



CAO ASSESSMENT REPORT

**Second Complaint Regarding IFC's investment in Tata Ultra Mega (Project # 25797)
Tragadi Village, India**

April 2017

Office of the Compliance Advisor Ombudsman
for
the International Finance Corporation and the
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. CAO reports directly to the President of the World Bank Group, and 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.

For more information, including an overview of CAO's compliance and dispute resolution work see www.cao-ombudsman.org.

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LIST OF ACRONYMS

ADB	Asian Development Bank
BIC	Bank for Information Center
CAO	Office of the Compliance Advisor Ombudsman
CGPL	Coastal Gujarat Power Limited
CMFRI	Central Marine and Fisheries Research Institute
IFC	International Finance Corporation
ICZM	Integrated Coastal Zone Management
MIGA	Multilateral Investment Guarantee Agency
MoP	Ministry of Power
MPEDA	Marine Products Export Development Authority
PPA	Power Purchase Agreement
UMPP	Ultra Mega Power Projects
VDAC	Village Development Advisory Committee

1. OVERVIEW

In April 2016, local residents of Tragadi village, and members of the Tragadi Sea Shore Development Committee (the “Complainants”) lodged a complaint with CAO raising concerns about the impacts of an outfall channel connected to the Coastal Gujarat Power Limited project (“CGPL” or the “Project”), an IFC client. CAO determined that the complaint met its three eligibility criteria in May 2016, and initiated an assessment of the complaint.

This is the second complaint received by CAO regarding the project. The first complaint was filed in 2011 and resulted in a compliance investigation of IFC’s environmental and social performance with regard to its investment in CGPL. CAO is monitoring IFC’s actions to address the findings of the investigation, which was completed in August 2013¹. CAO has released one compliance monitoring report related to the investigation to date.

In this case, the parties did not agree to participate in a CAO-facilitated dispute resolution process and the complaint will be referred to CAO’s Compliance function for an appraisal of IFC’s environmental and social due diligence of the project. This report provides an overview of the CAO assessment process, including a description of the project, the complaint, the views of the parties, and next steps.

2. BACKGROUND

2.1 The Project

According to IFC’s project documentation, CGPL will build, own, and operate a 4,000 megawatt (MW) (5 units of 800 MW each) ‘ultra mega’ coal power plant at Tundawand Village, Taluka Mundra, District Kutch in the state of Gujarat, India.² CGPL will sell electricity generated to the utilities of five different states (Gujarat, Maharashtra, Punjab, Haryana, and Rajasthan) in western and northern India through a 25 year take-or-pay Power Purchase Agreement (“PPA”).³ CGPL is sponsored by Tata Power Company Limited (Tata Power) which acquired 100 percent of CGPL on a build, own, and operate basis. CGPL is a wholly-owned subsidiary of Tata Power.

As indicated by IFC, the project will be the first 800 MW unit thermal power plant using supercritical⁴ technology in India, and hence, will be one the most energy efficient coal-fired power plants in the country, contributing to India’s coal-fired power sector energy efficiency and CO₂ emissions performance improvement.⁵ IFC indicates that CGPL was awarded the contract by India’s Ministry of Power (“MoP”) through tariff-based competitive bidding. IFC has issued an A Loan of US\$450 million for the project.

¹ See: <http://www.cao-ombudsman.org/cases/document-links/documents/CAOAuditReportC-I-R6-Y12-F160.pdf> Accessed on April 27, 2017.

² See: <https://disclosures.ifc.org/#/projectDetail/SPI/25797> Accessed on April 27, 2017.

³ Tata Power website - <http://www.tatapower.com/aboutus/coastal-gujarat-power-ltd.aspx> Accessed on April 27, 2017.

⁴ The technology and equipment are a once-through type super-critical steam generator installed at the ultra mega coal power plant, which has water forced into it by small generators. Water is passed through the reactor coolant pumps for recirculation. Water is evaporated through two evaporator passes to increase the feed quality. See: <http://www.power-technology.com/projects/mundra-ultra-mega-power-plant-gujarat/> Accessed on April 27, 2017.

⁵ See: <https://disclosures.ifc.org/#/projectDetail/SPI/25797> Accessed on April 27, 2017.

2.2 The Complaint

In April 2016, CAO received a complaint from residents of Tragadi village, and members of the Tragadi Sea Shore Development Committee, in the vicinity of the power plant raising concerns about CGPL's operations. The complaint raises issues about the impacts of a channel that carries water in and out of the thermal power plant on the environment and local fisherfolk's livelihoods, including limiting access to water resources, coastal erosion, and damage to fish stocks and natural habitats. The Complainants also raise concerns regarding the use of security forces and their interaction with fisherfolks, safety of livestock close to the outfall channel, as well as unfulfilled social and environmental commitments.

During the assessment visit, the complainants requested CAO to keep the names and signatures of the 120 Tragadi villagers that filed the complaint confidential while sharing the letter of complaint with CGPL.

