

Ripping Off the Mundra Coast!

**Environment and Forest Clearance Violations
in Mundra Port and Special Economic Zone Ltd.'s Projects**

A CASE STUDY¹

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1. Social and Ecological Fragility of Mundra Region

Mundra is a coastal *taluka* in Kutch, the largest district of the state of Gujarat and located on the Gulf of Kutch (GOK). GOK known for its rich biodiversity comprises of mangroves, coral reefs, mudflats, seaweeds, commercial Fishes and several rare marine species. Due to its geographical location on GOK, Mundra taluka has a significant and unique marine ecosystem dominated by mangroves and natural creek formations along the coast. It is understood that stretches of live corals near Mundra coast have discovered by researchers around the Mundra coast. The Mundra area is also the habitat of number of migratory birds.

The ecological sensitivity of this area was recognised officially, when in 1982, parts of the Gulf were declared a Sanctuary and Marine National Park by Government of India.

The significance of mangroves in coastal ecosystems is undebatably critical. The Government of India and the Ministry of Environment and Forests (MoEF) recognise that mangrove forests are ecologically sensitive areas and need to be protected and conserved. Mangroves are critical to marine coastal soil conservation, breeding and nursery grounds for fish, crustaceans and other sea life, as well as vital habitat for birds and other wildlife. (<http://masskutch.blogspot.com>)

However, despite its recognised fragility and unique cultural significance the Mundra coast has been under large scale industrial use for the last decade or so. These commercial activities owned and controlled by private developers are only on the rise. One of the most significant investors and developers of the Mundra coast has been the Adani group. Even as affected communities raise concerns related to impacts on the environment and their livelihoods; and violations of environmental norms are reported to project authorities; destruction of the fragile Mundra coast continues.

Government reports on the Mundra coast have also highlighted that there has been huge environmental impacts in the area due to industrial expansion. A report of the H S Singh, Chief Conservator of Forests, Gujarat Forest Department published in early-2007 highlights that there have been drastic losses of mangrove forest mainly from industrial activities, specifically in the Gulf of Kutch. The report also brings out that in certain areas along the Gujarat coast like Mundra and Hazira, the mangroves disappeared overnight. As per the report, the Mundra SEZ area had 3,000 hectares of mangroves and much of these have been cleared.²

The Waghers, a local community (mainly muslim) depends on fishing for their livelihood.. They fish on small boats and on feet. The marine fishing settlements are transient fishing villages, which are populated by the fishing communities for 8-10 months in a year. The transient villages are on sand dunes or mudflats. After the fishing season the fishing

² Source: <http://infochangeindia.org/200812277554/Trade-Development/Features/How-Mundra-became-India-s-Rotterdam.html>

communities return back to their resident villages, which are usually 40 to 50 kilometers away from these transient villages. Usually, all the fishing households from a village migrate to a particular coastal settlement and stay together. This has been a tradition for hundreds of years.

The inland areas are used for traditional occupations like animal husbandry, agriculture and horticulture. Other than the fishing communities, the Mundra coast is also home to the Rabaris, a traditional cattle/buffalo rearing community relying entirely on animal husbandry and living off the the grazing lands (*gauchars*). For those who have no assets in many of the villages in Mundra tehsil, charcoal making with *Prosopis Juliflora* (growing on common and wastelands) is the only source of income.



Picture: Original geographical and coastal terrain of Mundra coast, taken from MASS presentation, made for members of CEC (Central Empowered Committee)

2. Commercial and Industrial Operations in Mundra

The Adani group initiated its activities in Mundra in 1994-95 when the Gujarat Maritime Board approved setting up a captive jetty at the Port of Mundra. In 1998, a joint-sector company, the Gujarat Adani Port Ltd., was incorporated and multi-purpose berths 1 and 2 at Terminal I began operating. In 1999, multi-purpose berths 3 and 4 opened at Terminal I. In 2007, two more berths for bulk cargo were added at Terminal II, and the terminal trial run operations began. A service agreement was signed with Tata Power to produce power for handling coal cargo imports.

The Adani port on the Mundra coast along with being private has also been granted the status of a Special Economic Zone. The Mundra Special Economic Zone was incorporated in 2003 and was merged with GAPL in 2006. The combined company was renamed 'Mundra Port and Special Economic Zone Limited'. It is considered to be India's first multi-product port-based special economic zone (SEZ).³ In 2007, equity shares in MPSEZ were offered to the public and employees and was listed on the National and Bombay Stock Exchanges.

