LESSONS LEARNED FROM COMPLIANCE REVIEWS OF THE ASIAN DEVELOPMENT BANK (2004–2020)

Mundra Ultra Mega Power Project in India

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ASIAN DEVELOPMENT BANK

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LESSONS LEARNED FROM COMPLIANCE REVIEWS OF THE ASIAN DEVELOPMENT BANK (2004–2020)

Mundra Ultra Mega Power Project in India
The Lessons Learned from Compliance Reviews of the Asian Development Bank (2004–2020) series endeavors to provide lessons and institutional knowledge to strengthen ADB’s development effectiveness. The lessons shared through this series provide opportunities to improve project design and implementation and strengthen the compliance review function. In case of discrepancies between this document and ADB’s operational policies and Accountability Mechanism Policies 2003 and 2012, the respective policies will prevail.

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Notes:

In this publication, “$” refers to United States dollars.
ADB recognizes “Korea” as the Republic of Korea.

Cover page: Many steps, one process. The cover highlights the different processes involved in the compliance review of a project—the field visits, consultations, and discussions that compose ADB’s Accountability Mechanism (symbolized by the gear) and work toward a unified goal.

All photos are from ADB.
Coastal Gujarat Power Limited Mundra Power Plant (photo by the Compliance Review Panel).
# CONTENTS

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## ACKNOWLEDGMENTS
v

## ABBREVIATIONS
v

1 | KEY LESSONS 1

2 | BACKGROUND 2

3 | KEY SUCCESSES AND CHALLENGES 5

4 | LESSONS LEARNED AND RECOMMENDATIONS 6

## REFERENCES 12
ACKNOWLEDGMENTS

The Lessons Learned from Compliance Reviews of the Asian Development Bank (2004–2020) series was developed by the Office of the Compliance Review Panel (OCRP) of the Asian Development Bank (ADB), under the leadership of Compliance Review Panel (CRP) Chair and OCRP Head Elisea G. Gozun, and with the support of the following team members: Advisor Irum Ahsan, Senior Compliance Review Officer Josefina C. Miranda, and Associate Compliance Review Coordinator Julie Anne B. Mapilisan-Villanueva. This report was prepared with significant contributions from CRP members Halina Ward and Ajay Deshpande. Report preparation also benefited from insights generously shared by ADB Management, current and former ADB staff, project consultants, and former staff of private sector borrower and OCRP staff who were involved in the compliance review of the Project.

ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>CGPL</td>
<td>Coastal Gujarat Power Limited</td>
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<td>CRP</td>
<td>Compliance Review Panel</td>
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<tr>
<td>CSR</td>
<td>corporate social responsibility</td>
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<tr>
<td>IFI</td>
<td>international financial institution</td>
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<tr>
<td>km</td>
<td>kilometer</td>
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<td>OCRP</td>
<td>Office of the Compliance Review Panel</td>
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<td>OM</td>
<td>ADB’s Operations Manual</td>
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<td>PSOD</td>
<td>Private Sector Operations Department</td>
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<tr>
<td>RAP</td>
<td>remedial action plan</td>
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<tr>
<td>SPS</td>
<td>Safeguard Policy Statement</td>
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</table>
The Mundra Ultra Mega Power Project in India was the second project supported by the Asian Development Bank (ADB) to be addressed through a compliance review under the 2012 Accountability Mechanism Policy. The policy’s compliance review function investigates alleged noncompliance by ADB with its operational policies and procedures where these may have directly, materially, and adversely affected complainants during the formulation, processing, or implementation of an ADB-assisted project.

This publication is the fifth in the Lessons Learned from Compliance Reviews of the Asian Development Bank (2004–2020) series prepared by ADB’s Office of the Compliance Review Panel (OCRP). The series examines the completed compliance reviews of eight ADB-assisted projects that were the subject of complaints filed with the OCRP in 2004–2020. This series explores the challenges, gaps, and good practices identified in each project during the compliance review.

This report presents insights obtained following a thorough review of documents and an analysis of a survey done among former staff of the borrower and among current and former ADB project staff at headquarters and at the resident mission in India. Though the Lessons Learned series is prepared by the OCRP, it does not reflect OCRP’s opinion unless expressly specified.

This series provides practical insights to development practitioners, safeguard specialists, nongovernment and civil society organizations, government personnel, project beneficiaries, and ADB Management and staff seeking to learn more about project design and implementation, and the compliance review process. The intent is to contribute to capacity development in project management and good institutional governance.