3. ASSESSMENT PROCESS

3.1 Methodology

The purpose of a CAO assessment is to clarify the issues and concerns raised by the complainants, to gather information on how other stakeholders see the situation, and to determine whether the Complainants and the Project would like to pursue a CAO Dispute Resolution process, or whether the complaint should be referred to CAO Compliance for appraisal of IFC's environmental and social performance (see Annex A for CAO's complaint handling process). CAO does not gather information during the assessment phase to make a judgment on the merits of the complaint.

In this case, CAO's assessment of the complaint included:

- a review of IFC project documentation, along with documents submitted by the IFC client and complainants;
- meetings with the affected local residents of Tragadi village;
- meetings with the CGPL team;
- meetings with Bharat Patel, General Secretary, Machimar Adhikar Sangharsh Sangathan (MASS – Association for the Struggle for Fishworkers' Rights), and representatives of Bank Information Center (BIC), a civil society organization that supported the complainants in filing the complaint;
- meeting with other community members and Sarpanch (elected head of village) of Tragadi Village;
- meetings with IFC's project team; and
- visits to various community areas and to the project site.

3.2 SUMMARY OF VIEWS

This section gives a broad overview of the issues and perspectives expressed by the Complainants and Company, respectively. It does not comprise a judgment by CAO about the merits of the complaint. The parties' perspectives, as described to CAO, are summarized below.

Complainants' perspective

- The Complainants indicated that by bringing their complaint to CAO, they sought the opportunity to have a one-on-one dialogue with CGPL to directly express their concerns and frustrations about how the project has impacted them, and to hear CGPL's direct

response to this. In the Complainants' view, they continue to be impacted and they believe CGPL and IFC are not doing enough to help local people.

- The Complainants described a number of concerns regarding impacts to their livelihoods and the manner in which company-community engagement takes place.
- With regard to livelihood impacts, the Complainants described access to fishing and the sustainability of their activities as areas of concern. They stated that access to the fishing area has been negatively impacted due to construction of the outfall channel. The road they used to access previously has been eliminated. They indicated that they were never compensated for the loss in their livelihood as a consequence of this impact.
 - They stated that access to the road for *pagadiya* fishing (traditional fishing done on foot) is aggravated at night due to harassment conducted by CGPL guards. Community members described one episode in which the security guards mistreated community members trying to access the fishing area during the evening hours. In Complainants' view, the fisherfolk need to feel safe, and access should be guaranteed.
 - From the Complainants' perspective, when the earlier road was demolished, CGPL promised to provide a direct road for the fisherfolk to reach the fishing area. Currently, the fisherfolk are using a road controlled by the salt pan workers and this access could be denied at any time. Without a proper direct road, the journey lengthy and costly.
 - Another aspect of concern indicated by Complainants related to access to the fishing area is security and safety for their livestock that transit close to the outfall channel. Related to safety, they described an incident in which an animal fell into the channel. In their view this should not be happening and they would have expected CGPL to take preventive measures.
 - The Complainants indicated that these specific past security and safety incidents have been raised with CGPL and were addressed; however, they fear it could potentially happen again.
- On the sustainability of their livelihoods, the Complainants claimed that quantity and quality of fishing has been impacted due, in their view, to the following aspects:
 - 1) The Project's cooling system and the temperature of the water coming out of the outfall channel: the complainants believe that hot water discharges coming from the outfall channel is killing fish and/or keeping them away, thus affecting complainants' livelihoods. They believe that it is possible for CGPL to stop discharges for a period of three months when fisherfolk are not allowed to fish, during the monsoon period;
 - 2) Lack of oxygen in the water impacting the live cycle of the fish;
 - 3) Erosion of the beach near CGPL: from the Complainants' perspective, they have seen the impact of dredging on sand dunes, erosion due to the outfall channel, and chemicals in the water;
 - 4) Concerns that the intake channel pump is killing fish and fish eggs. They believe the installation of a wire mesh at the inlet channel could prevent fish get trapped and eggs from dying; and
 - 5) Concerns about chemicals being released into the water and polluting the fish.
- The Complainants stated that they respect and work with the elected Sarpanch, and they wish he could do even more for the fisherfolks.
- The Complainants expressed issues regarding proper compensation as a result of project impacts. They claimed that their concern in part comes from creation of local committees established by CGPL which do not represent actual fisherfolk and for which people joined only in the hope of receiving compensation. Complainants feel they have not received

compensation that was due to them. They stated they need to be compensated due to all the impacts they have suffered such as not being able to fish anymore. The Complainants are of the view that the village committees working with CGPL need to be more inclusive of those they believe are the fisherfolk groups. They are calling for a change in structure.

- The Complainants stated that the way water is flowing from the outfall channel and until it gets to the Mota Bhadiya route it is preventing parking of boats and fishing equipment in that area. From their perspective, CGPL should provide boat docking spaces for community members since that area has historically been accessed and used by the fisherfolk.
- The Complainants recognize that some efforts have been made by CGPL to create an alternate fishing program, however they do not see them as effective since there is no land available for these efforts to be realized. For example, they shared limitations they face in creating a lobster nurturing center, which is part of a World Bank Integrated Coastal Zone Management (ICZM) project. The feasibility of the project has been affected as a consequence of low oxygen levels in the water that comes out of the outfall channel. The Complainants believe reliable testing of oxygen levels is needed and other alternative options should be developed.
- The Complainants have asked for the outfall channel to be closed completely and access to alternative livelihoods to be granted.
- Complainants expressed frustration that the company has done a lot for farmers but very little for the fisherfolk community they are part of. As the ancestral fishing community from Tragadi, they believe they should be the ones being supported since their livelihood is being impacted.