A look at the other related operations along the Mundra coast is also critical. In 2001, the Port of Mundra signed a concession agreement with GMB for development, operation, and maintenance of the port at Mundra. Also in 2001, the private Mundra-Adipur railway line to Vasco da Gama was completed and in 2002, it was integrated with the Indian Railways.

In 2002, Guru Govind Singh Refineries Ltd. signed an agreement with the Port of Mundra to handle crude oil in the port. In 2002, additional agreements were signed with Indian Oil Corporation to set up a single-point mooring facility and handle crude oil at Mundra. In 2003, a sub-concession agreement was signed to add a container terminal in the Port of Mundra, and the terminal began operating that year. In 2005, Adani Port Limited and Gujarat Adani Port Limited were merged. In late 2005, the Single-Point Mooring became operational.

Other than the port activities, the Adani group also generates income from land related and infrastructure activities. According to an article by Manshi Asher and Patrik Oskarsson, "the total land⁴ has been utilized by different component of MPSEZ, i.e. Mundra Special Economic Zone (1082 hectares), Gujarat Adani Port (2648 hectares) and Adani Power Private Limited (294 hectares). These three components initially planned as single unit, before being dividing into three separate units in order to comply with Union Ministry of Commerce order on maximum land area limit for industrial unit. Further, the Adani Group has been granted the right to use and develop 1400 hectares of land around Mundra Port for 30 years under a concession agreement with the Gujarat government. This brings the total amount of land available to approximately 6300 hectares around Mundra to be developed into SEZs according to the company's own estimates."

In this process of industrial expansion, several thousand acres of mangroves have been destroyed in the region. The destruction of mangroves is visible in the satellite images (Annexure 1c, 1d) and the photographs below. It is also pertinent to highlight that the existing construction has had and is having a very detrimental impact on the creeks, mud flats and mangroves of this extremely biodiverse and ecologically sensitive area on which livelihoods of thousands of fishing, pastoral and agriculture communities are deeply entangled.

Ownership of land which has been transferred to the project proponent could be classified into revenue, forest land under mangrove or scrub forests, grazing land, and private land that was under agriculture or was uncultivable.

³Source: http://www.worldportsource.com/ports/IND_Port_of_Mundra_1652.ph

⁴ Asher, M and Oskarsson, P. Se(i)zing the coast and the countryside. Seminar. February 2008

3. The Applicable Environmental Laws and its Violations

There are a range of environmental procedures that are applicable for project authorities like the Adanis before any activity is initiated on the ground. Both the Environment Impact Assessment (EIA) Notification, 2006 and Coastal Regulation Zone Notification, 1991 issued under the Environment Protection Act, 1986 come into play. Both the notifications prescribe a set of procedures to be followed prior to the setting up of industrial and infrastructure activities. In the instance of any of these operations or activities involving the use of forest land, then a forest clearance (FC) under section 2 of the Forest Conservation Act, 1980 would also need to be sought. These clearances are required before starting any construction activity related to the project in question.

The grant of these clearances is under the jurisdiction of the Ministry of Environment and Forests (MoEF) on the recommendation of concerned appraisal/advisory committees and state governments. The operations of the Adanis in Mundra have followed a distinct pattern of working through the loopholes in the law in order to obtain clearances. The overall scheme for infrastructure development by them has been broken up into multiple projects and clearances have been sought separately for each of these units under different names and through different committees. While the grant of clearances to the Adanis' projects reflect the limitations of the regulatory regime in operation, their specificities make a very critical case in point.

A. Environment and CRZ Clearances

In 1994, the Gujarat Maritime Board approved the setting up of a captive jetty at the Port of Mundra. The first Environment Clearance (EC) was granted by the MoEF to Adani Port Limited on 25th August 1995 for handling facilities of general Cargo/LPG/Chemicals and their storage terminal at Navinal Island, Mundra Taluka of Kutch. In 1998, a joint-sector company, the Gujarat Adani Port Ltd was incorporated and multi-purpose berths 1 and 2 at Terminal I began operating. In 1999, multi-purpose berths 3 and 4 opened at Terminal I.

On 21st October 2008 MoEF granted EC for a 1980 MW (2X220+2X330 MW) Thermal Power Project at Mundra to M/s Adani Power Limited.

