

**The Tactics of Persuasion:
Environmental negotiations over a corporate coal project in coastal India.**

Kanchi Kohli and Manju Menon

<http://dx.doi.org/10.1016/j.enpol.2016.05.027>

Abstract

Following the earthquake of 2001 in the Kutch district of Gujarat (India), the state government and corporate investors have focussed on the coastal areas of Kutch, India's largest district, for economic and infrastructure development. Within a decade of industrialisation of this landscape, these projects have had profound impacts on the environment, livelihoods and futures of its *Kutchi* inhabitants. Today, the coastline between the old Kandla and Mundra ports is drawn into a three-way battle between International Financial Institutions (IFIs) investing in coal projects, technical experts of sustainable development and international anti-coal campaigners. These three groups have selectively engaged the project affected *Kutchis* on the importance of economic development, environmental management and climate change. But the affected local people comprising artisanal fisherfolk who belong to a minority community, economically powerful salt and agricultural farmers and a traditional pastoral community of camel herders, frame, debate and act upon the impacts of the project in pragmatic ways. The range of remedies sought by them can be located between the practical expediency of everyday life and ethical questions about correct action. These remedies offer a glimpse of what regulatory bodies should be paying attention to rather than abstract or procedural justice.

1. Introduction

This paper seeks to understand the ways in which locally affected people respond to economic and social transformations introduced by new energy and infrastructure projects through one specific project context on the west coast of India. The paper first situates this region within the context of national and state investment priorities. It then analyses the relationships that various actors like developmentalists, environmentalists and corporations develop with the affected fishing, farming and pastoral communities living in the area in an effort to engage these communities in debates on economic development and environmental impacts. It finally draws out the outcomes of these relationships and how these have effected varied responses to such investments. The paper concludes with a set of recommendations to expand the scope of interactions between regulators and locally affected people in order to better shape the developmental and environmental outcomes of such projects.

2. Methods of data collection and analysis

The paper relies on data collected through ongoing ethnographic research conducted by the authors who work on the legal empowerment of communities affected by land use change in this region. The authors of the paper draw on discussions with key stakeholders in coastal Gujarat, especially those who are located in Mundra *taluka* (administrative block) of Kutch district for their analysis. They also draw upon data from policy documents, news reports and government data on investments in coastal Gujarat since 2000.

3. Evidence and Analysis

3.1 Transformation of a coastal town

Mundra is a coastal *taluka* (administrative block) in Kutch, India's largest district and part of the state of Gujarat in the western region of the country. Kutch district has a coastline of 406 kms and the littoral region of Mundra is known for its rich marine biodiversity with almost 5 km wide inter-tidal mudflats intercepted by numerous creeks, mangroves, seagrass beds and coral reefs (Fishmarc and Kutch Nav Nirman Abhiyan, 2010). For the fishing community, which largely practices artisanal fishing (with small boats) and *pagadia* (on foot) fishing, the exceptionally wide inter-tidal zone is their food bowl. Everyday when the tides come in, the *pagadiyas* walk into waist deep waters and cast their nets by hand, for the day's catch.

Mundra has always been the more prosperous part of the district, also supporting multiple land-based livelihoods such as salt production, grazing and horticulture. This is because of its relatively abundant 'sweet' ground water, unlike the other parts of this arid desert landscape. Pastoral communities have historically used the region's expansive drylands as common grazing grounds for their cattle and other livestock (Fishmarc and Kutch Nav Nirman Abhiyan, 2010). The *maldharis*, or the transient grazing community of Kutch as well as the settled cattle breeders of Mundra mainly used lands that belonged to the revenue department until recently. The possibility of productive livelihoods makes these areas more suitable for human settlements. The data on population of village settlements show that in areas like Mundra, the density is much higher than the district average of 34 persons/sq.km (*ibid*).

The people of Kutch have been part of a trading economy since the 17th century because of the four ports of Lakhpat, Anjar, Mandvi and Mundra that allowed them access to Africa and the Middle East. The Mandvi and Mundra ports, in particular, have been critical for the circulation of commodities and capital between Africa and commercial trade centres such as Bombay (Goswami, 2015). It was only technological advancements in shipping and rail transport in the 19th century that diminished their importance in the Indian Ocean trade network. Suzuki remarks, tourists who visit Mundra today would find it hard to imagine its glorious maritime past (Suzuki, 2015).

In 2001, the district was hit by a massive earthquake with its epicentre at Bhuj, the district headquarters located 46 kilometres from Mundra. It has been recorded that more than 20,000 people were killed and 167,000 were injured. The total property damage has been calculated at approximately 500 billion rupees (Gujarat Ecology Society et al, 2014). Since the earthquake, two trends simultaneously worked their way into the reconstruction of Kutch. One was that of rehabilitation and resettlement. A platform of NGOs called the Kutch Nav-nirman Abhiyan ('Kutch reconstruction Campaign') and referred in short as Abhiyan, coordinated the efforts for resource planning and governance, as well as strengthening livelihoods. Their efforts were commendable and recognised both within and outside Kutch as an important example of post disaster response and for strengthening the capacities of the affected people to cope with the disaster (Jha et.al, 2010). The Abhiyan has since been supporting the voluntary organizations of Kutch that are engaged in a range of livelihood generation, natural resource governance and women's empowerment related programs. They continue to be an important and influential public forum in the district.

