

1. I am Deputy General Counsel in the Legal Department of the International Finance Corporation (“IFC”) in Washington, D.C.
2. I am familiar with the matters stated below, which are set forth to the best of my knowledge and understanding.
3. I have also been asked to explain IFC’s investment project cycle at the time the Tata Mundra project was approved, and to describe the Office of the Compliance Advisor/Ombudsman (“CAO”), which is independent of IFC and the Multilateral Investment Guarantee Agency (“MIGA”) management and reports directly to the President of the World Bank Group. I attach the following references:
 - Summary of Proposed Investment, dated November 27, 2007, attached hereto as Ex. 1 (“SPI”).
 - Loan Agreement between Coastal Gujarat Power Limited and International Finance Corporation, dated April 24, 2008, along with Schedule 1 (Common Terms Schedule) to the agreement, attached hereto as Ex. 2 (“Loan Agreement”).
 - Amendment to IFC Loan Agreement and Consent Agreement, dated November 7, 2008, attached hereto as Ex. 3 (“Amendment”).
 - IFC Articles of Agreement, attached hereto as Ex. 4 (“Articles of Agreement”).
 - Office of the Compliance Advisor/Ombudsman (CAO) Terms of Reference, attached hereto as Ex. 5 (“TOR”).

- CAO Operational Guidelines, attached hereto as Ex. 6 (“Operational Guidelines”).
- Beyond Compliance? An External Review Team Report on the Compliance Advisor/Ombudsman Office of IFC and MIGA, dated July 24, 2003, attached hereto as Ex. 7 (“Review Report”).
- Compliance Advisor Ombudsman 2014 Annual Report, attached hereto as Ex. 8 (“Annual Report”).
- June 11, 2011 Letter from members of Machimar Adhikar Sangharsh Sangathan (MASS – Association for the Struggle for Fishworkers’ Rights) to Vice President Meg Taylor, CAO, attached hereto as Ex. 9 (“MASS Complaint”).
- Ombudsman Assessment Report Regarding Community and Civil Society Concerns in Relation to IFC’s Tata Ultra Mega Project (#25797), dated January 2012, attached hereto as Ex. 10 (“Assessment Report”).
- IFC Management Response to the Compliance Advisor Ombudsman’s (CAO) Assessment Report Dated January 2012 regarding IFC’s Tata Ultra Mega Project in Gujarat, India (IFC Project # 25797), attached hereto as Ex. 11 (“Assessment Response”).
- CAO Appraisal for Audit of IFC dated July 27, 2012, attached hereto as Ex. 12 (“Appraisal”).
- Terms of reference for audit of IFC dated October 24, 2012, attached hereto as Ex. 13 (“Audit TOR”).
- CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India dated August 22, 2013, attached hereto as Ex. 14 (“Audit”).
- Letter from Anita Marangoly George, Director, Asia and Pacific, Infrastructure and Natural Resources and William Bulmer, Director, Environment, Social and Governance to Meg Taylor, CAO dated September 12, 2013, attached hereto as Ex. 15 (“Audit Response”).
- Statement by Jin-Yong Cai regarding CAO Audit of Tata Mundra dated November 25, 2013, attached hereto as Ex. 16 (“IFC Statement”).
- Monitoring of IFC’s Response to: CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India dated January 14, 2015, attached hereto as Ex. 17 (“Monitoring Report”).
- IFC Office Memorandum from Bernie Sheahan, Director, CNGDR, Morgan Landy, Director, CRKDR to Mr. Osvaldo L. Gratacós, Compliance Advisor

Ombudsman, CCAVP dated January 20, 2015, attached hereto as Ex. 18 (“Monitoring Response”).

