CLOSING THE ENFORCEMENT GAP

This document is the culmination of a year-long exercise of a community-led process for ground truthing the violations of environmental conditions laid out in the Coastal Regulation Zone approval for a large infrastructure, coal handling and port facility in the Mundra region of Kutch district in the western Indian state of Gujarat. It presents compelling data on the nature of the violations, many of which were anticipated when local community members objected to the Waterfront Development Project (WFDP) of the Adani group in the region. These anticipated impacts were presented to the regulatory bodies prior to the approval as well as in the appellate court soon after where the permission granted to the project was challenged.

This document lays out the evidence of non-compliance by the project and its effects on the environment and the people. The process followed by the community members to document data on impacts and present it as legally permissible evidence is unique. It includes the setting up of the Mundra Nitarakshak Manch (Forum for the Protection of Rights in Mundra), which will now work towards obtaining government action on non-compliance by the project as well as undertake other such studies to record evidence of violations by other projects in the region.
Mundra Hit Rakshak Manch (Forum for Protection of Rights in Mundra) is an informal collective of villagers impacted by large-scale land use change due to extensive industrial expansion in the Mundra region. These persons and organisations have been regularly raising concerns about the social and environmental impacts of these projects through memorandums, direct confrontations, street actions as well as courts. The forum was organically formed in June 2012 during discussions related to the findings of the community-led ground-truthing exercise.

Citation: Mundra Hitrakshak Manch et al. 2013. “Closing the Enforcement Gap: Findings of a Community-led Ground Truthing of Environmental Violations in Mundra, Kutch.”

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Note: A draft of these community-led research findings was submitted with key evidence to a special committee set up by the Ministry of Environment and Forests on 14 September 2012 to look into the violations by M/s Adani in Mundra, Kutch, Gujarat. The document was signed by the core group members and sent twice to the MoEF and the committee – in October 2012 and February 2013.
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Specific Condition No. (i)
NO EXISTING MANGROVES SHALL BE DESTROYED DURING CONSTRUCTION/OPERATION OF THE PROJECT.

Specific Condition No. (ii)
THERE SHALL BE NO FILLING UP OF THE CREEK AND RECLAMATION OF THE CREEKS.

Specific Condition No. (viii)
IT SHALL BE ENSURED THAT DURING CONSTRUCTION AND POST CONSTRUCTION OF THE PROPOSED JETTY THE MOVEMENT OF THE FISHERMEN’S VESSELS OF THE LOCAL COMMUNITIES, ARE NOT INTERFERED WITH.

General Condition No. (v)
THE SAND-DUNES, CORALS AND MANGROVES IF ANY, ON THE SITE SHALL NOT BE DISTURBED IN ANY WAY.

THE ORGANISATIONS INVOLVED

ANNEXURES
The Mundra region of Kutch district of Gujarat has for the last decade and a half seen increased industrial expansion. A range of multi-utility ports, coal handling facilities and thermal power plants have been granted approval under various environment regulations, with allegedly inadequate and incomplete assessments. A prominent feature of the Mundra Coast is the vast intertidal zone comprising a network of creeks, estuaries and mudflats. This zone is unique and very important because fishermen use these natural creeks to land their boats to keep them safe from strong winds and currents. The creeks also form a natural drainage system which, if disturbed, can lead to flooding during monsoons.

One of the largest industrial and infrastructure projects in the Mundra region is the waterfront development project (WFDP) by M/s Mundra Port and SEZ Limited (MPSEZL) (Now known as Adani Port and SEZ Ltd [APSEZL]). The Ministry of Environment and Forests (MoEF) under the Environmental Impact Assessment (EIA) and the Coastal Regulation Zone (CRZ) notifications issued clearance for the project on 12 January 2009. According to the EIA notification, activities such as mining, power generation, construction of roads/highways and the setting up of various kinds of industrial projects need to be preceded by a process of assessing potential environmental impacts and conducting a public hearing before permission can be granted to begin construction. These permissions also need to be compliant with the CRZ notification, which restricts the nature of activities in a specifically defined zone.

With every permission, the MoEF and its thematic expert committee put forth a set of conditions that needs to be met during the construction and/or execution of the projects. The environmental clearance for the WFDP was issued alongside 17 specific and 14 general mandatory conditions as set forth by law.

