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Dr. Jim Yong Kim's Dilemma: International Finance Corporation and the Tata Mundra Power Plant

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Dr. Jim Yong Kim's Dilemma: International Finance Corporation and the Tata Mundra Power Plant

ABSTRACT

The case study is about the dilemma faced by Dr. Jim Yong Kim (Kim), President of the World Bank Group, related to International Finance Corporation's (IFC) funding of the Tata Mundra Project in India. The Mundra plant was one of the Ultra Mega Power Projects (UMPPs) conceived with the objective of providing cheap electricity to power-starved states of India. Coastal Gujarat Power Limited (CGPL), a wholly-owned subsidiary of Tata Power, implemented the project with funds from various organizations including a funding of US\$450 million from IFC. Before the Tata Mundra power project went on stream, everyone related to the project claimed that it would be beneficial for infrastructure development, economic growth, as well as for the poor communities living in areas near the power plant site, but the project soon started facing some serious criticism on the environmental and social fronts. Critics alleged that the project had a severe impact on the environment, sea water, water level, soil, air, natural habitats, marine life, fish population, livelihood, and health and society as a whole. IFC's 'Office of the Compliance Advisor/Ombudsman' (CAO) did an extensive investigation and found evidence which validated the main aspects of the Machimar Adhikar Sangharsh Sangathan (MASS) complaint. The management of IFC largely rejected the findings of the CAO, and Kim faced a lot of criticism for toeing the management line. Kim was caught in a dilemma as the criticism grew more strident over the following months. If he still did not accept the findings of the CAO, then he as well as IFC risked being viewed as not doing enough for the environment and communities that were allegedly affected by the Tata Mundra power plant. On the other hand, if he did a U-turn and accepted the finding of the CAO, then he would have to stop the sustainable financing of US\$450 million to the Tata Mundra project, which was established with the objective of providing cheap and reliable electricity to millions of people of developing India.

“The World Bank President Dr. Jim Yong Kim and the bank’s International Finance Corporation (IFC) are at a crossroads – they can either choose to be on the right side of human rights and the environment, or they can continue ignoring the facts.”ⁱ

**– Nicole Ghio, International & Trade Representative, Sierra Club,
in 2014**

In April 2014, Dr. Jim Yong Kim (Kim), the twelfth President of the World Bank Group, received a petition signed by about 24,000 people from all over the world urging him to publicly recognize the alleged harm International Finance Corporation (IFC) had already caused to the people and environment of Gujarat, India, by funding the Tata Mundra power project, and to develop a meaningful action plan that addressed the damage.

Just nine months earlier, Kim had received kudos for his leadership as the World Bank had placed severe restrictions on coal finance, but a lot had changed since then. In November 2013, he received scathing open letters, one from more than 100 groups in India, another from 68 groups in 28 countries, and one from Machimar Adhikar Sangharsh Sangathan (MASS)^{i, ii} All these letters criticized him for rejecting the findings of the ‘Office of the Compliance Advisor/Ombudsman’ (CAO) against IFC’s long-term loan to the Tata Mundra power project run by Coastal Gujarat Power Limited² (CGPL). Dr. Soumya Dutta (Dutta), National Convener of Bharat Jan Vigyan Jatha, a science group in India, said, *“Kim’s endorsement of the management line indicates his real position that coal does not kill and he will continue supporting the deadly coal plants like Tata (Mundra project) that are not only disastrous but also facing serious financial issues. It then contradicts the President’s energy directions paper and pronouncements on moving the institution away from coal financing. His tall talk on climate change is proving to be a charade.”ⁱⁱⁱ*

Kim was caught in a dilemma as the criticism grew more strident over the following months and culminated in the new petition. If he still did not accept the finding of the CAO, then he as well as IFC risked being viewed as not doing enough for the environment and communities that were allegedly affected by the Tata Mundra power plant. On the other hand, if he did a U-turn and accepted the finding of the CAO, then he would have to stop the sustainable financing of US\$450 million to the Tata Mundra project, which was established with the objective of providing cheap and reliable electricity to millions of people in five states of developing India. Pulling the plug on the project would exacerbate the problems in a power-deprived India, where the supply and demand gap was very high and per capita power consumption was low. Also, it would affect the economic growth of the country.

WORLD BANK GROUP AND INTERNATIONAL FINANCE CORPORATION

The World Bank Group (WBG) was a group of five closely associated international organizations – The International Bank for Reconstruction and Development (IBRD), The International Development Association (IDA), The International Finance Corporation (IFC), The Multilateral Investment Guarantee Agency (MIGA), and The International Center for Settlement of Investment Disputes (ICSID). These five organizations came into existence between 1945 and 1988 and were owned by member countries. All these five organizations or WBG worked for a common mission – to reduce extreme poverty and boost shared prosperity. The WBG provided leveraged loans, insurance against various risks, and technical assistance to developing and under developed countries.

¹ Machimar Adhikar Sangharsh Sangathan is a group which fights for Fishworkers’ Rights.

² In 2014, Coastal Gujarat Power Limited (CGPL) was a 100% subsidiary of Tata Power Company Limited (Tata Power).

IFC was established in 1956 to promote economic development in the private sector. It supported for-profit private sector projects in developing countries through its investment, advice, and assets management services. IFC provided about one third of its total funds to the private sector in developing countries.^{iv} In 2014, after more than five decades of its establishment, it supported almost all major industries and touched the lives of millions of people in more than 100 countries. IFC helped in creating jobs, improving living standards, and building a better future. In FY2014, IFC invested US\$17.2 billion in around 600 projects and mobilized more than US\$5 billion to support the private sector in developing countries in different industries through its investment services.^v

In the energy sector, WBG's core focus areas included expanding access to energy, accelerating energy efficiency, and promoting renewable energy.