Even as the reconstruction efforts were ongoing, the earthquake brought with it a critical shift in the policies of both the central and state governments. Soon after the earthquake, the central government declared a five-year excise exemption and the state government announced concessions in sales tax in order to facilitate investments into the area. The vast drylands were extended to investors at cheap rates and industries were lured to set up their plants with tax rebates and subsidies (Mishra, 2004; Dasgupta, 2001). Over a period of ten years, local enterprise gave way to the creation of a special economic zone, coal handling facilities and coal-based power stations. Mundra and Anjar, in particular were seen as critical hubs of industrial and infrastructure investment. The post disaster plan had become an opportunity to re-shape the economic future of Gujarat.

The prime vehicle of this transformation was the highly publicized international investors' meetings. These meetings started in 2002 and were called "Resurgent Gujarat". From 2003, these events renamed 'Vibrant Gujarat', have been organised every two years as a conference bringing together investors, political leaders, large corporations and policy makers. Prior to the conference each year, the government rolled out new policies in the areas of minerals, automobiles, industrial infrastructure and tourism. By 2007, 33 Special Economic Zones (SEZs)¹ approved by the central government for Gujarat were showcased at "Vibrant Gujarat". These included both state and centrally owned ones but the bulk i.e 26, were private SEZs. (Department Related Parliament Standing Committee on Commerce, 2007). Of these, the Kandla SEZ of 600 ha had already started operations and the largest SEZ of the Adanis was proposed to come up in Mundra where the company had ongoing port operations since 1998. The then Chief Minister (CM) of Gujarat, Mr. Narendra Modi, stated that the state's coastline was a 'natural destination for investment.' When asked about what would happen to the people who live in these parts, he was prompt to reply that these are 'wastelands where nothing grows'. He also stated that the rehabilitation of people is the responsibility of the SEZ developers.

¹ India promulgated its SEZ Act in 2005 with the objectives of generating economic activity and develop infrastructure facilities for it, promoting investment in and exports of goods and services, increasing domestic employment opportunities and developing infrastructure facilities.

It has been reported in the business newspapers that companies such as Essar, Adani Group, Suzlon, Sanghi Group, Tata Power, Welspun, Videocon International Ltd, Surya Group, JP Group and Electrotherm are some of those which set up industrial and infrastructure operations following these events. In one such article from 2011, the vice president of the Gandhidham Chamber of Commerce and Industry was quoted saying that since 2001 Kutch saw investments more than INR 15,000 crore through 200 companies (Mehta and Dave, 2011). A BBC report in its analysis of the Kutch post-earthquake reconstruction stated the number of industries in the district to be over 300 and rising (Buchanan and Solanki, 2011). Swaminathan S. Anklesaria Aiyar, a senior economic policy analyst in India, in a 2006 article in the Economic Times has referred to the Kutch earthquake being an opportunity for investors and a blessing in disguise for the locals. The article analyses the impact of tax breaks for Kutch following the 2001 earthquake. According to this article, “the tax breaks could bring in Rs 25,000 crore (\$ 5.5 billion) of investment. This was dismissed by the media as propagandist wishful thinking. Yet businessmen say today that fresh investment may indeed have crossed Rs 20,000 crore.”

One of the corporates that benefited from this new investment climate has been the Adani group and its meteoric rise globally coincides with its spread in Mundra. The company's activities in Mundra were initiated in 1994-95 when the Gujarat Maritime Board approved the building of a captive (i.e. with exclusive ownership and operation) jetty at the Port of Mundra (Kalpavriksh, 2010). Since then the Adani group has become the foremost industrial corporation in the area profoundly transforming Mundra's land and waterscapes. With its first port and special economic zone (SEZ) being incorporated as Gujarat Adani Port Limited (GAPL) in 1998, the company's presence in Mundra has grown through the development of multipurpose ports, coal handling facilities, road and rail infrastructure coal based power plants and ancillary activities such as housing colonies for staff. Now there are several other emerging corporations in the region primarily interested in setting up power plants to be operated using imported coal and sea water for cooling.

The 7th Vibrant Gujarat Summit took place between 11th and 13th January 2015 at the state capital following the last one in 2013 being recorded as a “resounding success” by the state government. The website of the 2015 summit says that the previous event had “provided enormous prospects to the state government to display its strengths, progressive stand, initiatives taken to improve governance, investor friendly climate and art & culture of

Gujarat. The chief guest at the valedictory ceremony of the 2011 summit was Gautam Adani, the chairman of the Adani group, who had during previous summits made statements that Gujarat become the “investment destination” for the industries in the country. “The buzzword among the industrialists in the country now is that if you want to double the progress at half the time, you must come to Gujarat,” reported one of the leading newspapers in the country following the summit (Dasgupta, 2011). Although called wasteland by the Chief Minister the corporates knew well that, all costs included, what was on offer was a sweet deal.