Previous regional, national and international studies have highlighted that enforcement and compliance continue to be challenging aspects of regulation. With this background in mind, discussions among members of the affected community and others – Panchayat representatives from the area, local activists, researchers, representatives of Machimar Adhikar Sangharsh Sangthan (MASS), Ujjas Mahila Sangathan, SETU and Namati-Centre for Policy Research Environment Justice Program – took place to explore the possibilities of carrying out a community-led assessment to ascertain the extent of non-compliance and its impacts, and especially to understand its relevance in coastal areas. The idea was to initiate a ground-truthing exercise to assess the implications of non-compliance towards achieving a few specific legal empowerment goals:

1. A greater understanding in the affected community about environment regulatory processes related to EIA and CRZ notifications.
2. Initiating a community-led exercise to correlate social and environmental impacts and create legally permissible evidence related to non-compliance of conditions laid in the environment CRZ clearance letters.
3. Organising community responses and follow-ups to the findings with the help of local, state, national and global supporters. Planning subsequent steps—seeking governmental intervention, corporate accountability and media response.
4. Drawing lessons from this exercise for its replicability at other sites and for possible preparation of tools for similar legal empowerment actions.

The four conditions that were identified as part of the community-led ground truthing of violations are:

- **Specific Condition No. (i):** No existing mangroves shall be destroyed during construction/operation of the project.
- **Specific Condition No. (ii):** There shall be no filling up of the creek and reclamation of the creeks.
- **Specific Condition No. (viii):** It shall be ensured that during construction and post construction of the proposed jetty the movement of the fisherman’s vessels of the local communities, are not interfered with.
- **General Condition No. (v):** The sand-dunes, corals and mangroves if any, on the site shall not be disturbed in any way.

As part of the research and discussions, and as a background to this exercise it was revealed that:

1. Many of the concerns and compliance related issues being addressed as part of the community-led research were also along with the issue construction activity prior to receiving clearance; were challenged by multiple petitioners in a case filed before the National Environment Appellate Authority (NEAA) in New Delhi. The petitioners included representatives of fishing communities affected by the WFDP project. The EIA report underplayed the existence of the mangroves and the loss that would occur if the project were to go ahead.
2. Following complaints made by the affected people and the fisher-people’s union in the area, the MoEF carried out a site inspection in the Mundra region and specifically looked at the violations of the WFDP project. Based on this, the MoEF issued a show-cause notice seeking explanation from MPSEZL (APSEZL) as to why their approval should not be revoked with respect to the aforementioned violations. Yet, the project carried on.
3. There was only one copy of the mandatory 6 monthly monitoring and compliance reports of the WFDP project, available when sought under Right to Information. This was for the January to June 2011. Here MPSEZL had stated that they were ‘complying’ with all four conditions related to the destruction of mangroves, the filling up of creeks, the destruction of sand dunes and the access of fishing vessels. No other monitoring or compliance reports were provided despite the RTI application requesting for the same. This implies that either no monitoring or compliance reports existed before this period or the MoEF’s regional office in Bhopal did not provided them through the RTI.
In February 2012, the community-led ground-truthing exercise was initiated with a meeting of villagers from Zarpara, Shekhadia and Bhadreshwar villages and several of the fishing harbours accessed by them. Representatives from the horticulture and grazing communities also participated as they had already been active in raising concerns regarding the running of the WFDP project and other operations of the Adani Group including through litigation in the Gujarat High Court. The purpose of this meeting was to:

1. Understand the conditions listed in the CRZ and environmental clearances granted to the WFDP project and the process by which this happened.
2. Discuss the possibilities of a community-led evidence gathering process which would be carried out by representatives of the villages affected by the project along with members of MASS, Ujjas and SETU who would act as resource people in understanding the law and the implications of the violations.
3. Identify a list of conditions which could be verified and investigated through a community-driven process with technical assistance related to mapping and legal clauses provided by other organisations involved.
4. Ascertain the extent of evidence already available among the community and the paralegal work that had already been done by organisations like MASS, Ujjas and SETU.

In the meeting that took place on 17 June 2012, many other villages affected by the WFDP project gathered to discuss the impacts and violations. While many villages were fighting their solitary causes of grazing, fishing or farmlands, during this meeting they organically decided to come together to form the Mundra Hit Rakshak Manch (Forum for the Protection of Rights in Mundra). This was a congregation of village representatives and local NGO community organisers. Members of this forum have contributed extensively to evidence gathering, discussions on coming up with subsequent steps to the ground-truthing exercise and larger conceptual debates around impacts of industrialisation in the region.