Various Environment Clearances Granted to Adani Group in Mundra, Gujarat

- EC for the proposed Port expansion project including dry/break bulk cargo container terminal, railway link and related ancillary and back up facilities at Mundra Port, District Kutch in Gujarat by M/s Gujarat Adani Port Limited. **(Date: 20th September, 2000), No. J-16011/40/99-IA-III**

EC for the proposed Single Point Mooring (SPM), Cruide Oil Terminal (COT) and connecting pipes at Mundra Port, district Kutch by M/s Adani Port Limited. **(Date: 21st July 2004), No.J-16011/30/2003-IA-III**

EC for the proposed Establishment of Salt Works at Mundra, District Kutch by Adani Chemical Limited. **(Date: 4th August 2005), No. J-17011/10/2003-IA.III**

EC for the proposed development of multipurpose Berth Terminal (2) at Mundra Port by Mundra Port and Special Economic Zone. **(Date: 5th February, 2007), No.11-84/2006-IA-III**

EC for 1980 MW (2X220+2X330 MW) TPP at Mundra by M/s Adani Power Limited **(Date: 21st October 2008), No. J- 13011/1/2008-IA-II (T)**

Environment and CRZ clearance for the Mundra Multiproduct SEZ

MoEF's Expert Appraisal Committee (EAC) for Infrastructure Development, Coastal Regulation Zone and Miscellaneous projects, which appraises SEZs, held a meeting on 23 and 24 April, 2009. At this meeting, the EAC granted an exemption from holding public hearings for the Development of Multi Product SEZ (MSEZ I & MSEZ II) at Mundra, Gujarat by M/s. Mundra Port & Special Economic Zone Ltd. As per the minutes of this meeting, the project involves development of multi product SEZ on a plot area of 18,000 hectares, of which 5,920 hectares is presently notified under Special Economic Zone (SEZ). The multi-product SEZ is to provide plots to various industries and also develop dwelling units, hotels, shopping malls and other related amenities and utilities.

It is important to note Special Economic Zones are listed in clause 7(c) in the schedule of activities requiring environment clearance, as per the EIA notification, 2006. SEZs like Mundra, prior to the start of construction would need to follow through a process of screening, scoping, public consultation and appraisal before any construction can be initiated. Integral to this process is the preparation of an EIA report and the conduct of a public hearing for the overall SEZ. Only thereafter can environmental clearance be given.

A Right to Information (RTI) application was filed to ascertain the status of the clearances and the applicability and/or exemption of the public consultation process (under the EIA Notification, 2006 to the Mundra multi product SEZ. MoEF's reply dated 30 July 2009 completely denies that any such exemption from holding a Public Consultation has been given to any SEZ project. Thus, within two months of recommending that the Mundra project be exempted from holding a public hearing, the presiding officer responded to a Right to Information application, completely denying that any such exemption has been given.

Till May 2010, the environment clearance for Mundra Multiproduct Special Economic Zones had not been granted by MoEF. However, the situation on the ground reveals that despite the pending of EC, the project proponent initiated activities related to the multipurpose SEZ. The MoEF's response is different from its stand on MPSEZ.

However, there is no update on whether or not the Mundra Multi product SEZ was granted environment clearance with a public hearing exemption.⁵

Water Front Development Project (WFDP): Public Hearing and EIA concerns (Also see: Section on legal tangles]

Prior to the above instance of the Mundra Multipurpose SEZ, the Adani group had sought CRZ and Environment Clearance for the WFDP activities of Mundra Port and Special Economic Zone (MPSEZ) Limited, Mundra. The WFDP is to be a part of the SEZ and would include development of a total waterfront length of 40 km, total quay length of about 22,000 m, 55 berths (including existing 12), and 225 MMT of cargo handling capacity likely to go up further development of port back-up area – a total of 3200 ha. The application for environment clearance for the SEZ, which was made earlier, was followed by yet another application for the WFDP to the EAC in April 2008. It is important to note in the comprehensive proposal for the WFDP came about only due to the insistence of the Principal Secretary, Gujarat who wrote to the Adani Group that the cumulative impact of the project cannot be assessed till a comprehensive masterplan of the project is presented before the government. Had this directive not been issued, the company had intended to seek separate clearances to develop berths in the north, south, east and west side of the port .

The clearance for Water Front Development Project (WFDP) was granted on 12.1.2009. However, complaints that the construction on the project had started well before the grant of clearance was repeatedly highlighted by the local communities and organisations working in the area.⁶

⁵See also: <http://www.indiatogether.org/2009/aug/env-exempt.htm>

⁶“the company had started the construction of West port and South Port even prior to this clearance as is visible in the satellite images of December 2008”-Extract from presentation made by Bharat Patel during the CMZ consultation at Mumbai in August, 2009

It is important to note that neither the CRZ nor Environment Clearance of 12.1.2009, mentions the use forest land required for the project. This is despite the obvious fact that the components of the WFPD project needed forest land which is mentioned in letters by Government of Gujarat as well as the company (See Section B (a) for more details) . While the project authorities chose to deliberately conceal this critical fact, there was no cross verification by the Expert Appraisal Committee (EAC) of the MoEF, before the grant of the EC.