Kim was the first scientist to head WBG. Under his leadership, the group had made climate change a priority as Kim believed that it was impossible to tackle poverty without dealing with this environmental problem. WBG was facing criticism for funding coal-fired power plants as these were seen as one of the main causes for the rising pollution from heat-trapping gases. In July 2013, WBG's board agreed to a new energy strategy that would limit financing of coal-fired power plants to "rare circumstances" – restricting financial support to countries that had "no feasible alternatives" to coal, as it sought to balance environmental efforts with the energy needs of poor countries.^{vi}

INVESTMENT SERVICE OF THE IFC

The IFC Investment Service offered a wide range of financial products only to private sector projects located in developing countries. The various financial products offered by IFC were loans, syndicated loans, equity finance, structured finance, risk management products, local currency financing, private equity & investment funds, and trade finance.^{vii} In addition to this, it provided funds only to environmentally, socially, and technically sound projects which were beneficial to the local economy and fulfilled the environmental and social standards of IFC and the host country.

When for-profit private companies or entrepreneurs needed funds to start a new project or expand existing projects, then they could apply directly to IFC for funds by submitting their investment proposal. IFC did not have any standard application form for this purpose. However, the investment proposal had to include a brief description of the project, management, technical feasibility, plant size, breakdown of project operating cost, manpower, raw material resources, market, potential environmental issues & solution, proposed financial structure, projected financial statement & return on investment, government incentives, tentative time table for project completion, and expected contribution of the project to economic development. The complete investment proposal could be submitted at IFC's head office in Washington, D.C. or any regional office of IFC near the project location.

Once the investment proposal was received by IFC, it did a first round review after which it sought a detailed feasibility study or business plan to appraise the project and make its decision. An investment proposal typically went through nine stages before IFC disbursed funds. After disbursement of the loan, IFC supervised and evaluated the project on a regular basis. It closed the book either when the loan had been repaid fully or if it sold its equity in the project (*See Exhibit I for various stages of the project cycle*).

IFC had a sustainability framework that consisted of its policy on environmental and social sustainability, the performance standards (which defined clients' responsibilities for managing environmental and social risks), and the access to information policy (which articulated IFC's commitment to transparency). According to IFC, this was an integral part of IFC's approach to risk management, and it underscored its strategic commitment to sustainable development. (*See Exhibit II for IFC's Performance Standards on Environmental and Social Sustainability*)

IFC had made a commitment to improve access to electricity and to promote clean energy alternatives. It was involved in many renewable energy projects. Between 2010 and 2014, IFC had transformed its power portfolio so that more than half of it was in renewable energy.

ELECTRICITY CRISIS IN INDIA

As on March 31, 2014, India had the third largest power generation capacity in the world with installed capacity of 243,029 Mega Watt (MW).^{viii} More than 68% of India's power was contributed by thermal plants, while around 18% came from hydropower. The rest came from nuclear, wind, and other renewable sources of energy. The per capita electricity power consumption in India was just 684 kWh, significantly lower than the global consumption of 3,043 kWh in 2011.^{ix} According to experts, around 400 million people, living primarily in rural areas, did not have basic access to electricity. Lack of electricity hindered the prospects of education, healthcare, clean water, employment, and ultimately growth of the economy. It was necessary to add 160,000 MW of capacity by 2018 to satisfy the needs of the second fastest growing economy in the world.

Experts stated that almost all the cities in the country, including the mega cities, experienced at least 360 hours of power cut per year. Tier II and Tier III cities had almost 1,000 hours of power cut per year. The situation was worse in the small towns and villages. Many of them were not electrified and those which did have electricity got only 2,500 hours of electricity per year on an average. The consumption of power varied across the country. Dadra & Nagar Haveli, a Union Territory in Western India, had the highest per capita power consumption at 13,767 kWh in 2011-12 (11,708.59 kWh in 2009-10) whereas Bihar, a state in Eastern India, had the lowest at 134 kWh (117.48 kWh in 2009-10) in the same period.^{x,xi}

The lack of reliable supply of electricity forced manufacturing industries in the region to rely on standby diesel generation to meet their power needs. According to the World Bank, nearly 40% of India depended on diesel for back-up power.

It was this shortage and unavailability of power which eventually forced the Government of India to come up with a massive plan for cost effective and reliable power generation and distribution.

ULTRA MEGA POWER PROJECTS: HOPE FOR MILLIONS

In 2005-06, the Ministry of Power (MoP) under the Government of India (GoI), Central Electricity Authority (CEA), and Power Finance Corporation Ltd.³ (PFC) worked together and came up with Ultra Mega Power Projects (UMPPs) with the social objective of providing 'Power For All by 2012' at the minimum possible cost through economies of scale and supercritical⁴ and environment friendly technology. The MoP envisaged 16 UMPPs with installed capacity of about 4,000 MW (nominal), each with scope for further expansion. These projects were planned to be executed under the build, own, and operate (BOO) model and awarded under a tariff-based international competitive bidding process.

To encourage investors, to reduce project risk, and to get good response to competitive bids, PFC, the nodal agency for the UMPPs, set up wholly-owned 'shell companies'⁵ to facilitate a

³ Power Finance Corporation Ltd. is a New Delhi, India based financial institution dedicated to power and associated sectors.

⁴ Conventional coal-fired power plants generate steam by boiling water that activates a turbine. Plants using supercritical technology operate at temperatures and pressures above the critical point of water, i.e. above the temperature and pressure at which the liquid and gas phases of water coexist in equilibrium, at which point there is no difference between water gas and liquid water. This results in higher efficiencies of above 45% compared to about 32% achieved by conventional plants.

⁵ Shell companies are non-trading companies formed for specially raising funds before starting operations, to take over another company, etc.

preliminary study and to obtain the various necessary clearances including environmental clearance. It also tied up water, land, and power selling arrangements etc., prior to the award of an UMPP to successful bidders.^{xii} Initially, six UMPPs were identified by PFC. Two of the power plants were based on domestic coal near coal mines and four were based on imported coal in coastal areas. However, by 2014, only four projects were awarded. The first UMPP was won by Tata Power Company Limited⁶ (Tata Power), and the other three were won by Reliance Power Limited, a company of Reliance Anil Dhirubhai Ambani Group.⁷

THE TATA MUNDRA PROJECT

A shell company, Coastal Gujarat Power Limited (CGPL), came into existence on February 10, 2006, as a wholly-owned subsidiary of PFC under the Indian Company Act, 1956. The CGPL was formed to execute a coal-fired UMPP in Mundra in Gujarat, a state in the Western part of India. In December 2006, Tata Power won the competitive bid for the Mundra project as the company quoted the lowest levelized tariff⁸ of Rs.⁹ 2.26 per KWh for 25 years.^{xiii} As a result, PFC transferred 100% stake in CGPL to Tata Power in April 2007 after which CGPL became a wholly-owned subsidiary of Tata Power.