### SNAPSHOT

<table>
<thead>
<tr>
<th>Project</th>
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<tr>
<td><strong>Project Title</strong></td>
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<tr>
<td>Mundra Ultra Mega Power Project</td>
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<td><strong>Country of Implementation</strong></td>
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<tr>
<td>India</td>
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<tr>
<td><strong>ADB Financing</strong></td>
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<tr>
<td>$450 million (Loan 2419), including $200 million from a syndicated loan with the Export-Import Bank of Korea (only $351.2 million was disbursed)</td>
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<tr>
<td><strong>Approval Date</strong></td>
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<tr>
<td>17 April 2008</td>
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<tr>
<td><strong>Plant fully operational on</strong></td>
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<td>21 March 2013</td>
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<tr>
<td><strong>Project Impact Categorization</strong></td>
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<tr>
<td>A for Environment</td>
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<tr>
<td>B for Involuntary Resettlement</td>
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<tr>
<td>C for Indigenous People</td>
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<tr>
<td><strong>Complaint</strong></td>
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<tr>
<td><strong>Date of Compliance Review Request</strong></td>
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<tr>
<td>12 July 2013</td>
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<tr>
<td><strong>Complaint Status</strong></td>
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<tr>
<td>On 4 September 2018, the Compliance Review Panel (CRP) concluded the annual monitoring of the project and circulated its third annual monitoring report to the ADB Board of Directors. The complaint has since been closed.</td>
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<tr>
<td><strong>Link to Complaint Documents</strong></td>
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</table>
1 Key Lessons

The compliance review of ADB’s actions regarding the Mundra Project brought out several important lessons. It also highlighted various challenges as well as opportunities to improve project management and compliance review processes. The significant lessons learned from the compliance review are discussed below.

1.1 Adequate identification of project-affected people is the first step toward ensuring meaningful consultation, which improves project design, prevents harm, and maximizes project benefits.

In planning a project, ADB must make sure that (i) the borrower comprehensively determines the project’s impact, (ii) all people who could be affected by the project are identified, and (iii) all affected people are effectively consulted.

Inadequate identification of people who could be affected by the project results in disregard for their concerns or views about the project’s social and environmental impact, which should be sufficiently discussed in public consultations. Incomplete gathering of insights during project consultation and assessment can (i) lead to harm; (ii) require spending for remedial actions that could have been avoided, thus adding to overall project costs; and (iii) make the project less beneficial to project-affected people. Proper scoping and effective consultations are, therefore, essential. ADB must also provide suitable advice to borrowers to ensure these are performed adequately. More information can be found in section 4.1.

1.2 A comprehensive assessment of baseline conditions in the project area is essential for the adequate determination of the project’s impact, which informs project planning, and the design and monitoring of effective mitigation measures.

As indicated in the final compliance review report of the Compliance Review Panel (CRP), ADB must see to it that borrowers gather adequate baseline data on the project’s environment, its socioeconomic features, and the condition of affected people and communities. Baseline data collection by a competent entity with relevant expertise ensures that the project is designed in a way that avoids risks, provides for adequate mitigation measures for all possible adverse impact, and enables informed and guided monitoring of the project’s impact over time. Baseline information is also helpful in differentiating and tracking the project and its impact against other activities or facilities in the area with comparable environmental, socioeconomic, or health-related effects. Benefits to the affected population can thus be maximized and generally better development outcomes can be attained. More information can be found in section 4.2.

1.3 ADB’s project team must track changes in project design and implementation in a timely manner to avoid harmful impact.

Alongside an adequate review of project plans, ADB must properly monitor and oversee all changes in the project. To this end, ADB must establish and maintain systems for identifying changes in project plans or in project implementation at an early stage. Such changes, once identified, must be followed up by ADB Management, to make sure that project owners take timely action to avoid harm and consequently higher project costs. More information can be found in section 4.3.

1.4 ADB must see to it that all stakeholders in ADB-funded private sector projects understand ADB’s operational policies, including its Accountability Mechanism Policy, and the specific mandate of the Compliance Review Panel.

ADB’s operations departments perform a critical role in ensuring that all relevant stakeholders, particularly counterparts and clients from the government and the private sector, fully understand ADB’s operational policies—the Accountability Mechanism Policy among them—and the stakeholders’ responsibility for compliance. These policies lay firm foundations for social safeguards (including health and gender aspects) and environmental safeguards in ADB’s activities, besides establishing accountability for upholding the safeguard standards. A clearer understanding of the Accountability Mechanism Policy among all stakeholders also helps to straighten out misconceptions about the policy mandate, and advances ADB’s development effectiveness mission.

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The Accountability Mechanism is essential to ADB’s lending operations. It can serve as another guarantor of ADB’s commitment to social and environmental safeguards, thus delivering ongoing project compliance in support of ADB’s mission. More information can be found in sections 4.4 and 4.5.

1.5 Project compliance can be improved through effective awareness-raising and capacity-building activities.

A stronger understanding of the principles behind the Accountability Mechanism Policy 2012 among ADB Management and staff is fundamental to an effective compliance review. Likewise for ADB’s clients, developing a clearer grasp of ADB’s safeguard policies and the ability to work within those policies and ADB’s Accountability Mechanism lead to proper safeguard compliance and client cooperation in the event of a compliance review. In-reach and outreach learning sessions with the OCRP would ensure that ADB’s internal and external stakeholders share an accurate understanding of the CRP’s mandate and its role in a compliance review. More information can be found in section 4.6.