Box: *Section 8 (vi) of the EIA notification, 2007 clearly states, “Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.”*

Alongside, local groups, independent researcher and civil societies have been regularly alerting state and central authorities that the existing construction is already causing detrimental impact on the creeks, mud flats and mangroves of this extremely ecologically sensitive area. Their attention has been drawn to the fact that the change of existing land use of this area will have irreparable negative consequences⁷ Despite these communication, no action has been taken to verify the facts on the ground.

All the impact assessment studies, which are mandatory for clearances under the CRZ notification, were initially done for the Adanis by the National Institute of Oceanography. They all speak of the biodiversity and marine ecology of the area being critical. They all refer to the localised impacts of the developments, whether port expansion or bulk terminal construction, on the benthic flora and fauna of the region. But all of them end with the statement that the “overall impact would be insignificant”.

Manshi Asher points out that based on these EIA studies, four separate environment clearances were obtained by the company from the MoEF. The first in 1995 followed by three more in 2000, 2004 and 2007 for the expansion of the port activities. Most of the other expansions were based on only consents from the state government and no timely Environment Impact Assessments were done. “The point that the airstrip built by the Adani group in the area did not have an environmental clearance from the union ministry was raised in a High Court case filed by local fishermen in 2006,” points out Mahesh Pandya, an environmental activist in Ahmedabad.

With regards to the terms of reference set by the EAC, the project came up for public hearing in Mundra on November 11, 2008. Bharat Patel, a member of a local NGO in Mundra called Setu, who managed to download a part of the Environment Impact Assessment report of the WFDP laments, “Very cleverly they put 40 MB files on the Pollution Control Board website. How would the local people who have no access to Internet get their hands on these

⁷ (Letter Dated August 15, 2009/, sent by email to Minister of Environment and Forest)

documents? Even with the best Internet connections downloading such heavy files would be a hard task.”

The EIA unjustifiably portrays the project area as barren land giving the impression that its the development would therefore not involve significant environmental impacts.

“The image from Google maps apparently reveals a vast area of natural marine ecology that would be dredged or filled under the project proposal. It is highly misleading to characterise this land as wasteland. The shallow waters and tidal mud flats that comprise this vast undisturbed area play a vital role in the overall ecology of the area even if they are not heavily vegetated,” claims Mark Chernaik, a technical expert of the E-Law Network, who carried out a critical analysis of the EIA report.

But the real and hard-hitting questions were raised by the local people on the day of the hearing. While they were shocked that the EIA says that the proposed project area has no habitation and does not involve any kind of rehabilitation or resettlement issues, what really surprised them is that the government, after a decade of the company’s expansion, asked for a public hearing to take place. Only one environment clearance public hearing was held during the expansion of the port in relation to EC granted in 2000. “What is the point of this now, after everything is almost over? They have destroyed the place and are now asking our opinion,” said many of the fishermen from the affected villages.⁸

Box: Coastal Zone Management Plan not made available

The ambiguity of the relevance and suspected violation of environmental laws exists due to the public unavailability of the Coastal Zone Management Plan for Kutch Area and Gujarat. The plan has not been made available by authorities even under the RTI Act. An application that was filed by one of the members of Akhil Kutch Macchi Mari Association before the Ministry of Environment and forests on 14.07.09 was transferred to the Member Secretary, Gujarat Coastal Zone Management Authority (GCZMA). However, the applicant has not received any response so far. Several RTI applications have been filed for the CRZ plans and these were rejected on the grounds that the maps were not in any shape to be photocopied or that they cannot be shared as they are confidential or that ISRO should be approached for the maps.

B. MPSEZ, WFPD and Forest Clearances: Under Forest Conservation Act 1980

As earlier mentioned, several independent components that were in operation were merged into the Mundra Special Economic Zone (MPSEZ) in 2004. The chronological history of MPSEZ's forest clearance has significant issues which have a bearing on the loopholes in the systems of governance and how project authorities are able to work around them.