For a place that had seen little by way of investment in public infrastructure and services before 2001, it was expected that there would be different views on this new industrialised future that was projected for Kutch. The official narrative heard in government offices was that better roads and electricity, state of the art hospitals and schools, even modern housing could all be billed to the new corporates who would move in to share the landscape with the camel herders, date palm farmers and artisanal fisher communities.

The Industries Association at the national level and in Kutch immediately welcomed it (Anon, 2001). They hold the post-Earthquake investments to be the sole reason for the global recognition and the economic gains for the region’s manufacturers, handicraft or commercial dairy producers (Mahurkar, 2008). Aspirational youth in cities like Bhuj also welcomed this transformation, looking out for improved educational opportunities for higher degrees and jobs near their homes (*ibid*).

At the same time there was dissent. Local residents and affected people came together to form Group 2001 for a concerted effort to demand accountability from the government (Dasgupta, 2001a). Conversations with farmers and fisherfolk of administrative blocks such as Mundra also reveal varying levels of acceptance for the infrastructure and industrial expansion linked reconstruction in Kutch. Gajendra Jadeja, the *sarpanch* (elected village representative) of Navinal village spoke about the same during a conversation with the authors in January 2014. He argued that there wasn’t much resistance by those involved in farming, horticulture or animal husbandry. Many welcomed the compensation packages. People even agreed to supply groundwater from their farms to the port developers and industries. It is only when the impacts began to affect everyday lives and occupations in the mid 2000s that people started protesting. These include salinity ingress into groundwater,

restriction of access to grazing areas and increased acquisition due to infrastructure expansion, and conflicts with migrants.

Fisher leaders on Junabander fishing harbour who were at the forefront of the protest against the setting up of a special economic zone and port infrastructure on their fishing grounds are now reconciled with the local development provisions made by the Adani Foundation. As shared by Kasam Hasam Jam a resident fisher of Juna Bander in September 2014, *“Yes, there has been an impact and we have lost out on fishing, but the company has given us vocational training, jobs and a well run school for the children of the fishing community.”* Fish traders like Haji Ayub Osman Majalia in Bhadreswar continue to raise red flags as they have been directly affected due to the loss in fish catch.

3.2. “Tata Mundra” and the tactics of persuasion

As a result of this transformation from being ‘marginal’ to a ‘hub’, the *Kutchis*, especially those affected by project investments in Mundra, are being persuaded by three groups of actors; the International Financial Institutions who have invested in these projects, climate activists, and technical experts on sustainable development. These actors are engaged in persuading the local residents about the importance of economic development, climate change and environmental management. This paper explores the tactical efforts at persuasion by them and their contingent outcomes with respect to one particular project in Tundawand village of Mundra, the 4000 MW Super Critical Power Project by the Coastal Gujarat Power Ltd (CGPL), a wholly owned subsidiary of Tata Power, India’s first and largest private power company in existence since 1910.

The Coastal Power Gujarat Limited (CGPL), which has popularly come to be known as “Tata Mundra” is claimed to be one of the first Ultra Mega Power Projects (UMPPs) to go into operation soon after the government of India announced its ‘Power to all by 2012’ program in the year 2005. The project, which received its environment related approvals in 2007 and 2008 has been designed to run on imported coal brought in through Adani’s port. The project owners claim to provide cost competitive power to industry and agriculture as well as benefit over 16 million domestic consumers.

The plant is surrounded by three traditional fishing settlements– Modhava, Tragadi and Kotdi. Since 2010, representatives of the affected fishing communities, their unions and environmental organisations have complained of a variety of impacts caused by the construction and operation of the power plant. This includes destruction of mangroves, reduction in fish catch and pollution caused due to improper handling of coal ash. Affected people have also complained of economic disempowerment because of the non-availability of contractual and permanent jobs for local affected people in the plant (Anon, 2012, Ramanathan, 2013). Several of these have been reported to the Ministry of Environment, Forests and Climate Change (MoEFCC) as well as financial institutions supporting the plant.

The CGPL's operations and impacts in Mundra are relatively small compared to the Adanis. The Adani group has been the biggest industrial player in Mundra since the time of its establishment in the mid 1990s. Its rise in the last two decades to become an international corporate giant has often been linked to the promoter, Gautam Adani's close ties with the ex Chief Minister and present Indian Prime Minister, Narendra Modi (Chadha, 2014). Yet the Tatas and their 4000 MW coal based power project have received significant national and international attention. The following sections explain why this project of the Tatas, despite being relatively smaller and relatively less impactful in terms of landuse change has had an iconic status among the national and international coal, climate and environmental activist groups. The locals who have related to the project through multiple forms of negotiation and opposition donot necessarily see this project any differently from the many others that have been set up on the coastline.

3.2.1 "Follow the money" activism, climate complaints and the local fisher union

The Tata Group is one of India's oldest industrial giants with over a century of operational experience in India and internationally. Post independence, they have had a role to play in the country's nation-building projects such as the steel production industry in Jamshedpur or the Tata Chemicals plant in Gujarat. Their projects both in India and abroad have been under scrutiny by activists and organisations working on human rights and environmental issues, not just for their ecological and social impacts, but also for their role in quelling protests with the help of state machinery using violent measures (Pandey, 2008).