- Second Monitoring Report of IFC’s Response to: CAO Audit of IFC Investment in Coastal Gujarat Power, Limited, India, dated February 2, 2017, attached hereto as Ex. 19 (“Second Monitoring Report”).
- CAO Assessment Report: Second Complaint Regarding IFC’s investment in Tata Ultra Mega (Project # 25797) Tragadi Village, India, dated April 2017, attached hereto as Ex. 20 (“Second Complaint Assessment Report”).
- Compliance Appraisal: Summary of Results, Coastal Gujarat Power Limited: Tata Ultra Mega (Project # 25797) India, Complaint 02 – Tragadi Village, dated September 26, 2017, attached hereto as Ex. 21 (“Compliance Appraisal”).

I. IFC’s Lending Application and Approval Process at the Time the Tata Mundra Project Was Approved

4. When deciding whether to lend money, IFC evaluated a project against a number of criteria applicable at various stages of the approval process. Generally speaking, these criteria would test whether the borrower is a member of the private sector, has good prospects of being profitable, is located in a developing country that is a member of IFC, would benefit the local economy, and would satisfy IFC’s standards.
5. The IFC Board of Directors approves IFC’s Policy and Performance Standards on Environmental and Social Sustainability.

A. Early Review

6. There was (and is) no standard application form for IFC financing. Potential borrowers would approach IFC directly and might submit an investment proposal to IFC’s industry departments, regional departments at IFC headquarters in Washington, or the regional field office closest to the location of the proposed project.
7. As of 2007, investment proposals were expected to include a brief description of the project; historical financial information; biographical information on managers; a description of technical arrangements (management, production, marketing, and finance); detailed sales and market projections; information on technical feasibility of the business; information on project financing and profitability factors; a description of government support and regulatory landscape; and the timetable for various stages of the investment.
8. In the first stage of consideration of a proposed financing, IFC investment officers performed an early review or initial screening of the proposed project based upon strategic business development goals. During this phase, in some cases, IFC officers would visit the project site for pre-appraisal review.

B. Appraisal

9. Based on the early assessment, IFC management determined whether the project was suitable for advancement to the next stage: appraisal (also known as due diligence).
10. During the appraisal stage, an IFC investment team assessed the project's business potential, risks, and opportunities associated with the investment through discussions with the client and visits to the project site. From this information, the investment team prepared a recommendation to departmental management whether IFC should approve the project.

C. Negotiation and Public Notification

11. If IFC management approved the project, an IFC project team proceeded to negotiate terms and conditions of the investment.

D. Board Approval and Commitment

12. Finally, after a period of public disclosure, IFC's Board of Directors considered the project for its economic, financial, and development value and made a judgment as to whether the project fit within IFC policies.
13. If approved by the Board of Directors, IFC and the client-borrower signed a lending agreement, including any connected instruments binding on the client-borrower. Funds were often lent in stages or on condition of certain steps being completed as agreed in the legal agreement.

II. IFC's Investment in Tata Mundra

14. Tata Power presented IFC with a proposal to build, own, and operate the first 'ultramega' power plant in India, which faced a crippling shortage of power in states near Gujarat. IFC's analysis at the time showed that, as of late 2006, only 10 percent of India's power was generated by the private sector, and India required an additional 100,000 megawatts of power to sustain its growth over the next ten years. The proposed Tata Mundra Plant would generate approximately 4,000 megawatts of power using supercritical coal technology in order to reduce its environmental impact.
15. On May 1, 2007, IFC cleared the Tata Mundra project for appraisal.
16. IFC (through its office in New Delhi) and CGPL (through its office in Mumbai) signed a Mandate Letter on July 30, 2007. The Mandate Letter's terms were expressly governed by laws of England.
17. The IFC Loan Agreement negotiations occurred in Mumbai, India.
18. On November 27, 2007, IFC disclosed its SPI for the Plant. Ex. 1 (SPI). The SPI notes that the investment fits under the IFC infrastructure department for Asia and the Pacific. Ex. 1 (SPI).