MPSEZL was granted in-principle approval for forest land of 1840 ha + 168.41 ha on 27.2.2009. However, this forest clearance letter does not specify the purposes for which forest

⁸ Source: Asher, M. How Mundra became India's Rotterdam. InfoChange News & Features, December 2008

clearance itself has been sought. At the outset it is important to note full fledged construction activity on a project can only begin after both environment and forest clearances are in place. In this instance, a closer look reveals that the area for which the forest clearance was sought was in favour of the MPSEZ, is the same as that required for the Waterfront Development Project of the same company. However, while seeking the environment clearance for the MPSEZL, the company sought not to disclose this crucial information. The link between the forest land for which in-principle clearance was granted and the Waterfront project is revealed through a understanding of the following facts:

- a) Letter dated 13th October 2008 from J.K. Vyas, Director (Environment), Government of Gujarat on the CRZ clearance to the Water Front Development of MPSEZL states that, "Further, the proposed development also utilizes 1840 ha.+ 168.41 ha (totalling to 2008.41 ha) of forest land for which MoEF. GoI, had already given in-principle approval to M/s Adani Chemicals Limited for diversion of the said land.
- b) MPSEZL in its response to Gujarat Pollution Control Board on 24th December 2008 gives "details regarding the forest land with supporting documents". The MPSEZL has attached the letters of in principle approval dated 13th May 2004 in favour of M/s Adani Chemicals for diversion of 1840 ha of forest land. The land use and company was changed for this by the MoEF.

This clearly indicates that the forest land is essential for the waterfront development project to be constructed. However, the company has gone ahead and started massive construction on the west port including construction of a road which passes through forest land. As per the prescribed norms of forest clearance under the forest conservation act, no construction work can be started even on non-forest land if the said project necessitates the utilisation of forest land; till such time the forest clearance is approved.

Section 4.4 of the application form under the Forest Conservation Act, 1980 clearly states that "Some projects involve use of forest land as well as non-forest land. State Governments / project authorities sometimes start work on non-forest lands in anticipation of the approval of the Central Government for release of the forest lands required for the projects. Though the provisions of the Act may not have technically been violated by starting of work on non-forest lands, expenditure incurred on works on non-forest lands may prove to be infructuous if diversion of forest land involved is not approved. It has, therefore, been decided that if a project involves forest as well as non-forest land, work should not be started on non-forest land till the approval of the Central Government for release of forest land under the Act has been given." The MPSEZ is in serious violation of this clause of Forest Conservation act.

However, this is not surprising considering the marred history of the forest clearance to MPSEZL and its legal tangles with the Central Empowered Committee which has been described in the next section.

**Box: Chronological order for Forest Clearance Approval by various Authority to
MPSEZ**

1.26th June 1998- 2400 ha of Forest land for M/s Adani Chemicals rejected by Forest Advisory Committee (FAC) on reasons that the area contains 19.42 lakh mangrove trees

2.17th July 2002, FAC asks for a fresh proposal to be submitted due to high impacts of the project and its location in an ecologically fragile region

3.26th September 2002 FAC recommends 1840 ha of forest land out of the proposal for 1850 ha, which was the original land proposed to be diverted. 10 ha of interspersed mangrove forests was kept out. However, the proposal was granted in principle approval 13th May 2004 and 14th May 2004 by MoEF to M/s Adani Chemicals for 1840 ha + 168.41 ha of forest land. During 2002 to 2004, the approval was pending the in principle approval.

4.23rd June 2004 MoEF approval for change of user agency from M/s Adani Chemicals Ltd to M/s Mundra SEZ Ltd. However on 5th September 2007, the MPSEZ Ltd requested the MoEF to amend the 'In principle approval' to include a changes. This included phasing out of payments for the diversions of the forest land; changing the name further to Mundra Port and SEZ Ltd; and also change of land use Master Plan also in favour of MPSEZ Ltd.

5.27th March 2008 FAC denies the change of land use to carry out activities related to the Master Plan of the MPSEZL as against purposes for which the forest land was earlier diverted. This was done after an application by MPSEZL on 5th September 2007. The FAC notes, "*the proposed land use completely changes the scope and purpose of the original diversion accorded....the state government may be advised to submit the proposal afresh.*"

6.17th April 2008 The FAC considers the proposal again following a representation by MPSEZL dated 3rd April 2008.