Company's perspective

- CGPL raised questions about the eligibility of this complaint. They consider that the complaint is a repetition of old allegations and that the allegations are made by vested and malicious interest groups without any credible evidence. CGPL is concerned that by accepting the complaint, CAO is giving undue credence to unfounded allegations. Therefore, CGPL believes that CAO should not have found the complaint eligible and that it is not in their interest to participate in a CAO-facilitated Dispute Resolution process with the complainants.⁶
- CGPL indicated that issues about the impacts of the channel were issues raised in the first complaint to CAO and have been addressed effectively by the National Institute of Oceanography (Government of India) report.
- CGPL believes that they are in compliance with the applicable standards and policies of the Asian Development Bank (ADB) and the IFC Sustainability Framework.
- CGPL during the assessment stated that the company has a well-established community information centre to enhance and strengthen the community engagement and are in regular contact with Tragadi Panchayat (the Tragadi village Council).

⁶ As noted above, while the complainants wanted to share the original complaint with CGPL they decided to keep confidential the 120 names and signatures of community members from Tragadi Village that filed the complaint. Therefore, while CGPL is aware that the complainants are from Tragadi village and Tragadi Sea Shore Development Committee, they do not know the names of the 120 specific individuals who filed the complaint.

- CGPL believes that the *pagadiya* fishermen (those that conduct traditional fishing done on foot) have access to the fishing area and there is no limitation or interference from CGPL in that regard. They indicated that there are no restrictions for community members to cross the bridge that crosses the outfall channel, even at night. The company is of the view that fishing directly in the outfall channel is extremely dangerous and would argue it is not allowed. CGPL also indicates that they must prevent risk prone activities given the channel is on CGPL's property.
- As for animals falling into the outfall channel, CGPL indicated that this had happened, but some of the animals which are able to jump high cannot be kept out by fencing. However, a trench and high fence of rust proof reinforced cement concrete (RCC) material has been put in place to prevent similar incidents.
- Regarding concerns about the road, they expressed that they have provided an alternative motorable road for access to Tragadi Bundar.
- CGPL stated that there may be expectations over commitments that they have not agreed to, such as providing spaces for boats to park near the end of the outfall channel. They believe that creating new docks and/or wharfs requires government permission and dredging.
- Regarding concerns about harassment from CGPL guards, their view is that security guards do not interfere with fisherfolk. CGPL indicates that the plant is under protection of the Central Industrial Security Force (CISF) which is supervised by the Ministry of Home Affairs, Government of India. From their perspective, the security system demands strict scrutiny of all entries, which does not amount to harassment. Any incidents arising out of misunderstanding with the fisher community, in their view are resolved with due consultation with local Panchayat.
- CGPL indicated they are in constant interaction with the Village Development Advisory Committee (VDAC), which was formed by residents of Tragadi village. CGPL had no role in its formation. However, CGPL shared the development objectives of VDAC and thus interacted with them and supported them on issues of village development.
- From CGPL's perspective, several locations along the outfall channel monitor water temperature on a daily basis and in real-time. According to CGPL's information, the temperature of the water is shown at the gate and they do not believe (verified by studies carried out by National Institute of Oceanography, Government of India) there is an impact on fish catch. As an assurance activity CGPL regularly monitors quality of sea water and marine ecology further reinforced by experimental cage fishing in outfall channel. This experiment is designed by Central Marine Fisheries Research Institute of Government of India.
- CGPL claims that there is a water screen in place right at the point where water comes into the inlet channel and it is cleaned every 15 days. A mesh cannot be installed in the wider area of the channel. Filtration, which prevents fish eggs from coming in, is not possible as the eggs are tiny.
- According to CGPL, the oxygen levels are regularly monitored and the dissolved oxygen (DO) measurements show that those are not limiting or adversely impacting fish and other marine life. Therefore, CGPL does not see the reason to conduct a feasibility study for an alternative fishing project.

4. NEXT STEPS

The Complainants and CGPL did not agree to participate in a CAO-facilitated dispute resolution process. Given the voluntary principle guiding participation in a CAO dispute resolution process, and in accordance with CAO's Operational Guidelines, the complaint will be referred to CAO Compliance for appraisal of IFC's environmental and social due diligence of the project.

ANNEX A. CAO COMPLAINT HANDLING PROCESS

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. CAO reports directly to the President of the World Bank Group, and 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 initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,⁷ the following steps are typically followed in response to a complaint that 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: **CAO assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute resolution function is initiated. The dispute resolution process is typically based or initiated by a Memorandum of Understanding and/or mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact-finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types 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 dispute resolution process, in a way that is acceptable to the parties affected.⁸

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is

⁷ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

⁸ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.

found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring** and follow-up

Step 6: **Conclusion**/Case closure