1.6 Prompt assessment and corrective actions mitigate harm and reduce additional project costs.

Prompt mitigation action prevents further harm and hastens progress toward compliance with ADB’s policies and procedures. The Mundra Project’s compliance review shows the benefits of the proactive approach taken by ADB Management in addressing issues raised by complainants for compliance review. Swift redress even before the review process is completed can reduce both adverse project impact and the costs of any further remedial actions that might otherwise be needed. More information can be found in section 4.7.

2 BACKGROUND

2.1 Brief Project Description

The Mundra Project involved the construction, operation, and maintenance of a 4,000 megawatt (MW) coal-fired power plant near the Gulf of Kutch in Mundra, Gujarat, India. It was commissioned by the Government of India in December 2006 to reduce power shortages and help stimulate regional economies by 2012, under the government’s “Power for All” program. Tata Power Company Limited won the bid to build, own, and operate the power plant. Tata Power’s subsidiary Coastal Gujarat Power Limited (CGPL) operates the plant, which has been in full operation since 21 March 2013, supplying 2%–3% of electricity needs in Gujarat, Haryana, Maharashtra, Punjab, and Rajasthan. The total cost of the Mundra Project was $4.62 billion. ADB funded $351.2 million, 7.6% of the total project cost, under Loan 2419.4

The project site covered 1,052 hectares of land, including private land in Tunda acquired by CGPL through a negotiated compensation settlement in 2006, as well as public land in Tunda, Mota Kandagara, and Nana Bhandya.5 To offset the project’s impact on local economic activities, livelihood programs were established. These programs involved assistance to cattle herders and fisherfolk in the nearby villages of Modwa and Tragadi.6

The project was located in the Mundra coastal zone. This was not a designated coastal protected area, but the project site was just 25 kilometers (km) away from a national park and marine sanctuary and 1.5 km away from the Gulf of Kutch, an area well known for its ecological richness.7 Under ADB’s safeguard policies, the project was assigned Category A for environmental impact,8 and Category B for involuntary resettlement.9

3 Footnote 1. Executive Summary, paras. 1–2, p. ii.
6 Footnote 1. Executive Summary, para. 1, p. iv.
7 Footnote 1. Executive Summary, para. 3, p. ii; and para. 7, p. 3.
9 A project in Category B for involuntary resettlement “includes involuntary resettlement [impact] that [is] not deemed significant. A resettlement plan, including assessment of social [impact], is required.” As it was constructed on unsettled grazing land, the project had limited impact in this regard and required only the preparation of a short resettlement plan. ADB 2013, pp. 2–3, para. 8; ADB 2015a, p. iii, para. 5. Asian Development Bank. 2013. Operations Manual Bank Policies (BP). OM Section F1/BP. Manila. para. 8, pp. 2–3 of 19; and Footnote 1. Executive Summary, para. 5, p. iii.
In accordance with ADB’s usual practice in private sector projects, its Private Sector Operations Department (PSOD) undertook a project assessment mission in 2007 while the project was being prepared for approval by the ADB Board of Directors (Board), and subsequently fielded monitoring missions in 2009 and 2011. In 2012, ADB was made aware of a complaint about the plant filed by affected people with the Compliance Advisor/Ombudsman of the International Finance Corporation and the Multilateral Investment Guarantee Agency. That same year, ADB also received a report commissioned by the National Fishworkers’ Forum alleging significant detrimental impact caused by the project. In response to these developments, ADB fielded supervision missions with greater frequency and PSOD likewise increased its engagement with CGPL.

The CRP’s compliance review found that an inadequate review of CGPL’s social and environmental impact assessments by ADB had resulted in the failure to fully identify the project-affected segments of the community. The CRP’s review also revealed lapses in ADB’s monitoring of changes introduced by CGPL into project design and implementation. These instances of noncompliance contributed to adverse impact on the environment and the community.

2.2 Summary of the Complaint

In July 2013, the general secretary of Machhimar Adhikar Sangharsh Sangathan (MASS, the Association for the Struggle for Fishworkers’ Rights) and two of its members, a farmer and a fish trader, filed a complaint with ADB’s Accountability Mechanism requesting a compliance review. The complaint alleged harm to the environment and to the complainants’ livelihood and health, and attributed this adverse impact to ADB’s noncompliance with its environmental and social safeguard policies.

