has concluded its involvement, and the case will now be appraised by CAO Compliance, CAO hopes that the parties may consider the potential benefits of continued dialogue or improved communications in the future.