The Tata Mundra power plant was set up on a 1,242-hectare site near village Tundawand, Mundra Taluka (administrative division) in Kutch District, Gujarat, at a latitude and longitude of 22° 49' 48" N and 69° 30' 58" E respectively at a cost of US\$4.2 billion (See Exhibit III for map of Tata Mundra plant). CGPL had set up 5 units of 800 MW each to produce 4,000 MW of power. These units used supercritical technology and imported¹⁰ high-quality, sub-bituminous coal in pulverized form. The annual estimated coal consumption was 11-13 million metric tons calculated on the basis of Gross Calorific Value¹¹ (GCV) of 5700 kilocalorie/kilogram (kcal/kg) and the worst coal would have a GCV of 5350 kcal/kg and at annual plant load factor of 85%. The power plant also used around 14.26 Mm³/day (594,200 m³/hr) of water for condenser cooling and other purposes. This came from the sea – from the Gulf of Kutch, situated at a distance of 2.5 kilometers from the power plant location.^{xiv}

The Tata Mundra power plant was fully commissioned in March 2013. Power produced from this plant was supplied to five power-deprived states of India – Gujarat (1,805 MW) and Maharashtra (760 MW) in Western India; and Punjab (475 MW), Haryana (380 MW), and Rajasthan (380 MW) in Northern India.^{xv} These five states suffered from energy shortage of 7% to 19% and peak hour's shortage was around 10% to 30%.^{xvi} The Tata Mundra plant increased the power generation capacity of India by 2% and helped to reduce the demand and supply gaps.

According to IFC, the Tata Mundra plant (project) impacted the lives of 16 million electricity consumer in India. The project also helped to generate 5,000 jobs at the time of construction and 718 jobs (255 CGPL staff and 463 outsourced staff) at the time of full commercial operation.^{xvii} In addition to this, the development of port and power transmission facilities generated more employment and infrastructure in India. The Tata Mundra project provided

⁶ Tata Power Company Limited (Tata Power) was the largest private player in power sector in India with installed capacity 8,613 MW in 2014. The company pioneered in power generation in India and over a period of time, it got involved in all segments of the power sector i.e., Fuel & Logistics, Generation (via thermal, hydro, solar and wind), Transmission, Distribution and Trading. It was part of the Tata Group, the most reputed and the largest conglomerate in India.

⁷ Reliance Anil Dhirubhai Ambani Group is a conglomerate based in Navi Mumbai, India

⁸ Levelized tariff is inflation adjusted average fixed and variable tariff over the entire term of the power purchase agreement.

⁹ Rs. is the symbol of the Indian currency, the Indian Rupee. As of 2014, US\$ 1 was approximately equal to Rs. 62.

¹⁰ Coal was primarily imported from Indonesia.

¹¹ Gross Calorific Value is the heating value of coal. It is defined as the amount of heat released when the coal is completely burnt.

power at a very affordable price and also US\$790 million in tax to the GoI over the period of the project.

INTERNATIONAL FINANCE CORPORATION AND THE PROJECT

The Indian government requested IFC to support the first UMPP of the country. IFC had participated in the pre-bid consultation to improve the bankability of the project. The project was significantly larger than any previous project of Tata Power and it increased the power generation capacity of Tata Power by three times. This type of project had a significant amount of risk. However, the presence of IFC indirectly contributed toward mitigation of political and regulatory risk. IFC also played a critical role in financial structuring on behalf of all lenders.

The Tata Mundra project needed long-term (20 years) funding due to its low tariff rates. Local Indian banks provided a major part of funding in the form of loans but these banks were unable to provide the entire funds required for the project, and that too for a long period due to their exposure limit. International commercial banks were not able to provide a long term loan due to refinancing risks and lower creditworthiness of state-owned power distribution companies, who were the purchasers of electricity generated from the Tata Mundra project.^{xviii} Ultimately, IFC provided a US\$450 million loan for 20 years in the form of a straight senior loan¹² at the rate of 12% per annum (*Refer to Exhibit IV for the fund providers*). It was one of IFC's largest investments in India.^{xix} According to IFC, its own involvement in the Tata Mundra project required CGPL to comply with more rigorous Environment & Social standards. CGPL conducted Social Impact Assessment (SIA) in accordance with IFC Performance Standards (PS) 1 and 5 requirements. CGPL also developed a detailed community development plan (CDP) for communities affected by the project. IFC went through a detailed process for loan appraisal for this project.

Before issuing the loan, IFC's appraisal team went through various technical, environmental, and social information submitted by CGPL which included Rapid Environmental Impact Assessment, Rapid Marine Environmental Impact Assessment, Baseline Social Impact Assessment, Comprehensive Environment Impact Assessment, supplemental environmental assessment documents, regulatory approvals, public hearing record notes, various supply and construction contract documents, and Tata Power's Human Resource (HR) manuals.^{xx}

Apart from a detailed study of these documents, the appraisal team interviewed various employees of Tata Power and CGPL who were responsible for construction, project management, environment, health safety, human resources, and community relations. In addition to this, the appraisal team went to the power plant site and interacted with representatives of affected communities and members of the project affected households from two to four affected villages.