19. On April 8, 2008, IFC's investment in the Plant was approved by the Board of Directors. Ex. 14 (Audit).
20. On April 24, 2008, IFC signed the Loan Agreement between CGPL and IFC, setting out the details of IFC's investment in the power plant. Ex. 2 (Loan Agreement). The Director for South Asia, located in New Delhi, India, signed the Agreement on IFC's behalf in Mumbai, India. Ex. 2 (Loan Agreement) at 20.
21. On November 7, 2008, IFC signed the Amendment to the Loan Agreement and Consent Agreement. Ex. 3 (Amendment). The "Principal Investment Officer," based in New Delhi, India, signed the Amendment on IFC's behalf. Ex. 3 (Amendment) at 20.

III. CAO Background

22. CAO is an office, independent of IFC and MIGA management, that reports directly to the President of the World Bank Group. Ex. 6 (Operational Guidelines) at 4. CAO is supported by its own budget. Ex. 5 (TOR) at 3. CAO is a centralized review and clearance function, independent from the line management of operations of IFC and MIGA. Ex. 5 (TOR) at 1.
23. CAO Guidelines establish restrictions on the movement of staff between CAO and IFC, and the CAO's staff is recruited by the CAO Vice President. Ex. 5 (TOR) at 5.
24. CAO's mandate is to:
 - Address complaints from people affected by IFC/MIGA projects (or projects in which those organizations play a role) in a manner that is fair, objective, and equitable; and
 - Enhance the environmental and social outcomes of IFC/MIGA projects (or projects in which those organizations play a role).Ex. 6 (Operational Guidelines) at 4.
25. In executing this mandate, the process provides communities and individuals with access to a complaint mechanism for IFC/MIGA projects. Ex. 6 (Operational Guidelines) at 4.
26. In FY2014 alone, CAO addressed 54 cases, 49 of which were filed either by community members directly or with the assistance of an outside organization. Ex. 8 (Annual Report) at 26.

IV. History of the CAO

27. No environmental or social complaint mechanism or office is required under IFC's Articles of Agreement. Ex. 4 (Articles of Agreement).

28. CAO was created in 1999 by the World Bank Group, as a recourse and complaint mechanism, independent from the line management of operations of IFC/MIGA for environmental and social concerns. Ex. 6 (Operational Guidelines) at 4.
29. At the time that CAO was created, the World Bank already had an Inspection Panel (“IP”) to review such issues. Ex. 7 (Review Report) at 1.
30. Following an independent review, various suggestions were made for an IP for IFC similar to that of the IBRD/IDA, or for inclusion of IFC in the IBRD/IDA IP. Ex. 7 (Review Report) at 1.
31. IFC management expressed concerns regarding the proposal to form an IP for IFC, and an alternative mechanism was sought. Ex. 7 (Review Report) at 1.
32. A more flexible, settlement-oriented, and problem-solving complaint mechanism was proposed that would be less rigid than an IP, and which would be more appropriate for dealing with the private sector. Ex. 7 (Review Report) at 1. This approach incorporated the present functions of CAO: ombudsman, compliance, and advice. Ex. 7 (Review Report) at 1.

V. CAO’s Authority and Role

33. CAO is an office independent of IFC and MIGA management that responds to complaints by those who believe that they have been affected by IFC-supported business activities. However, CAO has no authority with respect to judicial processes. Ex. 6 (Operational Guidelines) at 4.
34. CAO is not a court or a legal enforcement mechanism. Ex. 6 (Operational Guidelines) at 4.
35. Neither CAO nor any other environmental or social complaint mechanism with a similar role as CAO is mentioned in the Articles of Agreement. Ex. 4 (Articles of Agreement).
36. CAO has three complementary roles:
 - Dispute Resolution: In responding to complaints, CAO attempts to resolve the issues raised using a flexible, collaborative, problem-solving approach. The focus is on accessing directly those individuals or communities affected by the project and helping them and the client resolve the issues.
 - Compliance: CAO oversees project-level audits of IFC’s environmental and social performance, in accordance with the CAO’s operational guidelines.
 - Advisory: CAO is a source of independent advice to the President and the senior management of IFC and MIGA, with the goal of fostering systematic improvements in IFC and MIGA.