Specifically, the complainants alleged that

(i) ADB had failed to ensure the conduct of broad meaningful consultations with relevant stakeholders in communities, thus preventing these unrecognized affected persons from adequately exercising their right to information and participation (for example, fisherfolk were not considered among project-affected people);
(ii) social and environmental impact assessments of the project had been deeply flawed;
(iii) fisherfolk had suffered significant and irreversible livelihood losses, due to
(a) destruction of creeks and mangroves,
(b) thermal pollution,
(c) violation of the environmental clearance granted for a closed-cycle cooling system,
(d) destruction of marine life as a result of deoxygenation of seawater and probable chemical pollution, and
(e) increased salinity of seawater from brine discharged by the desalination plant;
(iv) health of communities in the area had deteriorated as a result of coal dust and fly ash pollution;
(v) fishing grounds were no longer accessible;
(vi) horticulture had been adversely affected;
(vii) the groundwater table, in an area with little rain, had significantly declined;
(viii) there was a lack of employment opportunities for the local population; and
(ix) migrant labor had generated stress, affecting local men, and resulted in increased incidents of violence against women.

2.3 Compliance Review Process and Results

In its compliance review, the CRP considered relevant ADB operational policies and procedures that were in effect when the project was processed and approved. The CRP’s review consisted of the following:

(i) a desk review of documents;
(ii) interviews with ADB Management and staff;
(iii) meetings with government officials from relevant regulatory agencies;
(iv) solicitation of expert opinions from relevant local research institutions in India;
(v) meetings with project consultants and with local nongovernment organizations;
(vi) meetings with the complainants, including their authorized representative, and with some affected persons;
(vii) visits to the area around the plant, including adjacent communities of migratory fisherfolk living temporarily in the villages’ bander.¹⁴
(viii) visits to the Tata Mundra plant, including its intake and outfall channels and the Adani West Port, where coal fuel was received and unloaded; and
(ix) site visits to the Kotdi and Modwa creeks.

One difficult aspect of the impact assessment was the presence of another large coal-fired power plant—the Adani plant, generating 4,620 MW—just 2 km away. Its proximity to the Tata Mundra plant compounded the challenge of attributing certain environmental impact to one plant or the other, in at least two areas: (i) the impact of emissions on air quality and health; and (ii) the impact on the marine environment, related to the operation of port facilities and a cooling-water intake shared between the two power plants. However, as the port facilities and the water intake were owned and operated by Adani, and were merely being leased to CGPL, the environmental impact of both operations was considered the legal responsibility of Adani and was not assessed in the compliance review.

The CRP identified several instances of ADB’s noncompliance with its operational policies and procedures, and concluded that the noncompliance had resulted in harm. The CRP’s determination of noncompliance was based on perceived lapses in ADB’s responsibility for ensuring the following:

(i) adequate consultation and public communication on the project’s design, including consultation with all project-affected persons;
(ii) completion of deficiencies in environmental and social impact assessments, including the collection of clear baseline data on environmental and social conditions, and establishment of a robust monitoring system to ascertain impact on project-affected persons;
(iii) broad consultation and adequate compensation for people affected by the access restrictions;
(iv) sufficient mitigation of thermal effects and chemical pollution from the discharge of cooling water through an outfall channel, to avoid harm to pagadiya¹⁵ fisherfolk; and
(v) the borrower’s adherence to national air quality standards (the CRP concluded that continuous violations of prescribed air quality standards were likely to cause harm, and that remedial measures were needed to achieve compliance).

At the close of the CRP’s 3-year monitoring period in September 2018, remedial actions designed by ADB Management to address ADB’s noncompliance in the project had achieved only partial compliance in three areas:

(i) the disclosure of information and the conduct of consultations with affected people, which the remedial action plan (RAP) had addressed with inclusive and transparent stakeholder consultations;
(ii) thermal discharge in the outfall channel, resulting in livelihood losses among pagadiya fisherfolk, which the RAP had dealt with by means of studies on the project’s impact and the implementation and monitoring of the Livelihood Improvement Plan;
(iii) ambient air pollution, which the RAP had addressed with the establishment of 10 air quality monitoring stations in nearby villages, along with studies on community health impact correlated with air quality, and the public disclosure and communication of the results of those studies.

As of 2018, the findings of noncompliance resulting from access restrictions remained unaddressed, pending the restoration of adequate compensatory services to the bander. The issue of chemical pollution from noncompliance relating to iron sludge treatment and disposal has since been closed, with a qualified exemption based on the application of local standards for effluent disposal.¹⁶

Though there was progress made in the implementation of remedial action, in effect none of the CRP’s findings of ADB’s noncompliance had been fully addressed to bring the project back into compliance.

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¹⁴ An area for refuge along the shoreline, typically on the outskirts of the village. (Kalavadiya and Patel 2015; Swadeep, n.d.) The Sea, the Law, and Salt: How we used the law to reclaim the intertidal area at Bavdi Bander, Gujarat, India; Swadeep. (undated). Enhancing livelihood of small fisherfolk. (Both accessed 14 May 2021).


3 KEY COMPLIANCE REVIEW PROCESS
SUCCESSES AND CHALLENGES

The table summarizes significant successes, gaps, and challenges brought out during the compliance review of the Mundra Project, as identified by survey respondents and through the desk review of the compliance review documents. Each point is discussed further in section 4.