According to IFC, the Tata Mundra project was a fit with its climate change strategy in the power sector as IFC encouraged the use of efficient technology in coal-based plants for lower carbon emission. The Tata Mundra project used supercritical technology which consumed less coal and released less CO₂ compared to other Indian power plants based on subcritical technology. It used Indian coal or imported coal as input to produce the same amount of electricity (*Refer to Exhibit V for comparison of CGPL imported coal with others*). The Tata Mundra project used 1.7 million tons of less coal per year compared to a similar sized power plant based on subcritical technology.^{xxi} The Greenhouse Gas (GHG) release intensity of this project was 40%, 18%, and 15% lower than any other coal based power plants in India, across

¹² A straight senior loan has the characteristics of two types of loans – Straight loan and Senior loan. Under Straight loan, during the term of the loan, the borrower pays only the interest and the principal amount due at the time of final interest payment. In the case of a Senior loan, the issuer holds first claim over borrower's assets at the time of bankruptcy of borrower.

the world, and OECD¹³ countries respectively.^{xxii} Rashad Kaldany, Director of IFC, said, *“The project will encourage other developing countries to make responsible choices, using best available technologies and applying higher environmental and social standards.”*^{xxiii}

ENVIRONMENTAL ISSUES

Before the Tata Mundra power project went on stream, everyone related to the project claimed that it would be beneficial for infrastructure development, economic growth, as well as for the poor communities living in areas near the power plant site. On environmental effects, IFC argued that the project would have minimal or no effect on the environment and justified it on the grounds that it would provide cheap and reliable electricity to millions of people in electricity deprived states of a developing country. However, according to critics, within a few years of the start of the Tata Mundra project, the local people of Mundra found that the project had a severe impact on the environment, sea water, water level, soil, air, natural habitats, marine life, fish population, livelihood, and health and society as a whole.

In 2012, an independent fact-finding team led by Justice (retired) S N Bhargava¹⁴ found that the area was full of mangroves, creeks and estuaries, and coral reefs, which contributed to making the area rich for fishing. However, CGPL and licensing authorities had not made any effort to stay away from this ecologically fragile area. The report of the independent fact-finding team said, *“The Tata’s have deliberately destroyed the rich ecosystem of some creek, to use these as their water intake (from 3.5km Kotdi Creek) and outfall systems (Mudhwa Creek).”*^{xxiv} The loss of creeks and mangroves around Mundra destroyed the rich ecology system of the area, which was impossible to fix. This loss affected the availability of fishes, lobsters, etc. (Refer to Exhibit VI for loss in fishes and others).

According to the local people of the region, before the power plant came up, fishes were easily available near the bank. After the plant was set up, they were not available because of the 250 meter-wide outfall channels in Mudhwa Creek which poured huge volumes of warm condenser cooling water into the sea. This water was about 7 degrees Celsius (7° C) above the sea water temperature.^{xxv} In addition to this, the Tata Mundra plant used the open cycle cooling system as against the closed cycle cooling system permitted by the Ministry of Environment and Forests (MoEF) of GoI in 2007.

One of the major impacts of warm water was de-oxygenation around the outfall channels. This reduced the level of oxygen in the water and affected marine life (Refer to Exhibit VII result of Tata Mundra’s inlet and outfall channel water test). A disturbance in the aquatic eco system reduced the fishing season by 15-30 days. Ahmed Ali Illiyasa, a fisherman and Head of MASS, said, *“Our fishing season is from August to mid-May but owing to their outlet and intake pipes, the hot water and the pollution, we are packing our way back to our villages now in April. Not enough fish this year so we are going back early... What is development to us?”*^{xxvi}

IFC denied that the project had converted any of the areas under mangroves, and said that there were no mangroves in the thin coastal strip impacted by the project’s intake and outfall channels. It also claimed that, in accordance with environmental clearance conditions, Tata Power had planted 1,000 hectares of mangroves in the Kantiyajal village of Bharuch district, leading to employment generation in the local community.

¹³ Organization for Economic Co-operation and Development (OECD) is an international organization of 34 countries.

¹⁴ S N Bhargava is a former Chief Justice of the Sikkim High Court, as well as former Chairperson of Human Rights Commissions of Assam and Manipur. The other members of the fact-finding team included Varadarajan Sampath, a marine scientist; Praful Bidwai, senior journalist and columnist; Jarjum Ete, former Chairperson of the Commission for Women, Arunachal Pradesh; and, Soumya Dutta, energy specialist and national convenor of the Bharat Jan Vigyan Jatha.

SOCIAL ISSUES

A significant fall in fish-catch reduced the income of fishermen and they became poorer (*Refer to Exhibit VIII for fall in income for fishermen*).

The fact-finding team mentioned in its report that CGPL and various government organizations including the MoEF and the Pollution Control Board were unable to recognize or willfully ignored the pre-project situation that existed in the project area. The report denied that the project was constructed on vacant land, as claimed by CGPL. It stated that the land was not vacant and it had been used by hundreds of fishermen families, pastoralists, etc., from many decades. Fishermen used this land for their hutments for 8-9 months every year. They also used the land for landing their boats, drying their fishes, mending their nets, and for various other related activities.

Due to Tata Mundra's water channels, the fishermen and pastoralists were not able to access their routes to fishing and grazing grounds. The once short route became longer for them by about 4 km and they had to spend Rs. 300 extra for each trip. The new route was not even maintained properly. Harun Kaka, a fisherman at Bhadreshwar¹⁵, said, *"Two years ago, we used to spend just Rs. 150 for our travel by auto-rickshaws, from our village to Tragdi, now we spend nearly Rs. 450 owing to the lengthy routes, road blocks, and constructions. Transport, the diesel spent for the boat, our living expenses are higher than what we get out of our catch, we will die in hunger soon."*^{xxvii}

The livelihoods of the salt-pan workers/owners of this area were also affected by the Tata Mundra project. However, the project did not include salt-pan workers/owners in this area as project affected persons. Bhika Bhai, salt-pan worker, Bhadreshwar, *"Out of India's total salt production, about 75% is produced from Gujarat. The Gandhidham¹⁶ area is filled with salt-pan workers. The salt-pan work is facing a great challenge due to the fly ash as well as dust that is emitted from the thermal projects. Our livelihood is affected by these thermal power projects."*^{xxviii}

Gujarat produced two-thirds of the total salt produced in India and Kutch accounted for one-third of this. As a large power plant was being set up in windy Kutch, there was the risk of a large amount of coal dust and fly-ash contaminating the salt, which was produced on vast open plains. Not only salt, drying fish and green fodder were also getting contaminated with coal dust and fly-ash. Salt and dried fish produced here went all over India and to other countries as well. According to experts, if the dried fish and salt produced here became contaminated by the toxic coal dust and fly-ash, then it might lead to health problems related to heavy-metal toxicity in the larger part of the population. They contended that such health concerns had the potential to destroy the dried fish and salt business of this area.