Some of the findings of the process, which have also been submitted to a committee headed by Sunita Narain constituted by the MoEF in September 2012 (which was set up midway during this exercise), reiterated:

• The impact of the WFDP has largely been on the creeks in two regions: Bharadi Mata and Kotdi. These areas also had an extensive growth of mangroves which too were destroyed alongside the creeks. It was highlighted that the overall the overall changes in this eco-fragile landscape and destruction of mangroves has also affected the main and supporting creek systems of the area.
• The construction of the different components of the Adani Group’s WFDP project has severely impacted the movement of fishermen to their existing fishing commons. While Specific Condition No. (viii) is limited to the movement of the fishermen’s vessels, it is important to link it to the fact that ever since the project was proposed, the existence of pagadiya fishing in the area has been severely undermined. As mentioned earlier, the EIA report of the WFDP project concealed information about the impact on the fishing communities using the fishing harbours in the area.
• In the course of several discussions among the affected villages it was revealed that before the construction of the West Port the area did not have any bunds and had, instead, sand dunes and creeks in the area between Kotdi Creek 1 and Kotdi Creek 2. The bunding activity undertaken in the region without permission led to the destruction of several sand dunes and creeks
• Due to the construction of the WFDP project the sand dunes in the area adjoining the Bharadi Mata hill, which is in the project area, have been completely destroyed.

The organisations involved in this community-led research are:

1. MUNDRA HIT RAKSHAK MANCH (FORUM FOR PROTECTION OF RIGHTS IN MUNDRA) is an informal collective of villagers impacted by large-scale land use change due to extensive industrial expansion in the Mundra region. These persons and organisations have been regularly raising concerns about the social and environmental impacts of these projects through memorandums, direct confrontations, street actions as well as courts. The forum was organically formed in June 2012 during discussions related to the findings of the community-led ground-truthing exercise.
2. MACHIMAR ADHIKAR SANGHARSH SANGATHAN (MSS) Kutch is a trade union of the fishing community in Kutch district, Gujarat. MASS is also associated with the National Fishworkers’ Forum (NFF), a national-level collective of fisherfolk and support organisations. Kheti Vikas Seva Trust is a grassroots group based in the Mundra region which has been highlighting concerns related to the impacts of indiscriminate industrialisation on farming and fishing communities in Kutch district. They are currently involved in several public interest litigations on these issues in the Gujarat High Court.
3. UJJAS MAHILA SANGATHAN is a women’s collective working on several advocacy issues with women at the core of their efforts and actions. In recent times they have also looked at issues of women and industrialisation in the Kutch region.
4. SETU in Bhadreshwar is an initiative of the Kutch Navnirman Abhiyan that works especially to strengthen local governance in the rural and least-developed areas of the Kutch district. The 18 SETUs help communities and local governments realise their development needs.
5. NAMATI-CPR ENVIRONMENTAL JUSTICE PROGRAM is the India chapter of Namati-Innovations for Legal Empowerment. In partnership with the Centre for Policy Research (CPR), New Delhi, Namati’s India work concentrates on environment justice issues.
BACKGROUND TO THE REGION AND THE ISSUE

JANUARY 2009

Environment and CRZ Clearance for the WFD Project

The Ministry of Environment and Forests (MoEF) had—under the Environmental Impact Assessment (EIA) and the Coastal Regulation Zone (CRZ) notification—issued clearance for the proposed waterfront development project (WFD) at Mundra, District Kutch, to Ms Mundra Port and SEZ Limited (MPSEZL) vide letter No.10–47/2008–1A–III dated 12 January 2009. An addendum to this was issued vide letter No.10–47/2008–1A–III, dated 19 January 2009. According to the MoEF’s own documents, this clearance was issued based on the recommendations made by the Gujarat State Coastal Zone Management Authority/Gujarat Environment Department vide letter No.ENV10/2008/843–P, dated 13 April 2008, and was for foreshore facilities and other permissible activities on the northern, western, southern and eastern ports.