<table>
<thead>
<tr>
<th>Positive Outcomes of the Compliance Review Process</th>
<th>Process Gaps and Challenges Identified through the Compliance Review</th>
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<tbody>
<tr>
<td>• Immediate PSOD engagement with the project owner, even before the CRP’s investigation had concluded, prevented further harm. More information can be found in section 4.7.</td>
<td>• Inadequate scoping of affected people. More information can be found in section 4.1.</td>
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<tr>
<td>• The PSOD increased its (i) assessment of client capabilities and (ii) efforts to reinforce safeguards compliance, through such means as increasing the number of safeguard personnel. More information can be found in section 4.1.</td>
<td>• Poor identification of potential project impact, including the cumulative impact. More information can be found in sections 4.1 and 4.2.</td>
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Source: Based on a comprehensive analysis of ADB compliance review reports and project documents, and the harvesting of lessons learned through interviews and survey responses, for this report on the Mundra Ultra Mega Power Project in India in the Lessons Learned from Compliance Reviews of the Asian Development Bank (2004–2020) series.
4 LESSONS LEARNED AND RECOMMENDATIONS

The compliance review process under ADB’s Accountability Mechanism Policy follows steps falling into the following categories: (i) eligibility determination, (ii) compliance review, (iii) remedial action plan / management action plan preparation, and (iv) monitoring. This section identifies lessons from the compliance review of the Mundra Ultra Mega Power Project in India and highlights their implications for ADB project design and implementation, and for future compliance reviews.

4.1 Adequate identification of project-affected people is the first step toward ensuring meaningful consultation, which improves project design, prevents harm, and maximizes project benefits.

ADB’s private sector (nonsovereign) lending projects differ in several ways from its public sector (sovereign) lending projects. A key distinguishing feature of private sector lending projects is the generally late start of ADB’s involvement, often at a relatively advanced stage of project preparation. At times, environmental assessments have already been prepared in accordance with local laws or permits have already been secured. As these activities precede ADB’s engagement, their results may not necessarily meet ADB’s Safeguard Policy Statement (SPS) requirements.

Moreover, as stated in its final compliance review report on the Mundra Project, the CRP found that ADB did not adequately advise the CGPL of ADB’s policy requirements in several critical areas. ADB did not direct the client to conduct at least two broad-population and wide-locality consultations for the environmental and social impact assessments before loan processing. It also did not inform the client of its responsibility for sharing information about the environmental impact assessments with potentially affected people through meaningful consultations. These omissions led to (i) deficiencies in identifying and scoping project-affected people, which diminished the project benefits and the adequacy of the livelihood restoration program; (ii) less-than-adequate identification of the project’s environmental impact due to the lack of meaningful consultations with all possibly affected people; and (iii) mitigation measures that did not fully address the adverse social and environmental impact of the project.

ADB’s independent due diligence overlooked some residual environmental and social impact on affected communities and thus reduced the effectiveness of decisions and actions taken by the CGPL, including the following:

(i) The CGPL concluded that the project’s impact on fisheries was due solely to the restrictions on access to traditional fishing grounds and cattle grazing imposed on residents of two nearby villages. This misguided conclusion limited the identification of (and consultation with) affected people and caused them harm. The wider impact of the plant’s discharge of higher-temperature cooling water into coastal fisheries was, therefore, disregarded, although the discharge had already adversely affected livelihoods in the wider bander fishing community. Reliance on small-scale fishing among the impoverished, vulnerable pagadiya was also overlooked.

(ii) The CGPL’s livelihood restoration program centered on the needs of residents of the two villages nearest to the plant. While the company later authorized corporate social responsibility (CSR) programs for bander people, these programs did not meet ADB’s requirements for a comprehensive public consultation and assessment of the project’s potential impact overall.
(iii) Inadequate identification of, and consultation with, affected people resulted in gaps in the determination of the project’s wider impact. The gaps, in turn, led to deficiencies in the collection of pre-project data on fish yield and costs associated with direct access to traditional fishing grounds and markets. Fishing communities experienced dual adverse effects: (a) the socioeconomic impact of the plant’s cooling water discharge in the redesigned location, and (b) unquantifiable additional costs imposed on the fishing economy as a result of the increase in travel time along the new access road.25

The Mundra Project highlighted the importance of constant and meaningful engagement with local residents, particularly during field-based review missions, in generating useful insights into how the lives of potentially affected people can be improved during project operation.

In addition, a fully functioning grievance redress mechanism established at the community level will ensure that complaints are adequately resolved in the early stages of project planning and implementation. This obviates the need for affected people to elevate complaints to the head office of the company or the international financial institution (IFI) — actions that attract international attention and magnify the company’s or institution’s exposure to reputational risk.