7.16th July 2008 Central Empowered Committee report on the FAC reconsideration decision to divert 1840 ha + 168.41 ha of forest land. The report concludes, "*the CEC is of the view that the recommendations of the FAC in the present case may not be accepted and the present request by the user agency for the diversion of forest land in a phased manner as part of the expansion of the Mundra Port and SEZ Limited may be rejected.*"

8.3rd October 2008 Supreme Court's order in the TN Godavarman case, "*as Regards the proposed land use, the State Government may furnish a fresh proposal to the FAC within a reasonable time.*"

9.13th October 2008 Letter from J.K. Vyas, Director (Environment), Government of Gujarat on the CRZ clearance to the Water Front Development of MPSEZL states that "*Further, the proposed development also utilizes 1840 ha.+ 168.41 ha (totaling to 2008.41 ha) of forest land for which MoEF. GoI, had already given in-principle approval to M/s Adani Chemicals Limited for diversion of the said land*"

10.19th September 2008 Gujarat Pollution Control Board rejects the NOC application of MPSEZL related to waterfront development and seeks details of the forest land involved.

11.24th December 2008 MPSEZL responds to Gujarat Pollution Control Board and in annexure IV gives “details regarding the forest land with supporting documents”. The MPSEZL has attached the letters of in principle approval dated 13th May 2004 in favour of M/s Adani Chemicals for diversion of 1840 ha of forest land.

12.12th January 2009 CRZ Clearance to Waterfront Development project of MPSEZL (no mention of forest land involved) and 27th February 2009. FAC grants in principle approval of the forest land for MPSEZL for diversion of 1840 ha. + 168.41 ha (Totaling to 2008.41 ha) of forest land. This is based on a fresh application from MPSEZL following the Supreme Court order.

4. Legal Tangles

Adani's operations in Mundra are mired in several legal entanglements both at state and national levels. We present below some critical cases and their outcomes.

- In 1993, Salim Jat and Others had filed a writ petition no. 8240/1993 inter alia seeking a restraint order on the allotment of land to company. Later, it appears that the said writ petition was withdrawn. Thereafter, Akhil Kutch Macchi Mari Association, through its president Salim Jat filed Civil Suit No. 78/1998 inter alia seeking a restraint against company from interfering with the fishing activities of the fishermen. The said suit was disposed of by a consent decree dated 7.11.1998
- In 2004, Gujarat High Court, dismissed the application of the residents of fishing villages. Prayer in the application was to restrain blocking or obstructing or putting impediments on the Navinal and Bocha Creeks. The court observed that Navinal creek was not navigable and could not be used for going to high seas on account of security reasons as pointed out by the customs authorities. The court also found that the fishermen had other accesses to the high seas and had no right to restrain the company from carrying on the development of project. Applicant went to division bench and Supreme Court in 2005, where the case was dismissed.
- In 2008, Salim Jat and others filed Civil Application No. 13090/2008 in the Gujarat High Court inter alia seeking a stay on the public hearing to be held on November 2008. The High Court refused to grant interim relief and refused to stay on the Public Hearing.
- The same petitioner also went to the Supreme Court in July 2008 with issues of impacts of the SEZ and port especially on the creeks and mangroves. The Chief Justice K G Balakrishnan, who headed the "environment bench" in the apex court, after staying the work in the first hearing, dismissed the case with the remark, "We cannot look into environment issues of each state. You can approach the High Court." The case was then filed in the Gu-

jarat High Court which ordered an investigation into the environmental and other violations by the company. Unfortunately, the Gujarat Maritime Board and departments involved gave a clean chit to the company. A special leave petition challenging this was filed yet again with the Supreme Court in 2009. In a year and a half the case came up for hearing several times but none of the departments concerned including the MoEF filed their replies on the case. After 12th April 2010 when the court gave a final warning and 3 weeks time for all departments to file their replies the petitioners were approached for a compromise and the case was withdrawn and the case dismissed on 7th May 2010.

- On 11th February 2009, an appeal filed before the National Environment Appellate Authority (NEAA)⁹ against the environment and CRZ clearance to the WFPD project. Following this, an order was passed by NEAA on 22nd July, 2009. After 5 months and a number of hearings on the application filed by Manjalia Ahmad Ishaq and other fisherfolk from the area, was disallowed without any substantive justification of the critical contentions of the applicants in the final judgment. This is despite the fact that the petition before the NEAA clearly highlighted discrepancies in the grant of clearances and the fact that the Adani group had initiated construction activity before receiving environment clearance. However, the NEAA verdict did not uphold these crucial facts and ruled in favour of the company.¹⁰ The order rejected the request of the appellants for grant of stay against ongoing constructions. With regards to the “apprehension” over the possible hindrance by the project activities over fishing activities of local fisherfolk, the project authorities were asked to ensure that any proposed activities of WFDP do not hinder safe access of fisherman to the sea through the traditional access including their use of *bandars*.