This approval was granted as per the mandatory requirements of the EIA notification, 2006 (earlier 1994), issued under the Environment Protection Act, 1986, according to which activities such as mining, power generation, construction of roads/highways and the setting up of various kinds of industrial projects need to be preceded by a process of assessing potential environmental impacts and conducting a public hearing before permission can be granted to begin construction. It is only after this—and the appraisal of project documents by a thematic expert committee—that a project is granted environmental clearance. [Note: The MPSEZ is now known as Adani Port and SEZ Ltd]

With every permission, the MoEF and its thematic expert committee put forth a set of conditions that needs to be met during the construction and/or execution of the projects. These conditions range from general ones of following standards and stipulations prescribed by environment laws, to more specific ones based on the nature of the project and the region where it is likely to be set up. For instance, clearance conditions for hydroelectric projects stipulate that extra care be taken while dumping debris generated during construction and controlled blasting. In the case of industrial projects, the conditions necessitate the establishment of effluent treatment plants and the continuous monitoring of various parameters such as air, noise and water pollution levels.

Companies don’t talk to people. They are not ready to listen to us. Many locals think they will get jobs in these companies, but they don’t. Companies make false promises.

~ Husain Kara, Core group member, Fisherman, Bhadreshwar village

There is not enough grazing land for cattle. They used to drink water at the dam, but now the water is dirty. Rich are getting richer, poor are getting poorer and the rich are buying most of the available water. All the water in Kutch is going to companies, not villages.

~ Javjiba Jadeja, Core group member, Founding member of Ujjas, Baraya village

Mangroves should be planted again. On paper, the number of mangroves that have been cut are about two crore. But in reality the number is much higher.

~ Deval Gandhi, Core group member, Ujjas member, Shekhadia village

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~ Deval Gandhi, Core group member, Ujjas member, Shekhadia village
A prominent feature of the Mundra Coast, where the WFDP project is located, is the vast intertidal zone comprising a network of creeks, estuaries and mudflats. This zone is unique and very important because fishermen use these natural creeks to land their boats to keep them safe from strong winds and currents. The creeks also form a natural drainage system which, if disturbed, can lead to flooding during monsoons.

The marine fishing settlements are transient villages, which are inhabited by the fishing communities for 8–10 months in a year. These villages are set up on sand dunes or mudflats known as ‘bandars’. After the fishing season the communities return to their formal villages, often situated at a reasonable distance from the transient villages. Typically, all the fishing households from a village migrate and stay together in a particular coastal settlement. More than 1,000 families in the coastal area in Mundra are involved in fishing. They fish on small boats and on feet. Besides fishing in high seas, about 229 people are involved in direct vending, 73 in net making and repairing, and over 5,000 women in processing the fish (Source: Fishmarc and Kutch Nav Nirman Abhiyan, 2010).

The CRZ cum environmental clearance for the WFDP was issued alongside 17 specific and 14 general mandatory conditions as set forth by law.

The four conditions that were identified as part of the community-led ground truthing of violations (more on this process on page 12) are:

Specific Condition No. (i)
NO EXISTING MANGROVES SHALL BE DESTROYED DURING CONSTRUCTION/OPERATION OF THE PROJECT.

Specific Condition No. (ii)
THERE SHALL BE NO FILLING UP OF THE CREEK AND RECLAMATION OF THE CREEKS.

Specific Condition No. (viii)
IT SHALL BE ENSURED THAT DURING CONSTRUCTION AND POST CONSTRUCTION OF THE PROPOSED JETTY THE MOVEMENT OF THE FISHERMEN’S VESSELS OF THE LOCAL COMMUNITIES, ARE NOT INTERFERED WITH.

General Condition No. (v)
THE SAND-DUNES, CORALS AND MANGROVES IF ANY, ON THE SITE SHALL NOT BE DISTURBED IN ANY WAY.

Lots of changes have occurred. People earn money by selling farmland to the companies, as a result of which farmlands are being destroyed. Mangroves have been destroyed. Temperatures have been rising since the companies came here.

~ Deval Gandhi, Core group member, Ujjas member. Shekhadia village

One of the general conditions states that ‘The Ministry reserves the right to revoke this clearance, if any of the conditions stipulated are not complied with to the satisfaction of the Ministry.’ [General Condition No. (x)]

Previous regional, national and international studies have highlighted that enforcement and compliance continue to be challenging aspects of regulation. During talks among members of the affected community, Panchayat representatives from the area, local activists, researchers, representatives of Machimar Adhikar Sangharsh Sangthan (MASS), Ujjas Mahila Sangathan, SETU, and Namati-Centre for Policy Research Environment Justice Program, the possibilities of carrying out a community-led assessment to ascertain the extent of non-compliance and its impacts was discussed. The idea was to initiate a ground-truthing exercise to assess the implications of non-compliance towards achieving a few specific legal empowerment goals:

- A greater understanding in the community about environment regulatory processes of environmental clearance and CRZ as well as the process of conditional clearances.
- A first step towards a community-led exercise to correlate real-time social and environmental impacts with the non-compliance of legal and mandatory conditions laid out during approvals. Addressing the illegality of the act of pollution, degradation and other similar impacts.
- Organising community responses and follow-ups to the findings with the help of local, state, national and global supporters. Planning subsequent steps—seeking governmental intervention, corporate accountability and media response.
- Drawing lessons from this exercise for its replicability at other sites and for possible preparation of tools for similar legal empowerment actions.

The road connecting Tunda and Vandh that goes from between the Adani and Tata power plants has been shut and another road has been built. But that goes around both the factories and is too long. Only people with personal vehicles can use the original road. We want that road to be reopened to us.

- Romat Alimamad, Core group member, Tunda (Vandh)

Discussions around impacts of the project: increase in salinity, reduction in fish production and increased vulnerabilities for women.
The concerns related to the social and ecological impacts of the WFDP and the construction activity prior to receiving clearance were challenged by multiple petitioners in a case filed before the National Environment Appellate Authority (NEAA) soon after clearance was granted. The petitioners included representatives of fishing communities affected by the WFDP project—Manjali Amad Iliyas Ishak of Luni village, Gadh Amins Ben Harun of Vandi village (Tuna), Manjali Amina Ben Ibrahim of Bhadreshwar village, Jam Jennat Ben Ram and Chamadiya Talab Osman Ishak of Shekhadia village—and Manshi Asher, a researcher and activist working in the region.

The application to the NEAA questioned several discrepancies in the draft EIA report submitted by the project proponents which were completely ignored by the expert committee of the MoEF. It highlighted that the EIA report had presented the land of the WFDP project as ‘non-agricultural, waste, barren or weed infested’, and the intertidal mudflats, mangroves and sand dune areas as wasteland or fallow land.

With respect to mangroves, the EIA report underplayed both their existence and the loss that would occur if the project were to go ahead. In Section 4.3.5 of the report, it was mentioned that ‘The Core Impact Area although has mangroves in the neighbourhood, the activities of project domain do not disturb those areas or species in these areas.’ However, based on the project area mentioned in the EIA report, the NEAA appeal clearly outlined that the impact zone encompassed 4.42 km² of dense mangroves and another 9.30 km² of sparse mangroves. It stressed that the loss of nearly 14 km² of mangroves would inevitably result in substantial and adverse environmental impacts even if this area is a small portion of the overall impact zone. Satellite imagery was also submitted to support this claim.

The appeal also brought out the gross underestimation of the social impact of the project and the complete neglect of the associated R&R issues. It underlined that along the 27 km long coastline of the WFDP, fishing activities would be obstructed and gradually become nil. This meant that 10,000 fishermen—who had till now been earning crores of rupees per annum from fishing and who did not have any other occupation—would become jobless.

The audiovisual evidence that was submitted showed that 60 per cent of the construction had already been carried out before the project received environmental clearance, thereby impacting the Bharadi Mata and Kotdi creeks. Affected people had also raised this issue as part of the mandatory public hearing on the project as per the EIA notification, 2006.

On 20 July 2009, the NEAA gave its judgement on the case. Certain observations are crucial with respect to the compliance of the environmental clearance conditions set out for the project. The NEAA judgement referred to several assurances made by the project authorities, that is, MPSEZL, that they would not destroy mangroves or fill creeks and also not impact the livelihoods of the fisherfolk. It also reiterated the conditions of the environmental clearance letter and stated that the statutory requirement of the EIA notification as a means of compliance to these conditions would ensure that impacts are contained and apprehensions responded to.