A survey respondent from ADB’s Regional and Sustainable Development Department (now the Sustainable Development and Climate Change Department) expressed the view that in “complex projects, management should allocate technically skilled and experienced staff and support them with external experts as needed.” In the Mundra Project, according to this survey respondent, “the safeguards staff engaged during the project approval stage did not have [the necessary] experience or expertise to evaluate large projects in [a] coastal setting.” ADB managers and specialists working on environment and social issues must have access to systems that enable and support the early identification of such skill gaps during project planning, so that supplemental capacity can be provided through the engagement of external experts if and where needed.

4.2 A comprehensive assessment of baseline conditions in the project area is essential for the adequate determination of the project’s impact, which informs project planning, and the design and monitoring of effective mitigation measures.

Good project preparation, one respondent noted, “is the magic bullet behind successful project implementation” and baseline assessments are an integral part of it. Project design can be only as good as the data and information on which it is based. That is why comprehensive baseline assessments of the environment, the socioeconomic features of communities, and relevant health conditions of potentially affected people are all important.

ADB’s due diligence prior to project approval should ensure that impact assessments account for all prevailing conditions in the project locale. As the Mundra Project was located near another large coal-based thermal power plant (the Adani plant), it was necessary for the project team to focus on studying the likely cumulative impact of these two plants. The study of cumulative impact is especially important when it is difficult to attribute impact to any one industry because of the similar nature of their operations.

Given the preceding observation, particular focus must be accorded to measuring and recording the cumulative impact of similar industries operating in the area, as also mandated under ADB policies.26 Such baseline assessments assist in differentiating and tracking the impact of the ADB project against that of similar existing operations, as they provide objective measures for monitoring impact and ultimately attributing any impact to the ADB project or to others implemented before it. In this instance, between the project and the Adani plant, the challenge of attributing impact on air quality and health and the socioeconomic effects of thermal discharges on marine fisheries remained, clearly because of a lack of baseline studies.

Baseline assessments also inform impact modeling, which facilitates project design and impact mitigation, and assists in defining monitoring parameters that measure the project’s progressive impact. The availability of baseline data on related cumulative impact is also helpful during project monitoring.

as the effectiveness of the project’s design and implementation of mitigation measures can be easily justified against the baseline information. In the Mundra Project, baseline data would have facilitated the monitoring of the socioeconomic effects of both thermal discharges on marine fisheries and the new access road as mitigation for access restrictions, had the data been obtained earlier.

4.3 ADB’s project team must track changes in project design and implementation in a timely manner, to avoid harm.

The redesign of the power plant’s water outfall channel in 2009 necessitated the relocation of the channel to another creek. Consequently, under ADB requirements, another impact assessment had to be done, as the first marine environmental impact assessment in 2007 was based on the assumption of a different outfall channel location. After reviewing the CGPL’s assessment of marine impact based on the new location, the CRP concluded that ADB fell short of its monitoring responsibilities, in failing to advise the CGPL of the need to conduct additional consultations with potentially affected people in the new location.27 With no public communication on the sudden restricted access to fishing grounds brought about by the construction of the outfall channel, residents of Tragadi staged public protests in 2010.28

Staff members of ADB’s PSOD reflected in hindsight that the issue could have been flagged as early as 2008–2009, when “the new outfall channel alignment was designed...immediately after Board approval.” The ADB deal team and the safeguard specialists assigned to the project “could have tracked the progress of the project more closely, to ensure that any environmental and social impact as a result of changes in alignment are managed.”

Reflections like these, taken together with the findings of the compliance review, point toward important insights into the overall quality required of ADB’s monitoring and supervision of projects during implementation. They illuminate the significance of steps that ADB Management and staff must take to

(i) monitor changes in the project owner’s plans or implementation of its plans;
(ii) carefully review new or revised impact assessments required under ADB policy in response to significant changes in project plans;
(iii) where needed, seek clarification on the proposed changes, to understand better their social and environmental implications; and
(iv) make sure that the proposed changes comply with ADB policies intended to avoid or mitigate harm or the potential for harm.

4.4 Private sector client’s understanding of ADB’s social and environmental safeguard policies and their requirements is crucial for compliance and sustainability of project outcomes.

Compliance with ADB’s safeguard policy as a condition for lending ensures that ADB’s mission of sustainable development and poverty reduction is fulfilled in each project.29 In turn, the Accountability Mechanism is essential to ADB’s lending operations since it provides an additional guarantee of ADB’s commitment to its social and environmental safeguards, including gender and health aspects. Private sector clients often refer to their internal CSR systems and processes, which may be quite robust, but may not necessarily be enough to ensure complete compliance with ADB’s safeguard policies.