Ex. 6 (Operational Guidelines) at 4-5.

37. The CAO is a complaint mechanism for IFC and MIGA; it is not a court of law and does not evaluate or decide liability under national or international law. There was no intent to waive any of IFC's immunities as provided under the Articles of Agreement through the creation of CAO. CAO's reports in any given case, published on the CAO website, are not designed or intended to create any legal cause of action for complainants against IFC.
38. With IFC loan investments, IFC contractual relationships exist only among IFC and other signatories to IFC's loan documentation. In such cases, there is no privity between IFC and third parties who are not signatories.
39. Requests brought before the CAO are not legal claims brought before a national court. The CAO simply ascertains whether IFC or MIGA has followed its own environmental and social policies and procedures. Ex. 6 (Operational Guidelines) at 23. These policies and procedures were not intended to contain and should not be interpreted as providing for any legal obligations on the part of IFC towards third parties.
40. If remedial measures are taken in the course of the CAO process, these measures are not a consequence of or any acknowledgment of any complainant's rights to damages or other legal recourse. These measures are designed to improve IFC's own environmental and social requirements and performance as they apply to the borrower, all in furtherance of getting results in the pursuit of IFC's development mission and objectives.

VI. Complaint Process

41. Complaints may be made by those who believe they are affected, or potentially affected, by the environmental and/or social impacts of an IFC or MIGA project. Ex. 6 (Operational Guidelines) at 10.
42. The grounds on which a complaint may be made have been broadly defined to encourage individuals or group(s) of individuals with concerns about a project to approach CAO. Ex. 6 (Operational Guidelines) at 10.

VII. Screening a Complaint

43. The CAO will screen any complaint against CAO's eligibility criteria. Ex. 6 (Operational Guidelines) at 12. CAO's eligibility decision is procedural, and does not constitute a judgment on the merits of the substance of the complaint. Ex. 6 (Operational Guidelines) at 12. CAO will deem the complaint eligible if:
 - The complaint pertains to a project that IFC or MIGA is participating in, or is actively considering.

- The issues raised in the complaint pertain to CAO's mandate to address environmental and social impacts of IFC or MIGA projects.
- The complainant is, or may be, affected by the environmental and/or social impacts raised in the complaint.

Ex. 6 (Operational Guidelines) at 13.

VIII. Assessment

44. Once CAO determines a complaint eligible, it will conduct an assessment of the complaint to:
- Develop a thorough understanding of the issues and concerns raised in the complaint.
 - Engage with the complainant and IFC/MIGA client (the parties).
 - Identify the local communities and any additional stakeholders relevant to the complaint.
 - Explain to the stakeholders the different roles of CAO.
 - Determine which CAO role the parties seek to initiate.

Ex. 6 (Operational Guidelines) at 13.

45. CAO's assessment of the complaint does not entail any judgment on the merits of the complaint. Ex. 6 (Operational Guidelines) at 13.
46. Following a CAO assessment process, if there is no agreement to undertake CAO-facilitated dispute resolution, the complaint will proceed to the CAO Compliance role. Ex. 6 (Operational Guidelines) at 14.
47. If the CAO Dispute Resolution role is triggered, CAO will facilitate a process designed to address the issues raised in the complaint, and other issues that may have been identified during the assessment. Ex. 6 (Operational Guidelines) at 14.
48. If the CAO Compliance role is triggered, CAO will conduct an appraisal of IFC's or MIGA's involvement in the project, and determine if an investigation is warranted. Ex. 6 (Operational Guidelines) at 14.
49. CAO will provide an Assessment Report to the parties, the World Bank Group President, the Board, and the public. Ex. 6 (Operational Guidelines) at 14.