The judgement concluded:

"In light of the apprehension raised by the Appellants over the possible hindrance by the project activities over fishing activities of local fisherman, Respondent-3 (MPSEZL) is directed 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. (Annexure 2)"

Further, if

Appellants are aggrieved that the Respondent–6 has destroyed any part of mangroves and he is carrying out illegal construction activities prior to statutory clearances, they are at liberty to approach the concerned statutory authorities for necessary relief."
Following complaints made by the affected people and the fisher-people’s union in the area, the MoEF carried out a site inspection in the Mundra region and specifically looked at the violations of the WFDP project. The site inspection report referred to two conditions (mentioned earlier in this report) regarding mangroves and creeks. Besides making other observations, it stated:

- Large scale reclamation using dredged material is being carried out on mangrove area behind the West and North port site.
- A dredging disposal pipeline has been laid in the inter tidal area carrying the dredged material to the landward side of the port to reclaim the land area on the West and North port side. This pipeline has been obstructing the tidal flow due to which the mangroves stretch on the western and northern port side have been affected and at several places they have dried up.
- At several places there has been large scale destruction of mangrove area specially at the northern port side abutting the dredging pipeline.
- The creeks system and the natural flow of seawater is being obstructed by reclamation along the creeks. At some stretches destruction of mangroves has been observed.
- Hospital ‘Sterling’ has been constructed within 20 metres from the same creek which attracts the Coastal Regulation Zone Notification, 1991.

We have to make them understand the importance of what they have lost and what might be lost in the future. Also, why there is a need for a collective fight for the sake of the future generations. Otherwise they will curse the older generation that we did not stop the destruction when we could. That we did not even try.

- Mundra Hit Rakshak Manch, Meeting 11 June 2012

Based on this, the MoEF issued a show-cause notice seeking explanation from MPSEZL as to why their approval should not be revoked with respect to the aforementioned violations. (See Annexure 1)

**Monitoring and Compliance of Clearance Conditions**

It is important to reiterate that the conditions laid out in CRZ and environmental clearances have manifold implications depending on whether or not they are complied with. In fact, they are considered to be the mechanism through which environment and social impacts of an activity or process are minimised or mitigated. The expert committees and the MoEF might even add additional stipulations in response to the issues raised by the local community and concerned citizens about potential environmental damage. Non-adherence to one or more of these conditions means nothing less than a violation of the legal commitment made by project proponents to reduce the impacts of their project. Moreover, it leaves communities struggling with the effects of pollution and degradation.

The monitoring of these projects is supposed to be carried out by the regional offices of the MoEF where scientific officers have to bring out monitoring reports every six months. The project authority—which in this case is the MPSEZL (APSEZL)—also needs to submit compliance reports to the MoEF’s regional office in Bhopal every six months.

In response to a Right to Information application, dated 11 September 2012, seeking copies of the monitoring and compliance reports of the WFDP project, one compliance report was received for the period January to June 2011. Here MPSEZL (APSEZL) had stated that they were ‘complying’ with all four conditions related to the destruction of mangroves, the filling up of creeks, the destruction of sand dunes and the access of fishing vessels. A copy of the aforementioned show-cause notice was also provided.

No other monitoring or compliance reports were provided despite the RTI application requesting for the same. This implies that either no monitoring or compliance reports existed before this period or the MoEF’s regional office in Bhopal did not provided them through the RTI.

If we want any documents we get them after a long time due to the RTI laws. We have filed RTIs, but there are people who take bribes and don’t release information.

- Kiritsinh Jadeja, Core group member, Bhadreshwar village
In February 2012, the community-led ground-truthing exercise was initiated with a meeting of villagers from Zarpara, Shekhadia and Bhadreshwar villages and several of the fishing harbours accessed by them. Representatives from the horticulture and grazing communities also participated as they had already been active in raising concerns regarding the running of the WFDP project and other operations of the Adani Group including through litigation in the high court. The purpose of this meeting was to:

- Understand the conditions listed in the CRZ and environmental clearances granted to the WFDP project and the process by which this happened.
- Discuss the possibilities of a community-led evidence gathering process which would be carried out by representatives of the villages affected by the project along with members of MASS, Ujjas and SETU who would act as resource people in understanding the law and the implications of the violations.
- Identify a list of conditions which could be verified and investigated through a community-driven process with technical assistance related to mapping and legal clauses provided by other organisations involved.
- Ascertain the extent of evidence already available among the community and the paralegal work that had already been done by organisations like MASS, Ujjas and SETU.

In the first meeting on 27 February 2012, the clearance letter was translated into Gujarati and shared with the participants. All the conditions were reviewed and four conditions were identified for the ground-truthing exercise, as one for which the community representatives could collect evidence. During this meeting a steering committee was chosen to manage the evidence gathering and coordination exercise. The members of the committee were: Kiritsinh Jadeja, Bhadreshwar village; Naranbhai Ghadvi, Zarpara village; Husain Saleh Muhd. Usman Bhai Kara, Bhadreshwar village; Devalben Malji Ghadvi, Shekhadia village; Javjiba Rangoba Jadeja, Baraya village; and Romatben Kumbhar, Tunda village. Members of Ujjas, MASS and SETU were chosen to act as technical assistants to this committee.