The Tata Group is known internationally for its commitment to environmental sustainability, good governance, and social responsibility. However, both the CRP’s findings in the final compliance review report and survey respondents’ comments gathered for this report pointed to the key distinction between (i) IFIs, which are fundamentally development organizations, tasked with delivering positive development outcomes, and (ii) private sector businesses, whose approaches to environmental sustainability, good governance, and social responsibility would in all likelihood be determined by the business case for action. Established private sector capacity to address issues relating to environmental sustainability and social responsibility is not a proxy for safeguard compliance.30

27 Footnote 1. para. 6, p. 2.
28 Footnote 1. para. 87, pp. 34–35.
30 “But these CSR activities, while most welcome, cannot be taken as a substitute for systematic consultations and assessments of potential [impact].” Footnote 1. p. vi.
The survey responses indicate that some members of ADB Management and staff lacked a full appreciation of the social responsibility and accountability required of a private sector borrower in accordance with ADB’s safeguard policy. On the one hand, survey respondents from PSOD suggested that the CRP’s apparent lack of recognition of the Tata Group’s CSR efforts was “narrow-minded and disrespectful to the company and presented ADB as a bureaucratic entity focused more on strict compliance than on the development effectiveness of its activities, which undermined its relevance.” At the same time, these survey respondents saw ADB policy requirements themselves as a challenge, suggesting that there was a “significant gap between ADB policy requirements... and what is realistically achievable in a private sector transaction context.”

This compliance review showed both the importance of ADB’s operations departments in ensuring the borrower’s proper understanding of its terms of lending—including adherence to ADB’s safeguards requirements—and the consequences of not doing so. Had ADB effectively explained the objective and principles of its Safeguard Policy Statement (SPS) to the CGPL, the company could have found it easier to design a livelihood restoration program that provided comprehensive and adequate support compliant with ADB’s SPS to those pagadiya “footfishers” who had lost much of their income when the outfall channel was built.

A respondent from the implementing agency reflected that “excessive and extensive CSR (corporate social responsibility) activities will never help to achieve policy compliance.” Even if the borrower is able to demonstrate the benefits of its CSR activities and capacity, it cannot be assumed that these alone will secure adherence to ADB’s safeguard policies. The same respondent added that private sector borrowers need “elaborate orientation and capacity building” on ADB’s safeguard policies and may even need to “hire staff who can address the requirement[s] of the policies.” More attention should therefore be paid to developing the capacity of private sector clients to fully understand and comply with ADB’s social and environmental safeguard policies and their requirements, to prevent confusion between these and the client’s own CSR requirements.

4.5 A clear understanding of ADB’s Accountability Mechanism Policy and the Compliance Review Panel’s specific role and mandate is indispensable in ensuring cooperation between the CRP, ADB, and ADB’s borrowers, to result in a robust compliance review.

In the surveys, some PSOD staff members remarked that the compliance review of the Mundra Project was not consistent with “internationally recognized and certified systems for conducting independent audit and review processes for environmental and social management, quality assurance and quality control.” These PSOD staff members also suggested that good practices in health, safety, environment, and quality management system audit and review should inform compliance reviews within an IFI’s independent accountability mechanism. These comments clearly showed a lack of appreciation of ADB’s Accountability Mechanism Policy and its specific mandate. The OCRP’s ongoing awareness-raising activities for ADB staff provide opportunities to clarify assumptions and strengthen staff understanding of the policy and its role in their work. A well-informed staff member can, in turn, provide similar capacity development training to clients.

All stakeholders must understand clearly that the boundaries of the CRP’s mandate are set under the Accountability Mechanism Policy. In a compliance review process, the CRP endeavors to (i) determine whether ADB complied with its responsibilities; (ii) probe for evidence of harm or potential harm resulting from any ADB noncompliance; (iii) where noncompliance is identified, ensure, through review and comment, that the resulting remedial action plan (RAP) submitted to the Board for approval is adequate to the task of bringing the project into compliance; and (iv) monitor the implementation of the RAP for at least 3 years, under normal circumstances.

The same PSOD staff members observed that the CRP had “decided on a very generous interpretation of its requirements for the assessment of actual or potential harm,” and added that, in their view, this approach was unscientific. In a separate response, an environment specialist from the Regional and Sustainable Development Department said that although the CRP “did very well to decipher the

safeguards issues on the project and take an objective view on most of the issues raised by the complainants” when assessing issues related to air quality, the CRP had “overemphasized the negative impacts and asked for studies that were perhaps not necessary.”

A survey respondent from the implementing agency felt that the CRP had “kept on expanding the agenda of the investigation in an ad hoc manner.” This misconception must be clarified because the CRP’s compliance review is not a fishing expedition, and neither is it a problem-seeking exercise in which reviewers search for problems or solicit complaints.32 The review is limited to issues raised in the complaint and specified in the Board-approved CRP terms of reference. However, in the course of its investigation, the CRP may uncover indications of ADB’s noncompliance and the harm caused, which it cannot ignore, even if these fall outside the scope of the affected people’s complaint.33 In this respect, the CRP is in part a guarantor of ADB’s development objectives. Its mandated practice, in general, is to bring such indications of noncompliance to the attention of the Board, for possible remediation by ADB Management, in agreement with the borrower. Working together, ADB’s operations departments and the CRP serve the needs of all ADB stakeholders—ADB’s membership, its borrowers as partners in development, and the greater public, whose betterment is the goal of ADB’s financing.