IX. Dispute Resolution

50. Engaging in a dispute resolution process is a voluntary decision, and requires agreement between both the complainant and the client, *i.e.*, IFC's or MIGA's client, at a minimum. Ex. 6 (Operational Guidelines) at 18; *see also id.* at 33 (in defining "Client (IFC)," stating "An entity (private or governmental) to which IFC provides Investment or Advisory Services, or in the case of an IFC investment through a financial intermediary, a client or subclient of an IFC client. The term may also refer more broadly to the party that is most appropriate to address the issues raised in the complaint, including the entity that is implementing/has implemented the project in question.").
51. The main objective of CAO's Dispute Resolution role is to help resolve the issues raised about the environmental and/or social impacts of IFC/MIGA projects and improve outcomes on the ground. Ex. 6 (Operational Guidelines) at 18.
52. This is a non-judicial, non-adversarial, neutral forum through which parties may find mutually satisfactory solutions. Ex. 6 (Operational Guidelines) at 18.
53. CAO and the relevant stakeholders, *e.g.*, IFC, IFC's client, affected community(ies), may use a number of different approaches in attempting to find resolution of the issues. Each approach will be chosen in consultation with the parties, and may include:
 - Facilitation and information sharing. In many cases, the complaint will raise questions of fact regarding current or anticipated impacts of a project. The CAO Dispute Resolution team may be able to help complainants obtain information or clarifications that result in resolution from the perspective of complainants.
 - Joint fact-finding. Joint fact-finding is an approach that encourages the parties jointly to agree on the issues to be examined; the methods, resources, and people that will be used to conduct the examination; and the way that information generated from the process will be used by the parties.
 - Dialogue and negotiation. Where communication among parties has been limited or disrupted, the CAO Dispute Resolution team may encourage the parties to engage directly in dialogue and negotiation to address and resolve the issues raised in the complaint. The CAO Dispute Resolution team may offer training and/or expertise to assist the parties in this process.
 - Mediation and conciliation. Mediation involves the intervention by a neutral third party in a dispute or negotiation with the purpose of assisting the parties in voluntarily reaching their own mutually satisfying agreement. In conciliation, the third-party neutral may make recommendations to the participants in the conciliation process.

Ex. 6 (Operational Guidelines) at 18.

54. Where the parties have reached agreement, CAO will assist the parties in monitoring implementation of the agreement(s). Ex. 6 (Operational Guidelines) at 19.
55. Any agreements reached by the parties will usually contain a program and timelines for implementation. Ex. 6 (Operational Guidelines) at 19. The CAO Dispute Resolution team will monitor whether the agreements have been implemented, and publicly disclose the outcomes on CAO's website. Ex. 6 (Operational Guidelines) at 19.

X. Compliance

56. Where Dispute Resolution is refused, as was the case regarding MASS's Tata Mundra complaint, the complainant may request that the dispute resolution team conclude their involvement and transfer the case to CAO's compliance function. Ex. 10 (Assessment Report) at 8.
57. CAO's compliance function oversees compliance appraisals and investigations of the environmental and social performance of IFC or MIGA at the project level. Ex. 6 (Operational Guidelines) at 22.
58. The focus of CAO's compliance function is on IFC/MIGA, not their clients. Ex. 6 (Operational Guidelines) at 22.
59. CAO assesses how IFC or MIGA assured itself 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 the relevant policy provisions. Ex. 6 (Operational Guidelines) at 22.
60. CAO's compliance function follows a two-step approach. The first step is a compliance appraisal. The second step is a compliance investigation. Ex. 6 (Operational Guidelines) at 22.
61. Compliance appraisals are initiated in response to complaints when:
 - The outcome of the CAO assessment process determines that the compliance role should be triggered.
 - CAO Dispute Resolution transfers a case to CAO's compliance function.Ex. 6 (Operational Guidelines) at 22.
62. The scope of the appraisal will be defined by issues raised in the complaint and identified during the CAO assessment phase. Ex. 6 (Operational Guidelines) at 22.
63. Compliance investigations are initiated upon the completion of an appraisal that determines whether the issues presented in the request for a compliance investigation, or issues related to the complaint, meet the appraisal criteria for conducting an investigation. Ex. 6 (Operational Guidelines) at 24. If an investigation is merited, the