However, IFC contended that the residents of 15 villages in the Mundra and Mandvi blocks of Kutch district had benefited from the project's community outreach initiatives. CGPL engaged in various initiatives aimed at improving education, promoting health, building infrastructure, improving access to natural resources, creating livelihood opportunities, and empowering women (*See Exhibit IX for some specific community outreach initiatives of CGPL*).

COAL PRICE HIKE ISSUE

Tata Power had a long-term supply agreement with Indonesian companies as well as a 30% stake in two coal mines in Indonesia which Tata Power had purchased in 2007 to ensure low input cost for the Tata Mundra project.^{xxix} However, in September 2011, the Indonesian government unexpectedly changed its coal price policies and linked the price of coal exported

¹⁵ Bhadreshwar or Bhadresar is village in Mundra, Kutch district in Gujarat state, India. It is less than a kilometer away from the seashore.

¹⁶ Gandhidham is a city and a municipality in Kutch district in Gujarat state, India.

from Indonesia with international coal price. This increased the price of coal imported from Indonesia. Coal prices rose 30% to US\$81.69 a ton in July 2013 from a low of US\$62.83 a ton in May 2009.^{xxx} The import of coal became even costlier in India with a sharp fall in rupee value against the U.S. dollar. The fall in rupee value not only increased the debt portion of the project but also made servicing of debt (interest payment) a costly affair. Tata Power filed a petition with the Central Electricity Regulatory Commission¹⁷ (CERC) to decide on the issue, asking for a tariff hike. According to Krishna Kumar Sharma, Executive Director and CEO of CGPL, *“CGPL’s estimated revenue loss of running the power plant at current rates stands at approximately Rs. 1,800 crore [Rs. 18 billion] a year. As of October 2012, the equity investment of CGPL had eroded by approximately Rs. 3,000 crore [Rs.30 billion].”*^{xxxi}

In April 2013, CERC allowed Tata Power to hike the tariff from its initial price of Rs.2.26 per kwh price. In its order, CERC set up a committee to work out the price hike and decide on the compensatory package. In August 2013, the committee recommended a price hike and a compensatory package also. Based on the committee’s recommendation, in February 2014, CERC increased the tariff by Rs. 0.524 per kWh with retrospective effect from April 1, 2013. In addition to this, CERC ordered electricity procurers to pay Rs.3,294.50 million as compensatory tariff for the period April 1, 2012, to March 31, 2013.^{xxxi} The hike of Rs. 0.524 per kWh would give Rs. 250 billion to Tata Power over the remaining life of the power project.^{xxxi} However, the same hike in tariff would directly hit the consumers of state electricity companies, listed as buyers with the Tata Mundra project.

Tata Power had plans to add another 1,600 MW capacity to the Tata Mundra plant, expanding the project from 4,000 MW to 5,600 MW. Sharma said, *“These two units are not covered through any existing arrangement for pricing and thus could participate in any new case-I bidding with imported coal. The cost of generation will depend on type of coal and capital costs once they are completed... As far as costing is concerned, appropriate funding will be arranged. We are reviewing all our options before we can finalize on the project. As regards land, we had kept provision for future expansion of two units in the layout.”*^{xxxi}

COMPLAINT OF MASS

In June 2011, Machimar Adhikar Sangharsh Sangathan (MASS) filed a complaint against the IFC investment in CGPL (Refer to table V) to the ‘Office of the Compliance Advisor/Ombudsman’ (CAO). The Compliance Advisor/Ombudsman (CAO), an independent audit body, was established in 1999. The CAO was established to address the concerns of individuals or communities affected by projects of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) and increase the environmental and social outcomes of IFC and MIGA projects and the public accountability of IFC and MIGA. The CAO directly reported to the president of WBG. The CAO served three roles, that of Ombudsman, Compliance, and Advisor.

MASS represented the fishermen communities that were affected by the Tata Mundra project. These fishermen belonged to the minority Wagher community of Muslims and depended on natural resources for their livelihood. They were migratory in nature and migrated to *bunders* (fishing harbors) from far-away villages during the fishing season, which lasted up to eight to nine months every year. Two of the *bunders*, Tragadi and Kotadi, fell under the cooling water intake and outfall channels. A summary of the complaint is provided here:

1. Failure to identify the Complainants as project-affected people during preparation of the project
2. Physical and economic displacement of fisher people from seasonal settlements and fish drying areas in the intertidal zone
3. Impact of coal ash and other airborne pollution on fish drying and public health

¹⁷ Central Electricity Regulatory Commission (CERC) is the apex power sector regulator in India.

4. Lack of compliance with national regulations in relation to the decision to construct a once-through cooling system
5. Impacts on marine environment and long-term decline in fish stocks due to destruction of mangroves; and construction/operation of the plant
6. Failure to consider expansion of Mundra Port as an associated development or to consider the investment in the context of cumulative impacts of related developments
7. Impacts on additional livelihood groups, namely graziers and salt pan workers, that were not adequately identified or mitigated
8. Social impacts of increases in the cost of power beyond that which was projected in the project documentation
9. Failure to consider technically and financially feasible design alternatives to minimize Environmental & Social (E&S) impact
10. Adequacy of IFC's supervision of E&S aspects of the project.^{xxxv}

The Tata Group, which was well-known for its corporate social responsibility and ethics, also came in for a lot of criticism from various activists for the Tata Mundra project. According to Dutta, *"Tata bills itself as a company that takes care of people, but this power project has caused such massive damage to the community's health and livelihood that their public image has come into question. If this is the most ethical corporation in the country and the negative impacts are so bad, imagine how much worse plants from other companies are."*^{xxxvi}

FINDINGS OF CAO

On MASS's complaint, the CAO did an extensive investigation and came out with a 55-page report on the audit of IFC investment in CGPL's Tata Mundra project, on August 22, 2013. It found evidence which validated the main aspects of the MASS complaint. The CAO found that the social baseline data with regard to the fisher people residing on the Tragadi and Kotadi *bunders* on a seasonal basis was missing. It found that IFC had failed to ensure that CGPL's E&S assessment adequately considered the risk and impact of the project on fisher people. The CAO found that IFC had failed to ensure the proper application of Performance Standard (PS) 5 as well as PS 6 related to 'land acquisition' and 'biodiversity conservation' respectively.