The funding from the World Bank Group's International Finance Corporation (IFC) for Tata Mundra was the foremost argument identified by national activists to bring greater national and international attention on impacts caused by this project. Due to the IFC's track record of investing in large scale, high impact projects all over the developing world from the 1970s, it had gained the reputation of undermining genuine developmental possibilities that existed in the countries it invested in. In India too, the World Bank's role in development has received criticism from large social movements across sectors (Kelly and D'Souza, 2010). By bringing to focus yet another IFC funded project, especially of a large Indian corporate like the Tatas, the activists had hoped that attention could be brought to the impacts of the project, the IFC's continued role in "funding destruction" and Tata Mundra's claims made to obtain funds from this source. It also meant that those against the Tata Mundra project could expect attention, solidarity and support from people affected by IFC investments the world over.

The project also attracted the attention of international climate advocacy groups due to its claims of being the most energy efficient and cleanest power plant in the country. The company has showcased itself as being a low producer of Greenhouse Gas (GHG) emissions. The company's website claims it to be "India's first 800 MW unit thermal power plant using supercritical technology, and (is) arguably the most energy-efficient, coal-based thermal power plant in the country." As a result, the concerns around burning coal and impacts on climate have been intricately linked with the efforts to campaign against the World Bank's International Finance Corporation (IFC) and the Asian Development Bank (ADB). Two international organisations- the Sierra Club and Bank Information Centre (BIC) have had a critical role to play in this effort in Gujarat. Since 2011 they have worked with a local fishing union, the Machimar Adhikar Sangharsh Sangathan (MASS- Association for the struggle for Fishworkers' Rights), to invoke the ombudsman processes of both these Banks to highlight that Tata Mundra has violated its terms of contract. The Sierra Club's blog posts² on Tata Mundra, all available on their website, link the power plant's impacts from burning of coal and polluting the air with adding to the climate crisis. For BIC, advocacy on this project helped to focus on the question of accountability of IFI (International Finance Institutions) funded high impact projects to local citizens who would be affected. Both organisations tested the project's claims on environmental and social impacts.

² Sierra Club's postings on the Tata Mundra project can be accessed at <http://www.sierraclub.org/international/tata-mundra>

MASS is a local fishing union that emerged out of the reconstruction and mobilisation on economic rights to strengthen fishing livelihoods after the Gujarat Earthquake. Within a decade of being formed the Union found itself at the forefront of contests between the fishing livelihoods and the growing coastal industrialisation. Bharat Patel, the General Secretary of MASS-Kutch has been the key complainant before the IFC and ADB, had worked through Abhiyan and its sister outfit, Setu, (meaning ‘bridge’) to organise the fishing community for better pricing and independence from middlemen who had captured the trade.

Four members of MASS actively worked on the submissions made to the IFIs targeting Tata Mundra’s performance and its impacts on the migrant fishing community especially at the Tragadi *bander* (fishing harbour). It also linked these impacts to the company’s non-compliance with the IFC’s performance standards, which could have a direct bearing on IFC’s funding for the power plant. IFC has invested USD 450 million in the project out of the total project cost of USD 4.14 billion. The first complaint in this regard was filed back in June 2011 with the IFC’s Office of the Compliance Advisor Ombudsman (CAO). While the Ombudsman’s report of January 2012 upheld the contention made by MASS that access to fishing grounds were blocked, there was decline in fish catch and there were significant impacts of coal ash from the mine, it stated that these problems would not have arisen had there been a broader dispute resolution mechanism. It stated, “a larger effort involving other industry players along the Mundra coast and the state government could help generate a sustainable solution to securing the fishing communities livelihoods” (CAO-IFC, 2012; MASS, 2011). IFC has continued its investment in the power plant.

Soon after, in July 2011, MASS also made a complaint to the United Nations Framework Convention on Climate Change (UNFCCC)’s Clean Development Mechanism (CDM) highlighting the environmental impacts of the project on the sea and mangrove destruction and argued that it was not a fit case to receive benefits for being a clean power station as it has claimed to be. It requested the CDM Executive Board not to validate Tata Mundra’s application for “GHG Emission Reductions through grid connected high efficiency power generation.” MASS’s argument simply was that Tata Mundra did not qualify for CDM benefits. For a variety of reasons not in public knowledge, this project did not get the benefits.

Quite interestingly, the IFC's website in its FAQs on Tata Mundra justifies the claim of the plant being carbon friendly. It states that even though the power plant did not qualify for CDM benefits, it should be considered as carbon-friendly, because other projects based on similar technologies as Tata Mundra have been registered with the UNFCCC as CDM (IFC, 2015). In February 2015, Tata Mundra's super critical thermal power plant received an award for being the most energy efficient plant from the Centre for Science and Environment (CSE) based on its Green Rating of the thermal power sector. CSE is considered to be one of India's oldest and leading environmental organisations. In its press release, CSE reported this two-year study to be the first-ever on the performance of coal-based power plants across the country (CSE, 2015).