CAO will often hire independent specialists for this purpose with appropriate expertise to form a compliance panel. Ex. 6 (Operational Guidelines) at 24. The investigation is based on a review of documents, interviews, and observation of project activities and conditions. Ex. 6 (Operational Guidelines) at 23. The verification of evidence is an important part of the process. Ex. 6 (Operational Guidelines) at 23.

64. In many cases, however, in assessing the performance of the project and IFC's or MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field. Ex. 6 (Operational Guidelines) at 22. In fact, this was the case with the CAO's investigation of MASS's Tata Mundra complaint, during which the CAO reviewed not only the actions of IFC's client — Coastal Gujarat Power Limited — but also the other activities in the Mundra coast, and noted that the affected communities' grievances stemmed from the wider industrialization of the region. Ex. 10 (Assessment Report) at 8.
65. CAO's working definition of a compliance investigation is as follows: An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria. Ex. 6 (Operational Guidelines) at 23.
66. The compliance investigation criteria include IFC or MIGA policies, Performance Standards, guidelines, procedures, and requirements whose violation might lead to adverse environmental and/or social outcomes. Ex. 6 (Operational Guidelines) at 23.
67. Compliance investigation criteria may have their origin, or arise from, environmental and social assessments or plans, host country legal and regulatory requirements (including international legal obligations), and the environmental, social, health, or safety provisions of the World Bank Group, IFC, MIGA, or other conditions for IFC/MIGA involvement in a project. Ex. 6 (Operational Guidelines) at 23.
68. When CAO conducts compliance investigations, at issue is whether:
 - The actual environmental and/or social outcomes are consistent with, or contrary to, the desired effect of the policy provisions.
 - The failure to address environmental and/or social issues as part of the review process resulted in outcomes that are contrary to the desired effect of the policy provisions.Ex. 6 (Operational Guidelines) at 24.
69. The Investigation Report will be prepared by a CAO compliance panel with the use of information gathered by expert panel members, as needed. The report will typically include:

- A brief description of the project.
- A description of the underlying issues that gave rise to the investigation.
- The objectives and scope of the investigation.
- The criteria against which the investigation was conducted.
- The findings of the investigation with respect to noncompliance and any adverse environmental and/or social outcomes, including the extent to which these are verifiable.

Ex. 6 (Operational Guidelines) at 25.

70. In cases where IFC or MIGA is found to be in compliance, CAO will close the investigation. Ex. 6 (Operational Guidelines) at 25.
71. In cases where IFC or MIGA is found to be out of compliance, CAO will keep the compliance investigation open and monitor the situation until actions taken by IFC or MIGA assure CAO that IFC or MIGA is addressing the noncompliance. Ex. 6 (Operational Guidelines) at 25. CAO will then close the compliance investigation. Ex. 6 (Operational Guidelines) at 25.
72. CAO makes public the current status of all compliance cases. Ex. 6 (Operational Guidelines) at 25.

XI. Cooperation among Parties is Essential to CAO's Operation

73. CAO's process involves close coordination with IFC and IFC's client, including reviewing documents, interviews, site visits, and other operational observations. Ex. 6 (Operational Guidelines) at 13, 23. The cooperation of all of the parties is important to the success of CAO's efforts.
74. When a complaint is filed, it is generally IFC's client, i.e., the borrower, that is most appropriate to address the issues raised in the complaint (Ex. 6 (Operational Guidelines) at 33 (definition of "Client (IFC)")); therefore, involvement of IFC's clients in CAO's work is important.
75. Trust and confidence by IFC clients, communities, NGOs, and civil society generally are prerequisites for CAO to be able to operate according to its mandate. Ex. 6 (Operational Guidelines) at 5.
76. For the purposes of CAO investigations, it will be necessary in many cases for CAO to review the actions of IFC's client and verify outcomes in the field. Ex. 6 (Operational Guidelines) at 22.