The CAO found lacunae in IFC's review and supervision of impacts of projects on airshed and marine environment. It found that IFC had not ensured that CGPL had properly applied the requirement of the World Bank's Thermal Power Guidelines (1998) to an airshed that had to be classified as degraded. The CAO found that IFC's process of E&S review relating to the marine environment did not match with the nature and scale of the project. It also found that IFC did not properly consider the effects of noise, light, heat, and other aquatic disturbances from the Tata Mundra project on the local marine environment in its marine impact assessment process.

The CAO contended that IFC had not tested the impact on an associated facility such as the Mundra port which CGPL used to import coal for the power plant. The CAO found that IFC did not ensure that the plant's seawater cooling system fulfilled IFC Environmental, Health, and Safety (EHS) Guidelines. CAO also found that a framework for managing E&S impact that could be effectively monitored or audited had yet to be established.^{xxxvii} The report stated that:

"CAO finds that (concerns of) the complainants, who are from a religious minority and occupy a socially marginal position given their migrant traditions, were not adequately considered. IFC has contributed to this situation to the extent that its review of CGPL's environmental and social assessments was not commensurate with project risk as required by its sustainability policy."^{xxxviii}

On the CAO findings, Dr. Bharat Patel (Patel), General Secretary of MASS, said, *“The findings reconfirm the concerns we raised since project construction started. CAO’s experts findings help bolster our fight to regain the damaged livelihoods of thousands of fishing families in Kutch coast.”*^{xxxix} Patel further said, *“Now that World Bank’s own investigations found such serious lapses, it is time for the Bank to sit up and take appropriate and immediate actions. We will not agree on anything short of IFC withdrawing financing from the project.”*^{xl}

IFC’S RESPONSE

On September 12, 2013, IFC had given an 11-page response to the CAO which was written by Anita George, Director for Infrastructure and Natural Resources of IFC’s Asia-Pacific, and William Balmer, Director for Environment and Social Governance of IFC. In the response, they accepted some of the good practices suggested in the audit report of the CAO. However, by and large, they denied any policy violations and recorded their views relating to more than 10 findings of the CAO. In conclusion, they wrote:

“Further, there is sufficient evidence available with IFC that CGPL has and continues to follow through on its commitments to IFC, in fact going beyond for a range of issues. Appropriateness of IFC’s approach is also reflected in that the monitoring data indicates that the actual impacts on ambient conditions are significantly lower than those predicted in the assessments that IFC reviewed. Also, over the 5 years since approval, the progressive improvement demonstrated by CGPL in proactively identifying, assessing, and mitigating environment and social risks and impacts, makes IFC confident that the Company’s management system effectively addresses these risks and impacts in accordance with the Performance Standards.”^{xli}

Later, in November 2013, Kim supported IFC and rejected the findings of the CAO. This led to huge criticism of his action by different stakeholders. *“By clearing the IFC response, President Kim sends a clear message that he supports his staff’s denial of science, of expert findings, and endorses management’s avoidance of accountability,”*^{xlii} said Patel.

Some of them contended that the region was better off without such coal-powered projects. According to Dutta, *“I have seen hundreds of wind turbines in this district just driving down to Mundra. This area has been known as one of the most prospective areas for wind and solar. Because Gujarat is in the extreme west of the country, it is not as impacted by monsoons. There are many sunny days throughout the year and wind potential is strong due to being close to the coast. Though the turbines already set up are older and use more expensive technology, wind power costs have come down considerably, opening up better possibilities for newer, higher-hub, higher power.”*^{xliii}

In January 2014, another investor in the Tata Mundra project, the Asian Development Bank (ADB), which was also facing flak for its association with the project, approved the recommendation of its accountability mechanism, the Compliance Review Panel (CRP), for a full investigation into the project. Following the findings of the CAO, the ADB’s CRP also found evidence of noncompliance with ADB policies, and concluded that this *“is serious enough to warrant a full compliance review.”*^{xliv}

LOOKING AHEAD

In April 2014, Patel gave a petition to Kim on behalf of the communities affected by the Tata Mundra project. This petition was signed by about 24,000 people from all over the world. The petition stated, *“Despite such a scathing report, we are disappointed that you [Dr. Kim] have not taken any action. By not acknowledging the violations committed by IFC, and by not taking any immediate corrective actions, you are letting the violations to continue.”*^{xlv} Through this petition, Patel placed three demands in front of Kim:

- Recognize that IFC had violated policies and the Tata Mundra project had serious impacts of local communities;

- Develop a corrective action plan with clear timeline, targets, and measurable indicators to address restoration and reparation needs; and
- Withdraw IFC funding from the Tata Mundra project and stop any new funding for project expansion.^{xlvi}

The Tata Mundra project, meanwhile, was hemorrhaging cash and Tata Power's Managing Director, Anil Sardana, called it 'the albatross around the neck' of the company.^{xlvii} The company was desperately negotiating with lenders to avoid penalties after it failed to meet conditions on US\$2.3 billion of loans taken to build the plant. It was also looking to IFC for funding to add another 1,600 MW of generating capacity to the Tata Mundra plant. Electricity generated from this could be sold at market rates, countering losses arising from its existing units.

Critics contended that it was still not too late for Kim and IFC to take the right decision which would not only help various affected communities but also help restore the environment. In the past, IFC had made a U-turn in case of the US\$30 million loan to Grupo Dinant, a Honduran palm oil company. IFC had turned a deaf ear to allegations of violence and intimidation against Dinant while approving the loan. Then too, IFC and Kim had disregarded the findings of the CAO, but they were forced to make a U-turn within weeks as IFC faced huge protests from civil society groups in Honduras and abroad. However, if Kim did a U-turn in the case of the Tata Mundra power project, would it hamper the infrastructure development in developing countries like India, where millions of people would not be able to get even basic electricity to study at night or charge their cell phones?

Exhibit I

IFC Project Cycle

1. Business Development

Guided by IFC's strategic goals, our investment officers (IOs) and business development officers identify suitable projects. This initial conversation with the client is critical in helping us understand their needs and determining whether there is a role for IFC.

2. Early Review

The IO prepares a description of the project, IFC's role, the anticipated contribution to development and benefits to stakeholders, and any potential deal-breakers. Lessons from previous projects are considered here and, in some cases, a pre-appraisal visit is conducted to identify any issues in advance. IFC senior management then decides whether to authorize project appraisal.