These highly critical reflections on the Mundra Project’s compliance review signify the potential value of increasing the transparency of the CRP’s work through the publication of information notes and discussions with stakeholders on the CRP’s work methods.

4.6 Project compliance can be improved through effective awareness-raising and capacity-building activities.

Survey responses received for this report seemed to show that the aims of a compliance review are not fully understood even by stakeholders who were directly involved in the Mundra Project’s compliance review process. For example, officers from the PSOD suggested that “the project facilitation role of the [Office of the Special Project Facilitator] would have been a more effective approach to resolving the [complainants’] claims and should be a necessary step before a project goes to compliance review.” However, the main objective of a compliance review is to determine whether there has been noncompliance with ADB’s operational policies and procedures. Problem-solving can at best serve this objective only indirectly.

For this reason, the Accountability Mechanism Policy 2012 allows complainants immediate access to the compliance review process without having to go through the problem-solving stage. This was a direct response to perceived shortcomings in the Accountability Mechanism Policy 2003, which required complainants to engage in problem-solving before they could gain access to the compliance review function.34 This change was intended to address instances in which harm caused may be linked to noncompliance. In such cases, the requirement to engage in problem-solving first may be a hindrance to immediate and effective harm reduction or removal. This is because problem-solving results in solutions that address specific problems of certain complainants, while compliance review looks at the root causes of such problems in a project and aims to help ADB mitigate the wider range of their effects.

The Accountability Mechanism Policy 2012 also stipulates that once a complaint has been deemed eligible for compliance review and the process is underway, there is no mechanism for reverting to problem-solving under the auspices of the Special Project Facilitator (SPF).35 ADB’s operations departments are not, however, prevented from trying to resolve issues raised in the complaint, even before the CRP’s investigation has ended. Immediate action is, in fact, encouraged.36 But in acting to mitigate complaints, ADB Management should take necessary care to ensure that complainants (i) do not feel intimidated or compelled to engage with ADB, and (ii) are free not to engage with ADB Management if they do not wish to do so.

In the light of these observations, the Mundra Project underscored the need for increasing the capacity development of PSOD staff on the application of
the SPS to private sector projects, so that they are equipped to assess their client’s capacity needs. It is also important to improve awareness and understanding of the nature of lending by IFIs like ADB—insitutions responsible for sustainable, resilient, and inclusive development—among private sector clients. Compliance with an IFI’s operational policies and procedures, particularly its safeguard and accountability requirements, should not be seen as excessive bureaucracy, but as central to the IFI’s lending activities, related to the goal of development effectiveness.

Regular outreach (with external stakeholders) and in-reach (with ADB’s internal stakeholders) is the main approach that the OCRP can take to ensure that all stakeholders share an accurate understanding of the CRP’s mandate and its role. The approach also offers opportunities to raise questions and, as needed, to discuss the drafting history of the Accountability Mechanism Policy 2012 and the fundamental strategic choices inherent in its design.

The PSOD officers’ perceptions and views also indicate that they would appreciate a greater emphasis placed by the CRP on explaining its role, mandate, and work methods, through awareness-raising and capacity-building activities initiated when a compliance review is under way. No parties to compliance review processes should have any doubt about these basic issues.

4.7 Prompt assessment and corrective actions mitigate harm and reduce additional project costs.

Swift corrective assessment and action toward mitigation prevent further harm and result in the prompt achievement of project compliance with ADB’s policies and procedures. Proactively addressing issues raised by complainants for compliance review even before the review ends reduces adverse project impact, and may also bring down the costs of any further remedial actions needed. Noncompliance, after all, has high costs.

In the Mundra Project, the PSOD fielded a supervision mission right after the complaint was filed in 2013. Its safeguard specialists confirmed some alleged issues of harm and alerted the CRP to the project’s adverse impact on pagadiya fisherfolk. The PSOD then immediately began working out a livelihood restoration plan with the CGPL. This plan was later included in the remedial action plan that resulted from the compliance review, thereby mitigating potential harm to project-affected people sooner.

37 Internal stakeholders of ADB: Management, staff, and consultants. External stakeholders: private sector and government borrowers and their executing or implementing agencies, and affected communities.
38 Footnote 4. Executive Summary, para. 3, p. iii.
REFERENCES


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Mundra Ultra Mega Power Project in India

Lessons Learned from Compliance Reviews of the Asian Development Bank (2004–2020) is a series of publications prepared by ADB’s Office of the Compliance Review Panel (OCRP). The series features compliance reviews of eight ADB-assisted projects that were the subject of formal complaints filed with the OCRP in 2004–2020. In this publication, the fifth in the series, the focus is on the compliance review of the Mundra Ultra Mega Power Project in India, under the 2012 Accountability Mechanism Policy. Underscored here is the importance of developing a clear understanding of the policy context among stakeholders, along with strong and transparent stakeholder engagement, to promote trust and confidence in the compliance review process.

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