77. If the results of a CAO investigation could potentially form the basis for a legal cause of action against IFC or its clients, IFC's clients would be far less willing to work with CAO and IFC in a cooperative manner.
78. Potential legal causes of action or purported waivers of immunity flowing from the activities of the CAO would have a severe chilling effect on CAO's and IFC's effectiveness without providing any corresponding benefit to IFC.
79. Beyond negatively affecting the CAO's mission, potential legal liability flowing from the CAO's function would negatively impact IFC's ability to advance its purpose of furthering economic development by encouraging the growth of productive private enterprise in member countries, particularly in the less-developed areas. Ex. 4 (Articles of Agreement) Art. I. In particular, IFC would be less able or willing to invest in high risk projects that further IFC's purposes.

XII. CAO's Role in Tata Mundra

80. On June 11, 2011, one of Plaintiffs (MASS) filed a complaint with CAO "against the Tata Ultra Mega - Coastal Gujarat Power Limited investment, with funding from the International Finance Corporation (Project number: 25797) and other international and national banks." See Ex. 9 (MASS Complaint).
81. In January 2012, CAO issued an assessment report. Ex. 10 (Assessment Report). The assessment was based upon three site visits to Gujarat, India, in 2011 in order to hold meetings with relevant parties, including Plaintiff MASS, and upon an additional meeting with Plaintiff MASS in Delhi, India, on September 1, 2011. Ex. 10 (Assessment Report) at 5. In the Assessment Report's "Conclusions and Next Steps" section, CAO wrote:
 - "It is CAO's view that a collaborative process may have been helpful in this case to address many of the concerns of the fisher folk."
 - "Specifically, the company [*i.e.*, Coastal Gujarat Power Limited ("CGPL")] and the users of the Tragari bandar could work together to identify who among the bandar's users may not have been adequately compensated and may require additional assistance or compensation."
 - "Open dialogue between the company and the fisher folk could equally help enhance benefits, such as provision of health services or schooling for the fishing communities."
 - "Dispute resolution tools ranging from information sharing, to a review of company documentation by mutually agreed independent experts, to participatory monitoring are the types of approaches that can be used to assist parties to address such concerns jointly. *These tools may have been helpful in addressing concerns expressed by the fisher folk regarding the medium and long term*

impacts of plant operations on marine life and their fish stock.” (emphasis added).

- *“Finally, both parties [i.e., CGPL and Plaintiff MASS] understand that part of the threat to the livelihoods of the wider Mundra coast’s fisher folk stems from sources beyond Tata Power in the wider industrialization of the coast, and thus cannot be resolved by the company and community alone.”* (emphasis added).
- “A larger effort involving other industry players along the Mundra coast and the state government could help generate a sustainable solution to securing the fishing communities’ livelihoods.”

Ex. 10 (Assessment Report) at 8.

82. While concluding that the parties could potentially benefit from CAO’s several dispute resolution resources, the CAO also noted:

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

Ex. 10 (Assessment Report) at 8 (emphasis added).

83. CAO then transferred the complaint to CAO’s compliance function. Ex. 10 (Assessment Report) at 8.
84. On February 1, 2012, Anita Marangoly George (former IFC Director of Infrastructure & Natural Resources for Asia, located in New Delhi, India) issued a response to CAO’s Assessment Report. Ex. 11 (Assessment Response). In the response, IFC stated, although it was disappointed that Plaintiff MASS was not prepared to enter into a collaborative process of dispute resolution, IFC was committed to working towards a satisfactory outcome. Ex. 11 (Assessment Response).
85. On July 27, 2012, CAO issued an appraisal report for the audit of IFC. Ex. 12 (Appraisal). Echoing its conclusions in the Assessment Report, the CAO noted:

Significant in the context of the complaint is the fact that the coastline around Mundra is undergoing a rapid industrial transformation. This involves, in addition to the construction of the CGPL power plant, the development of the Adani Group’s Mundra Port and Special Economic Zone (MPSEZ) which includes significant expansion of existing port facilities and the construction of a 4620MW coal fired power plant (Adani Power).