3. Appraisal (Due Diligence)

The investment team assesses the full business potential, risks, and opportunities associated with the investment through discussions with the client and visits to the project site. The following questions are asked: Is the investment financially and economically sound? Can it comply with IFC's social and environmental Performance Standards? Have lessons from prior investments been taken into account? Have the necessary disclosure and consultation requirements been met? How can IFC help the client further improve the sustainability of the project or enterprise?

4. Investment Review

The project team makes its recommendations to IFC departmental management, who will decide whether to approve the project. This is a key stage in the investment cycle. The team and departmental management must be confident that the client is able and willing to meet IFC standards and work with us to improve the sustainability of their enterprise.

5. Negotiations

The project team starts to negotiate the terms and conditions of IFC participation in the project. These include conditions of disbursement and covenants, performance and monitoring requirements, agreement of action plans, and resolution of any outstanding issues.

6. Public Notification

A Summary of Proposed Investment (SPI) for the project and the environmental and social review, where applicable, are posted on IFC's website before being submitted to the Board for review. The length of the disclosure period is determined by the category of the project.

7. Board Review and Approval

The project is submitted to IFC's Board of Directors for consideration and approval through regular or streamlined procedures. "Streamlined" means that the members of the Board review the documents but don't meet to discuss the project. This option is available to low-risk projects of a small enough size. Certain small projects can be approved by IFC management under delegated authority. The due diligence process and public disclosure remain the same in all cases. The Board demands that each investment have economic, financial, and development value and reflects IFC's commitment to sustainability.

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8. Commitment

IFC and the company sign the legal agreement for the investment. This includes the client's agreement to comply with the applicable Performance Standards, to immediately report any serious accident or fatality, and to provide regular monitoring reports. The legal agreement will also covenant the client's Action Plan.

9. Disbursement of Funds

Funds are often paid out in stages or on condition of certain steps being completed as agreed in the legal agreement.

10. Project Supervision and Development Outcome Tracking

We monitor our investments to ensure compliance with the conditions in the loan agreement. The company submits regular reports on financial as well as social and environmental performance, and information on factors that might materially affect the enterprise. Ongoing dialogue during supervision allows IFC to support clients, both in terms of solving issues and identifying new opportunities. We also track the project's contribution to development against key indicators identified at the start of the investment cycle.

11. Evaluation

We evaluate projects on a regular basis. To help improve our operational performance, annual evaluations are conducted based on a stratified random sample of projects that have reached early operating maturity.

12. Closing

We close our books on the project when the investment is repaid in full or when we exit by selling our equity stake. In specific cases we may decide to write off the debt. Our goal is to help the client reach a high level of sustainability that will continue long after our involvement has ended.

Source: "IFC Project Cycle,"
www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/ifc+projects+database/projects/aips+added+value/project+cycle.

Exhibit II

IFC's Performance Standards

1. IFC's Sustainability Framework articulates the Corporation's strategic commitment to sustainable development, and is an integral part of IFC's approach to risk management. The Sustainability Framework comprises IFC's Policy and Performance Standards on Environmental and Social Sustainability, and IFC's Access to Information Policy. The Policy on Environmental and Social Sustainability describes IFC's commitments, roles, and responsibilities related to environmental and social sustainability. IFC's Access to Information Policy reflects IFC's commitment to transparency and good governance on its operations, and outlines the Corporation's institutional disclosure obligations regarding its investment and advisory services. The Performance Standards are directed towards clients, providing guidance on how to identify risks and impacts, and are designed to help avoid, mitigate, and manage risks and impacts as a way of doing business in a sustainable way, including stakeholder engagement and disclosure obligations of the client in relation to project-level activities. In the case of its direct investments (including project and corporate finance provided through financial intermediaries), IFC requires its clients to apply the Performance Standards to manage environmental and social risks and impacts so that development opportunities are enhanced. IFC uses the Sustainability Framework along with other strategies, policies, and initiatives to direct the business activities of the Corporation in order to achieve its overall development objectives.
2. Together, the eight Performance Standards establish standards that the client is to meet throughout the life of an investment by IFC:

Performance Standard 1	Assessment and Management of Environmental and Social Risks and Impacts
Performance Standard 2	Labor and Working Conditions
Performance Standard 3	Resource Efficiency and Pollution Prevention
Performance Standard 4	Community Health, Safety, and Security
Performance Standard 5	Land Acquisition and Involuntary Resettlement
Performance Standard 6	Biodiversity Conservation and Sustainable Management of Living Natural resources
Performance Standard 7	Indigenous Peoples
Performance Standard 8	Cultural Heritage

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3. Performance Standard 1 establishes the importance of (i) integrated assessment to identify the environmental and social impacts, risks, and opportunities of projects; (ii) effective community engagement through disclosure of project-related information and consultation with local communities on matters that directly affect them; and (iii) the client's management of environmental and social performance throughout the life of the project. Performance Standards 2 through 8 establish objectives and requirements to avoid, minimize, and where residual impacts remain, to compensate/offset for risks and impacts to workers, Affected Communities, and the environment. While all relevant environmental and social risks and potential impacts should be considered as part of the assessment, Performance Standards 2 through 8 describe potential environmental and social risks and impacts that require particular attention. Where environmental or social risks and impacts are identified, the client is required to manage them through its Environmental and Social Management System (ESMS) consistent with Performance Standard 1.
4. Performance Standard 1 applies to all projects that have environmental and social risks and impacts. Depending on project circumstances, other Performance Standards may apply as well. The Performance Standards should be read together and cross-referenced as needed. The requirements section of each Performance Standard applies to all activities financed under the project, unless otherwise noted in the specific limitations described in each paragraph. Clients are encouraged to apply the ESMS developed under Performance Standard 1 to all their project activities, regardless of financing source. A number of cross-cutting topics such as climate change, gender, human rights, and water, are addressed across multiple Performance Standards.
5. In addition to meeting the requirements under the Performance Standards, clients must comply with applicable national law, including those laws implementing host country obligations under international law.
6. The World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines) are technical reference documents with general and industry-specific examples of good international industry practice. IFC uses the EHS Guidelines as a technical source of information during project appraisal. The EHS Guidelines contain the performance levels and measures that are normally acceptable to IFC, and that are generally considered to be achievable in new facilities at reasonable costs by existing technology. For IFC-financed projects, application of the EHS Guidelines to existing facilities may involve the establishment of site-specific targets with an appropriate timetable for achieving them. The environmental assessment process may recommend alternative (higher or lower) levels or measures, which, if acceptable to IFC, become project- or site-specific requirements. The General EHS Guideline contains information on cross-cutting environmental, health, and safety issues potentially applicable to all industry sectors. It should be used together with the relevant industry sector guideline(s). The EHS Guidelines may be occasionally updated.
7. When host country regulations differ from the levels and measures presented in the EHS Guidelines, projects are expected to achieve whichever is more stringent. If less stringent levels or measures are appropriate in view of specific project circumstances, a full and detailed justification for any proposed alternatives is needed as part of the site-specific environmental assessment. This justification should demonstrate that the choice for any alternative performance level is protective of human health and the environment.