The outcomes of the IFI Ombudsman process that sought a broader dispute resolution on the coast, the certificates of the project's carbon-friendliness and the Company's efforts to deliver material well-being gradually brought about a rethink in the fishing union. Members of the union from the fishing harbours around Tata Mundra questioned Bharat Patel about whether the decision to complain to the IFIs and the CDM Board was too severe a step. Many among them now hold the view that negotiating with the Company for compensations for the impacts faced by the fisherfolk may have been the right and realistic thing to do. They feel disappointed that the years of communication with the IFIs, the several site visits made by the IFI investigating teams and interviews conducted with the affected communities has not resulted in changing their situation.

Patel's response to them reveals his progressive and long-term view of the public spirited role of a mobilised body such as the union. He maintains that the reason why the Company is making continuous efforts to reduce its environmental footprint and improve the economic lives of the locals is due to the pressure held out by groups like theirs. He believes that under the watchful role of the union and its global network of supporters, the company would be pushed to comply with environmental norms, improve its efforts to contain the impacts as well as not take the coastal people and their space for granted.

3.2.2 Neighbourly Corporate Patronage and Accountability mechanisms

As a region that was seeped in maritime and commercial trade, material culture and collective living form a part of the ethos of Mundra's social life (Goswami, 2015). In the port towns of

Gujarat, capital-owning classes such as rich traders, ship owners and entrepreneurs have supported members of their communities both at home and overseas to improve their means. So the relationship between them is one of cooperation rather than antagonism or distance. Local government bodies such as *panchayats* (village level local self government), civic organisations and non-governmental groups emphasise economic rights and see this as their main plank of work. In such work, new companies that have established here in the last decade play the role of providing seed grants or loans to start up enterprises. Their contribution towards building local enterprises has increased especially since international donors moved out of Kutch due to its perceived status as an industrialised region.

The Tata group has a long history of philanthropic activities in the areas where they have set up industrial operations. It describes itself on its website as “capitalistic by definition but socialistic by character.”³ With a dedicated arm that funds developmental NGOs, sets up educational institutions and supports community development activities, the Company has made attempts to provide for the basic services needed by communities living around their industrial operations. Their efforts of corporate philanthropy are often described as exemplary and pre-date the legal requirements of compliance or corporate social responsibility (CSR). Such efforts by them towards economic and social development of affected communities at the local level outside of the CSR framework or any legal requirements could be seen as corporate patronage.

At the local level, Tata Mundra has attempted to forge alliances for its long term presence in Kutch. The Kutch Nav Nirman Abhiyan which has a large network in Mundra built upon its work on earthquake reconstruction, community development and income generation initiatives entered into a collaboration with the company soon after the Tatas initiated the construction of their power plant in Mundra (Tata Power et. al, 2012). Jointly they have developed technical partnerships for local economic development schemes in three villages around the power plant. These have largely been assistance to fishing and allied occupations through financial support, provision of fishing gear, interaction with banks and promoting alternative livelihoods for those who lost access to the sea. The company has also approached GUIDE, an organization known for its ecological work in Gujarat, to assist the project in implementing mangrove plantations and in marine and biodiversity conservation.

³ Website of the Tata Group: <http://www.tata.com/aboutus/articlesinside/A-tradition-of-trust> accessed on 25th September 2015

Through these alliances the company has attempted to send a message that its commitment to community development initiatives is as strong as the project outcomes from coal based power generation. Partnering with them is a civil society which also does cost-benefit analysis for developmental initiatives. Tata Power's website boasts of a range of documents and "stakeholder" statements to provide evidence of their sustainable development, community outreach and environment protection related initiatives. An undated document called *Samvad* (dialogue), lays out positive testimonies by government officials, support NGOs, banks and employees of CGPL. They describe in positive terms the service delivery, micro credit and income generation efforts that the company has undertaken. The document is based on interviews of various stakeholders between May-June, 2012. In particular, the testimonies from the villagers of Tunda Vandh and Modhva (including elected village representatives, artisans, provision store owners and those employed in the company for various tasks including accounts or managing the green belt around the plant) are critical. The responses from the residents of Tragadi Bander are about better water availability, improvement of roads and provision of fishing nets from CGPL (Tata Power et. al, 2012). The *Samvad* document also includes positive testimonies from cattle and camel graziers from Mota, Tragadi and Tunda villages, all affected villages (ibid).

Their testimonies are in sharp contrast to those of the petitioners from Tragadi who along with MASS, had appealed to the IFC and the ADB to take action on the project for its social and environmental impacts. Discussions by the authors with the office bearers of MASS, local NGOs like Kheti Virasat Seva Trust, Ujjas Mahila Sanghathan (UMS) and SETU between 2011-2014 show that those who did complain at the international or national level did not benefit from Tata's community outreach efforts. They have not been primary beneficiaries of financial support nor have they secured unskilled and semi-skilled jobs.