Ex. 12 (Appraisal) at 5.

86. On October 24, 2012, CAO issued the terms of reference for the audit of IFC. Ex. 13 (Audit TOR).
87. On August 22, 2013, CAO issued an audit report. Ex. 14 (Audit). In the report, CAO found that IFC was out of compliance with some of its internal policies. Ex. 14 (Audit) at 3-5.
88. On September 12, 2013, IFC responded to the CAO's audit. Ex. 15 (Audit Response). The Audit Response was sent by Anita Marangoly George and William Bulmer. Ex. 15 (Audit Response) at 11. Copied on the e-mail were Jin-Yong Cai (former Executive Vice President and CEO of IFC); Karin Finkelston (former IFC Director for East Asia and the Pacific, located in Hong Kong); and Serge Deveux (former IFC Director of the South Asia Department, located in New Delhi, India). Ex. 15 (Audit Response) at 11. On November 25, 2013, IFC issued a statement regarding the audit, which included a 10-point action plan to work cooperatively with CGPL and the Gujarat fishing communities, including Plaintiff MASS, to address their concerns. Ex. 16 (IFC Statement).
89. On January 14, 2015, CAO issued its first monitoring report. Ex. 17 (Monitoring Report). CAO decided to keep the audit open for monitoring. Ex. 17 (Monitoring Report) at 5.
90. On January 20, 2015, IFC responded to the monitoring report. Ex. 18 (Monitoring Response). In the response, IFC "agree[d] with CAO's decision to continue its monitoring of the Project through November 2015, as at this stage the key studies that form part of the action plan have not yet been completed." Ex. 18 (Monitoring Response) at 1.
91. In February 2016, CAO carried out a monitoring field visit in Mundra, India, including site visits to the plant and neighboring areas. Ex. 19 (Second Monitoring Report) at 6. During the site visit, CAO met with CGPL representatives, complainant representatives and other community members from the surrounding area, and representatives of the village of Navinal. Ex. 19 (Second Monitoring Report) at 6.
92. In April 2016, residents of Tragadi village and members of the Tragadi Sea Shore Development Committee filed a separate complaint with CAO "Regarding IFC's investment in Tata Ultra Mega (Project #25797) Tragadi Village, India." Ex. 20 (Second Complaint Assessment Report) at 5.
93. On February 2, 2017, CAO issued its second monitoring report in response to the first CAO complaint. Ex. 19 (Second Monitoring Report). The monitoring report listed the "relevant CAO audit finding, the actions proposed by IFC in response to the Audit, the current status of those actions as reported by IFC, and actions identified by CAO as outstanding." Ex. 19 (Second Monitoring Report) at 7. CAO decided to keep the audit open for monitoring. Ex. 19 (Second Monitoring Report) at 7.

94. In April 2017, CAO issued an assessment report regarding the second complaint. Ex. 20 (Second Complaint Assessment Report). In the Second Complaint Assessment Report's "Next Steps" section, CAO wrote that

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.

Ex. 20 (Second Complaint Assessment Report) at 5.

95. On September 26, 2017, CAO issued a summary of its compliance appraisal regarding the second complaint. Ex. 21 (Compliance Appraisal). In the Compliance Appraisal's "CAO Decision" section, the CAO wrote that

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.

Ex. 21 (Compliance Appraisal) at 21.

96. CAO's monitoring of the project remains open and is a matter of public record.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19th day of June, 2019, in Washington, DC


Leslie Sturtevant