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8. A set of eight Guidance Notes, corresponding to each Performance Standard, and an additional Interpretation Note on Financial Intermediaries offer guidance on the requirements contained in the Performance Standards, including reference materials, and on good sustainability practices to help clients improve project performance. These Guidance /Interpretation Notes may be occasionally updated.

Source: "Performance Standards on Environmental and Social Sustainability," www.ifc.org, January, 2012.

INSPECTION COPY

Exhibit III

Map of CGPL (Tata Mundra Power Plant) – Power Plant and Outfall Channel



Source: "The Tata Mundra Project," <http://worldisgreen.files.wordpress.com>, April, 2008.

Exhibit IV
Fund Provider of Tata Mundra Project

Type of Fund	Fund Provider	Amount (in million US\$)	% of Total Funding
Equity	Tata Power	1,000	24%
Loan	International Finance Corporation	450	11%
Loan	Asian Development Bank ¹⁸ (ADB)	450	11%
Loan	Korean ECA ¹⁹	800	19%
Loan	Local Indian Banks ²⁰	1,500	36%
	Total	4,200	100%

Source: "IFC to lend Rs 1,800 Crore to Tata's Power Project," http://articles.economictimes.indiatimes.com/2008-04-09/news/28453097_1_mundra-project-power-project-ifc-release, April 9, 2008.

Exhibit V
Comparison of CGPL Imported Coal with others

	Efficiency	Coal Consumption (Million tons)	CO ₂ (Million tons)
CGPL Imported Coal	40.50%	10.8	23.4
Subcritical Indian Coal	35.00%	20.4	28.8
Subcritical Imported Coal	35.00%	12.5	27

Source: "The Tata Mundra Project," <http://worldisgreen.files.wordpress.com/2008/04/tatamundraproject04-04.ppt>.

¹⁸ Asian Development Bank (ADB) is a Philippines-based regional development bank which supports Asia-Pacific countries with the aim of freeing this region of poverty.

¹⁹ Korean ECA is the Export Credit Agency of South Korea.

²⁰ The local Indian banks were SBI (Lead bank), India Infrastructure Finance Co, Housing & Urban Development Corporation, Oriental Bank of Commerce, Vijaya Bank, State Bank of Bikaner & Jaipur, State Bank of Hyderabad, State Bank of Travancore, and State Bank of Indore.

Exhibit VI
Loss of Fishes and others (in tons)

Year	Bunde r	Fish Trade r	Prawn Boil Dry	Praw n Dry	Pomf ret<5 o	Pomfr et>50	Lobste r >100	Lobst er small
2009-10	Saleiha	Abdul Bhusa r	NA	–	–	110	1,714	–
2010-11			NA	–	–	0	137.4	139
2011-12			NA	–	–	–	125.5	37
2009-10	Tragdi	Juma Reliya	63	1,426	49	24	3.3	4.0
2010-11			86.5	148	79	48.5	0.4	0
2011-12			06	21	18.5	2.5	0	0

Note: 1. Only large variety of important fish-catch figures are mentioned here.

2. Tata Mundra plant was fully commissioned in March 2013.

Source: “The Real Cost of Power,” www.bicusa.org, June, 2012.

Exhibit VII
Tata Mundra – Inlet and Outfall Channel Water Test

Parameter	Inlet	Outlet
Date of Sampling	02.06.2012	02.06.2012
Salinity - ppt	41	43
pH	7.7	6.8
TDS - ppm	41230 ppm	43910 ppm
DO-mg/I	3.1	2.6
Turbidity-NTU	39 NTU	46 NTU
Color	No visible color	Slightly reddish/brownish
Odor	No smell	Strong odor
COD-mg/I	126	287
BOD-mg/I	2.4mg/I	7.8 mg/I

Source: “The Tata Mundra Project,” <http://worldisgreen.files.wordpress.com>, April 2008.

Exhibit VIII
Fall in Income of Fishermen of Saleiha Village

Years	Boats	Earnings (in million Rs.)
2004-05	12	2.5-2.7
2010	16	2.1
2011	21	0.9

Compiled from "The Real Cost of Power," www.bicusa.org, June, 2012.

Exhibit IX
Some Specific Community Outreach Initiatives of CGPL

1. Village-level development advisory committees formed to ensure wider village participation in conceiving, developing, and implementing improvement initiatives.
2. Fodder provided to dairy cattle through the Gaushala initiative.
3. Priority to local community members for project-related jobs or contracts.
4. Community infrastructure through construction of modern roads, stadium, community halls, drainage lines, clean drinking water and sanitation, boat lights, and street lights.
5. Improved health facilities through periodic medical camps.
6. E-learning stations (computer kiosks) in schools.
7. Microfinance opportunities and training for self-help groups.
8. Drip irrigation, pond renovation, well recharge, and check-dam programs.
9. Better fishing nets to fisherfolk, solar lights for fishing boats, and fishing equipment.
10. Sagarbandhu project for development of fisherfolk in association with the Aga Khan Society for Rural Development Program (India).
11. Addressing indebtedness and livelihood enhancement for seasonal migrant fishing communities living near the plant in association with Fisheries Management Resource Center, a non-governmental organization.

Source: www.ifc.org

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