The patronage relationships have also extended to processes, which were a direct result of the earthquake rehabilitation efforts, thus connecting the dots between disaster rehabilitation and corporate industrialisation. The Kutch Fish Producer Company Limited, one of the outcomes of the post-disaster efforts, was supported by CGPL at a critical time when the producer group was unable to repay its bank loan. This has been possible due to CGPL's support to Fishmarc, an NGO based in Kerala and which works with the producer company to strengthen and scale up the operations of the local fish Company as well as assist in

marketing of the produce. Fishmarc works with the producer company and with the local civil society networks like Kutch Nav Nirman Abhiyan, SETU and Ujjas Mahila Sangathan (UMS) ⁴ (CGPL, undated).

The local developmental context is heavily influenced by the relationship between the project and a Sustainability Advisory Council set up with eight members, four from the non-governmental or academic sectors as independent subject experts and four from corporations, including one from Tata Power.⁵ Due to the long-standing role of some of the members in the pre and post earthquake developmental history of the district, this Committee has gained the status of an institution holding the corporate body to account for its actions. The Committee is engaged in discussions over projects and schemes that support local livelihoods, access to loans, primary education, healthcare and several other basic services that touch the lives of local communities on a daily basis. Though nascent in its formation and lacking in formal procedures of transparency and participatory decision making, this new form of corporate accountability to the local can be seen as an outcome of prolonged and persistent social mobilisation, presenting a case for accountability mechanisms being created only through a productive tension between energy projects and collective action.

3.2.3 Public Interest Environmentalism, Regulatory Challenges and Rule of Law

Tata Mundra's operations has also seen a legal challenge from an environmental organisation in India. The legal initiative was taken by a Mumbai based environmental NGO (name and case application number withheld) in October 2013. A legal application was filed before the National Green Tribunal's Western Zone Bench that is located approximately 1000 kilometers away from where Tata Mundra operates. The organisation engaged in investigations to identify violations of environmental laws. The application raised substantial

⁴ UMS has collaborated with CSR activities in general and CGPL in particular only as part of their collaboration with Fishmarc. As an organization they have refused any other CSR funding from industries operating in Kutch.

⁵ As per Tata Power's disclosure on <http://tatasustainability.com/pdf/Day1/Vivek-Talwar.pdf> as accessed on 10th April 2016, the members are as follows. Categorized as civil society: 1. Ms. Sushma Iyengar, expert on sustainable social development 2. Mr. Tim Flannery, international expert on Climate Change 3. Dr. S Parasuraman, expert on sustainable social development 4. Mr Ravi Singh, expert on wildlife, bio-diversity. Categorized as "Corporate World": 1. Mr. P R Menon, ex-MD of Tata Power 2. Mr. Deepak Satwalekar, independent Director of Tata Power 3. Mr. Nawshir Mirza, independent Director of Tata Power 4. Mr. Shankar Venkateswaran, Head Tata Sustainability Group

questions regarding procedural irregularities in the implementation of the environment impact assessments as well as the impacts on mangroves and wildlife due to the construction of the plant. The petition urged that the environmental approvals given to the plant be set aside and project operations be stayed without further delay.

This initiative came entirely from the environmental organization without any involvement of the affected people, local trade unions, activists or NGOs and was done in the style of the environmental Public Interest Litigation (PIL) in the Supreme Court of India in the 1980s and 90s. It was done with little collective thinking or no collaboration with those directly affected by the project impacts. There was no discussion regarding the consequences of the use of an antagonistic approach such as litigation or the limited control the litigant would have over the judge's pronouncements on the project that would then take on the power of law. However, the NGT questioned this public-spirited environmentalism. One of the first objections raised against the petition was that the organization filing the petition had no cause of grievance, was not affected directly and therefore a case filed by them should not be entertained. The court's order of March 7th 2013 observes that the lawyer representing Tata Mundra asked, "*why they are aggrieved persons and how they can fall back on cause of action*". As of April 2016, the arguments had been completed and a decision was pending.

MASS and other environmental groups also restated some of the complaints at an official environmental public hearing organised for the expansion of the CGPL plant in August 2013. The public hearing is a mandatory requirement under the Environment Impact Assessment (EIA) Notification, 2006. In August 2014, the Ministry of Environment, Forests and Climate Change took action to defer the approval for the expansion of the Tata Mundra plant. While news articles reporting this decision mention the complaints by MASS on the impacts of the plant (Anon, 2014), the official minutes of the Ministry's Expert Appraisal Committee (EAC) reviewing the proposal for expansion of the two units of the plant largely rely on the monitoring reports of its own regional office. The reasons cited officially include the non-compliance of conditions of approval including those related to the plantation of mangroves and setting up a green belt (MoEFCC, 2014). The construction of the power plant involved the diversion of 321.24 acres of mangrove area, which is officially recorded as forest in government records. As per regulatory requirements, CGPL was to carry out compensatory afforestation in the form of mangrove plantations on an area equal to what was lost as a result of the project construction. The environment ministry's decision was based on the observation that this requirement had not been fulfilled.

These observations of the Environment Ministry are an interesting contrast with the projections that Tata Mundra makes in the document titled *Samvad* discussed earlier, which showcases pictures of local villagers, particularly women participating in the plantation of the green belt. The project's website also highlights its collaborations with reputed local organisations for the plantation of mangroves.