- The forest clearance matter before the Central Empowered Committee is a significant trajectory to follow to understand the illegalities of the Adanis. The application for forest clearance for 1840 ha came up before the Forest Advisory Committee (FAC) of the MoEF¹¹ (a committee which recommends or rejects forest clearances) in March 2008. The members of the FAC questioned the validity of the earlier impact assessment studies of the project and sought that a fresh proposal for the SEZ would have to be made. But in a

⁹ The National Environment Appellate Authority (NEAA) was set up by the Ministry of Environment and Forests to address cases in which environment clearances are required in certain restricted areas. It was established by the *National Environment Appellate Authority Act 1997* to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall or shall not be carried out, subject to certain safeguards under the Environment (Protection) Act, 1986. The Authority shall become defunct and the Act shall stand repealed upon the enactment of the *National Green Tribunal Bill 2009* currently pending in Parliament

¹⁰See also: <http://www.infochangeindia.org/200908197896/Environment/Features/Mundra-An-incomplete-verdict.html>

¹¹Forest Advisory Committee (FAC) has significant role under the ambit of Forest Conservation Act, 1980. Whenever a project requires the diversion of forest land for non forest Purposes, it requires forest clearance as per the stipulations prescribed under the Forest Conservation Act, 1980. A proposal for such clearance is received by the FAC through the State Forest Department following the recommendations by the local Divisional Forest Officer (DFO). The FAC has the responsibility to process the proposals, seek additional information and subsequently recommend or reject the grant of clearance

volte face the same committee (FAC) granted an in-principle approval to the application for change in land use in April 2008. At this point the order of 27 April 2007 in the *T N Godavarman v/s Thirumulpad* (Writ Petition (Civil) 202 of 1995) was in operation. Therefore the FAC decision came under the scanner of the Central Empowered Committee (CEC) of the Supreme Court. The CEC in its report of July 2008 strongly questioned the reversal in the FAC's decision and recommended that the application of the company and in-principle clearance be rejected. Based on this the Supreme Court in October 2008 ordered the state government and company to make a fresh proposal for the forest clearance. A fresh application was made and yet again an in-principle approval was granted in February 2009 (27.2.2009, this time in favour of MPSEZL¹².

5. Local Protests

From 1998 onwards, NGOs, community organisations, village panchayats and fishing communities have raised these issues consistently with the district revenue and forest departments, state government, State Human Rights Commission and the Ministry of Environment and Forests. Apart from this the matter has been reported in several newspapers and magazines on a regular basis. But there has been virtually no response from the authorities. Demands have been made repeatedly asking for an immediate halt to any further clearances and expansion of the MPSEZL project and an independent inquiry to investigate the destruction of the marine ecosystem of the Gulf of Kutch. However, announcements of expansions spelling doom for the local communities of Mundra, now clamped between several SEZs and megaprojects along their coasts have been relentless.

In terms of local actions, ever since the Adanis began their operations for a jetty and were followed by construction of a port, warehouses, godowns, infrastructure like roads, rail, airport and a power plant, there have been phases of unrest. In the year, 2000 the *Vaghers* of Jharpara village organized themselves for a 42 day sit-in after they were evicted from their temporary shelters at the village fishing harbor. This was the first expression of organized protest against the Adani Port. But false cases were filed against those leading the struggle. For a community leading a hand to mouth existence, carrying on the struggle would have meant a direct impact on their day to day survival. Further, communities dependent on resources that they have been using for years but have no legally recognized ownership over are seen as having no locus standi to stake a claim to the resources. A consistent, organised resistance was therefore not feasible.

The Jharpara struggle went down as a failed attempt, as the community got no relief or response from the government. Infact, it set a precedent, and for a long time there were no protests against the activities of the company which included consistent land grab and destruction of the fishing habitats. In February 2006, the construction of a wall enclosing land for the airstrip effectively blocked all access of the *pagadiyas* (traditional fishermen who fish

¹²Source <http://www.indiatogether.org/2008/jun/env-facecec.htm>; Kohli, K. and Asher, M. November, 2009. Adani Builds, MoEF Bends. Civil Society, Delhi Pp 31-32.

on foot) of Shekhadiya village to the sea. Desperate and angry, they protested under the banner of the Machimaar Sagar Sahas Samiti, along with groups like Setu, and Ujjhas Mahila Sanghatana. A petition was filed in the Gujarat High Court. The company signed a settlement with the villagers that an access road would be provided around 200 metres away from the present boundary wall. Though an out of court settlement was arrived at, now there was a revival of the fisherpeople's movement for protecting their access to the coast.