Both sets of actions, that is the litigation on the project and the official decisions regarding its expansion, are taken by experts at a long distance from where the plant is located with little or no recognition of the local residents who may have critical inputs to provide to these decision making procedures. Neither of these actors has sought to officially include the complaints and grievances of the affected parties or responded to their need for compensations for the loss of fisheries livelihoods and perennial drinking water sources. While rule of law may have been upheld, the social and environmental ramifications of illegality have not been considered at all. The EAC's decision on Tata Mundra also requires its own sub committee to visit the site and appraise itself of the compliance status of all the conditions of approval by the project. It neither sees local engagement in this process as desirable nor mandates the need for public interaction. There isn't any information available on whether this visit took place or what the outcomes were. The regulatory and legal mechanism, ostensibly for grievance redressal of the project impacts on local residents, has given them no place so far.

4. Discussion

Through this case, the authors explore how locally affected people are drawn into engaging with three clearly identified groups of actors to respond to an energy project. The arguments presented to them are framed within global narratives of climate change, environmental management and economic development. However, the affected *Kutchi* coastal residents comprising fishermen and women of a minority community, salt and agricultural farmers and a traditional pastoral community of camel herders, frame, debate and act upon land and environmental questions posed by their local development circumstances in unexpected ways. Their conditional and shifting engagement with the three sets of actors described above can be located between the practical expediency of everyday life and ethical questions about correct action. Their willingness to accept the services offered by the company through its

local development schemes even as they continue to raise bigger questions about the manner in which the company came to be situated there must be seen in this light rather than as a contradiction of goals set out for themselves.

The expert framing of the transformation of Mundra within the larger narrative of climate action and rule of law campaigns seem distant and unstable to address the rapid changes playing out due to industrialisation at the local scale. There is no telling how much time court cases and international advocacy will take to influence the local situation and more importantly, the expected outcomes of these campaigns are nebulous. Both these expert framings rely on values and regulations that are external to the ways in which this interconnected and networked community of traders and entrepreneurs have negotiated changing fortunes brought on by time. The collective action by the fishing union, which once represented the impacted community, has aligned itself to international groups that seek remedies away from the sites of conflicts. This has resulted in criticism over questions of representation. Those who have come to represent the actions against Tata Mundra are the leaders and campaigners who justify their external alignments as important. They believe that the expediency of everyday life does not envision the long term impacts of land transformation caused by coal based power plants like Tata Mundra.

5. Conclusion and Policy Implications

The activist framings based on rule of law, international finance and climate action have focussed on what is wrong and what is right in distant, abstract ways. The affected local communities have required remedies for the losses of quality of life, livelihoods and opportunities suffered by them even as they engage in questioning or critiquing development. They seek remedies that are material in nature rather than abstract ways of setting wrongs right. These remedies are crucial to put their lives back in some order so that they may engage in the local economy and plan for their future. But these remedies also need to be designed and implemented with their participation.

From this case, there are three key policy implications, which emerge for regulatory decisions on energy and infrastructure projects at a global and national scale:

1. Decisions under the Clean Development Mechanism (CDM) or whether to finance projects often only rely on the official reports generated by national or provincial

governments in partnership with the project concerned. They also only rely on technological efficiency rather than drawing upon the environment and social consequences of land use change. There is no in-built procedure to gather local inputs prior to making a judgment on whether to grant carbon credits or support the project through international funding. Complaints from the affected people or mass based organisations can only go thus far in remedying any impacts that might be caused due to a decision taken that is disconnected from the local. Climate financing and IFI procedures could draw these lessons for a precautionary approach rather than post-facto action.

2. Environmental Impact and other regulatory assessments lead to one-time decisions based on studies generated by project authorities and reviewed by regulatory agencies. The conclusions are based on estimations and predictions of what impacts might occur in the future with an attempt to minimise or mitigate them. However, there is no mechanism by which the conclusions of these impact statements are reviewed retrospectively based on what transpires once a project is underway. Encouraging periodic reviews and creating formal opportunities for discussions between all concerned could ensure timely remedial measures as well as attributing liability on agencies that might have ignored important facts at the time of granting approvals.
3. The judicial and regulatory recourse in the forms of courts, tribunals as well as ombudsman mechanisms are situated at a distance from the site of impact or where compliance and other legally mandated safeguards need to be delivered. This makes access to social, economic and environmental justice not just tedious and expensive but only accessible to and by a limited set of actors. These actors either speak on behalf of the affected community or take forward their own cause, without feeling the need to involve the affected parties. Regulatory practice needs to ensure that social and environmental impacts are addressed sooner, closer to the site of impact and with the involvement of the affected parties.

REFERENCES

Anon. 2014. Tata Mundra power project denied expansion clearance, The Hindu, 3rd September 2014.

Anon. 2012. The Real Cost of Power: Report of the Independent Fact-Finding Team on the Social, Environmental, and Economic Impacts of Tata Mundra Ultra Mega Power Project, Kutch, Gujarat, June 2012 accessed from http://www.banktrack.org/manage/ems_files/download/the_real_cost_of_power/real_cost_of_power.pdf on 10th April, 2016.

Anon. 2001. Excise duty relief in Kutch welcomed, The Hindu, 4th August 2014.