A network of three NGOs, namely Setu (Bhadreshwar), Yusuf Maheraully Centre (YMC) and Kutch Mahila Vikas Sangathan (KMVS), working for the comprehensive development of the coastal communities of Mundra also took up the issue. With an aim of guaranteeing livelihood rights to the fishing communities, the NGOs have organized various workshops, padyatras and awareness campaigns. Support from the National Fishworkers Forum (NFF) played an important role in further strengthening the movement. In 2007-08 the Macchimaar Adhikar Sangharsh Sangathan, a local trade union was formed bringing together all affected fisherpeople.

A series of communications were initiated since 2007 with the Ministry of Environment and Forests. A detailed representation made on 01/10/07 appealed for the intervention of the ministry with the following demands:

1. Immediate halt to the mangrove destruction process, including the breaking of the bunds that had been constructed. This would allow the destroyed mangroves to regenerate.
2. Independent enquiry committee set up by the ministry to be sent to the area to investigate violations.
3. Appropriate action to be taken against the violators.

Despite this appeal to save sensitive ecology and livelihood of the area, the ministry did not initiate any effort to investigate into the case. In 2008-09, after repeated follow-up, the Ministry claimed that it had not received the memorandum of October 2007. This was re-sent to the Ministry but a more detailed presentation was made to Shri Jairam Ramesh during the consultations on the CZM Notification in August, 2009. Though the Minister assured that action would be taken, no such process was initiated. An RTI application was filed by Kalpavriksh Environment action group, a supporter of the movement in Mundra, to seek information on action taken by the MoEF in November, 2009. Yet again the MoEF responded that no such letter was received and the RTI application was transferred to the forest division of the MoEF.

Apart from the fisherpeople, the livestock rearing communities have been affected by the take over of more than 1400 hectares of grazing land of 10 villages. The opposition has been strongest in Tunda village against Adani Power's thermal power plant. The battle has now gone to the High Court. This group did extend their support to the fisherpeople's struggle but as of today, there is no unified opposition from various groups that are adversely impacted by the Adani projects in Mundra.

In a society differentiated by caste, religion and class, the possibility of organised and united action by the 'losers of resources' has become increasingly tough especially in a business oriented state in like Gujarat. The failure of the legislature, the bureaucracy and the law of the land to address public grievances and protect the interests of the people has caused further demoralisation. But the pagadiyas of Mundra know that the sea is their only hope for survival and they continue to demand a stop to further industrial expansion into their fishing zones. The recent agitations against another proposed thermal power project by the OPG group, which led to arrest of many of community leaders, indicates that the spirit of the fisherpeople is far from broken.

6. Key Issues

Some specific issues that emerge from the investigation of the projects of the Adani Group in Mundra are the following. These are in addition to the general problems and loopholes that exist in the process of grant of various clearances to infrastructure projects by the central and state governments.

1. The FAC's 2009 in principle approval for the diversion of 2008.41 ha forest land for the MPSEZL was granted despite there being evidence that construction on the project had begun well before grant of clearance. These issues were brought up at the time of the public hearing for the project too. This amounts to rewarding a violator.
2. The CRZ clearance granted in 2009 for the Waterfront Development Project was obtained by withholding information regarding the requirement of forest land by the project. The expert Appraisal Committee did not verify the information provided by the Adanis and therefore validated this gross negligence.
3. MPSEZL has been working to establish multipurpose Special economic zones in Mundra by combining all the various components of MPSEZL and seeking separate clearances for that. While these clearances have been under process, the environment clearance for the entire multipurpose SEZ has not been granted so far by Ministry. However project authorities have been pushing activities on the ground for the entire SEZ.
4. Due to project activities, nearly 300 ha mangroves which are important for fish breeding, had been destroyed and large area of mangroves are under the threat of being eliminated for projects. Apart from ecological value of mangroves, they are indirectly a source of livelihoods of the fisherfolk and local people.
5. Local people, fisherfolk and civil society groups have been intimating the government authorities about the violation of environmental laws and ground realities of project by participating in public hearing, writing letters and initiating litigation. However, these ac-

tions have not moved the authorities towards taking any concrete action against the violators.

Overall, the main issue in the movement against the Adanis projects is the large scale environmental violations that have been taking place since they began work in the Mundra coast. The current demands by the affected groups is that no further expansion or projects should be allowed for new ports or SEZ units. An independent enquiry of violations should be undertaken so that impacts of all previous violations are recorded grievances redressed. This area should be declared as a 'special fishing zone' to protect whatever is left of the livelihoods and marine ecosystem for the local people who survive only on these resources. Work remains to be done to ensure that central and state government authorities accept these demands.

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