Buchanan, E and Solanki, S. 2011. Gujarat's astonishing rise from rubble of 2001 quake, BBC news, 30th January 2011 accessed from <http://www.bbc.com/news/world-south-asia-12309791> on 22nd August 2015.

CAO-IFC. 2012. Ombudsman Assessment Report: Regarding Community and Civil Society Concerns in Relation to IFC's Tata Ultra Mega Project (#25797), International Finance Corporation, January 2012, Washington D.C.

CGPL. Undated. Turning the Tide: Moulding the lives of fishermen on coastal belt of Kutch, Gujarat, CGPL, Gujarat-India.

Chadha, S. 2014. Modi, Mundra and zeal: How Adani made it to top 10 Indian billionaire list, First Post, 18th September 2014.

CSE. 2015. India's first-ever environmental rating of coal-based power plants finds the sector's performance to be way below global benchmark, Press Release dated 21st February 2015, accessed from <http://www.cseindia.org/content/india%E2%80%99s-first-ever-environmental-rating-coal-based-power-plants-finds-sector%E2%80%99s-performance> on 25th August, 2015.

Dasgupta, M. 2011. Fifth edition of 'Vibrant Gujarat' Summit concludes, The Hindu, 17th January 2011.

Dasgupta, M. 2001. *PM announces excise duty holiday for Kutch*, The Hindu, 4th June 2001.

Dasgupta, M. 2001a. 5000 Anjar Residents take out protest March, The Hindu, 6th April 2001.

Department Related Parliament Standing Committee on Commerce. 2007. Eighty Third Report on the Functioning of Special Economic Zones, Rajya Sabha Secretariat, New Delhi.

Goswami, C. 2015, *Mundra: A tale of a Walled Port Town* in Keller, S and Pearson, M. (eds.) *Port Towns of Gujarat*, Primus Books, 2015.

Gujarat Ecology Society, Foundation for Ecological Security and MIR Projects and Consultants. 2014. Ecological Profile for Coastal Talukas of Gulf of Kachchh: OVERVIEW; Gujarat Ecology Society, Vadodara.

IFC (International Finance Corporation). 2015. Frequently Asked Questions: Tata Mundra Project, accessed on 16th November, 2015 on http://www.ifc.org/wps/wcm/connect/region_ext_content/regions/south+asia/countries/frequently+asked+questions

Jha, Abhas K.; Barenstein, Jennifer Duyne; Phelps, Priscilla M.; Pittet, Daniel; Sena, Stephen. 2010. *Safer Homes, Stronger Communities : A Handbook for Reconstructing after Natural Disasters*. World Bank, Washington DC

Kalpavriksh. 2010. *Ripping Off the Mundra Coast! Environment and Forest Clearance Violations in Mundra Port and Special Economic Zone Ltd.'s Projects*, Kalpavriksh and WWF-India, 2010.

Kohli, K. 2014. *Envisioning Environmental Futures: Conversations around Socio-ecological Struggles and Industrialisation in Mundra, India* in Fakier, K and Ehmke, E. (eds.) *Socio-Economic Insecurity in Emerging Economies*, Routledge, United Kingdom.

Kelly, M. and D'Souza, D. 2010. *World Bank in India: Undermining Sovereignty, Distorting Development*, Orient Blackswan, New Delhi.

Mahurkar, U. 2008. Rising from the Ruins, India Today, 4th April 2008.

MASS. 2011. Complaint to the Compliance Advisor/Ombudsman, International Finance Corporation dated 11th June 2011.

Mehta, S. G and Dave, P. 2011. Gujarat Earthquake 10 years on: From rubble to biz hub, The Economic Times, 27th January 2011.

Mishra, P.K. 2004. The Kutch Earthquake 2001: Recollections, Lessons and Insights, National Institute of Disaster Management, Ministry of Home Affairs, New Delhi.

MoEFCC. 2014. Minutes of the 18th Meeting of the Reconstituted Expert Appraisal Committee of Environment Impact Assessment of Thermal Power and Coal Mining Projects (31st July-1st August, 2014), Ministry of Environment Forests and Climate Change, New Delhi.

Pandey, B. 2008. The Kalinganagar Tragedy: Development Goal or development malaise, Social Change, Vol 38, No.4, December 2008, pp 609-626.

Rajshekhar, M. 2013. How Mundra overtook Kandla to become largest port by tonnage, The Economic Times, 1st August 2013.

Suzuki, H. 2015. Circulation, Memory, Landscape: Kachchhi Bhatias in Mundra and Bhadrashwar in Keller, S and Pearson, M. (eds.), *Port Towns of Gujarat*, Primus Books, 2015.

Ramanathan, S. 2013. Tata has no answers at public hearing for Mundra power plant expansion, Down to Earth, 31st August 2013.

Tata Power, Social Initiatives-Mundra UMPP, CGPL.2012. Samvad: a dialogue with our stakeholders, Coastal Power Gujarat Limited, India.

Website of Tata Power <http://www.tatapower.com/cgpl-mundra/home.aspx> accessed on 25th August, 2015.

DRAFT