Meeting to discuss the ground-truthing process, February 2012
Following this, other meetings took place on 11 March 2012, 4 April 2012, 17 June 2012 and 10 October 2012. During this time, gathering of evidence—photographs, Right to Information data, local testimonies, existing petitions, memorandums, letters, etc.—continued. In addition, efforts were made to represent land use changes through the Google Maps exercise. The idea was to corroborate the changes visible in and around the project site with imagery available through Google Earth. The final findings of this report reflect this interface.

In the meeting that took place on 17 June 2012, many other villages affected by the WFDP project gathered to discuss the impacts and violations. While many villages were fighting their solitary causes of grazing, fishing or farmlands, during this meeting they organically decided to come together to form the Mundra Hit Rakshak Manch (Forum for the Protection of Rights in Mundra). This was a congregation of village representatives and local NGO community organisers. Members of this forum have contributed extensively to evidence gathering, to discussions on coming up with subsequent steps to the ground-truthing exercise and to larger conceptual debates around impacts of industrialisation in the region. There were indepth discussions around what the group would be looking to do with the information gathered and put together and what are the ultimate outcomes are being envisioned once violations are recorded. Would the group be looking at steps to restrain industrial expansion or work towards regulatory and restorative measures.

Members of MASS and Namati helped with the writing and finalisation of this report which was subsequently shared with the members of the steering committee and the Mundra Hit Rakshak Manch in a meeting on 10 October 2012. Prior to this, the report was translated into Gujarati and disseminated among the members in order to facilitate discussions during the meeting. The findings were collectively discussed, suitably modified and endorsed.

During the October 2012 meeting it was also discussed that the findings of this ground truthing exercise could be submitted to a committee set up by the Ministry of Environment and Forests on 14th September 2012 to look into the violations of the APSEZL in Mundra. It was discussed that while this would be important to feed into an existing process, it would be important to continue to debate on what are the other next steps that the Manch would like to take both with respect to the findings of this report as well as other issues in the Mundra region.
List of responsibilities, names of core group members and planning for the next meeting on ground truthing.
If there is no value today, then there will be value tomorrow. This is a small step we have taken. We hope Kutch and entire Gujarat wakes up.

~ Kiritsinh Jadeja, Core group member, Bhadreshwar village

Core members

KIRITSINH JADEJA
Bhadreshwar village

BHARAT PATEL
Bhadreshwar village

NARAN GHADVI
Zarpara village

HUSAIN KARA
Bhadreshwar village

JAVJIBA JADEJA
Baraya village

HAJI AYUB OSMAN MAJALIA
Bhadreshwar village

PALU JVARAJBHAI GHADVI
Shekhadia village

DEVAL GANDVI
Shekhadia village
Specific Condition No. (i)

**NO EXISTING MANGROVES SHALL BE DESTROYED DURING CONSTRUCTION/OPERATION OF THE PROJECT.**
According to the report of the Integrated Coastal and Marine Area Management (ICMAM), Department of Ocean Development, Government of India, in May 2002:

The southern coast of Gulf of Kachchh is almost occupied with ecologically sensitive features like mangroves, corals and mudflats—some of which are potential for regeneration of mangroves. The ecology along southern coast is already under severe stress exerted through the major commercial projects already situated, hence the southern coast can not withstand any further stress from the future developments which are under proposal / sanctioning stage.

Looking at the Mundra-Kandla area within which the WFD is located, the report said:

Another 38 km long stretch between Mundra and west of Kandla creek is occupied by rich intertidal mudflats of area around 115 km². The eastern tip is characterised by a scattered mangrove area extending to 4.3 km². Recently, Scientists discovered live corals near Mundra, the exact location and details of them are yet to be studied.

And, finally:

In order to protect the newly found coral beds of Mundra and also to minimise the effect of eddy off Mundra, it is suggested that controlled waste disposal activities be located at least 10 km away from the coral beds. It is also suggested that the entrepreneurs who are permitted for this activity in this zone may be given the responsibility of afforestation of mudflats of this zone and innermost Gulf. This will help in reduction of sedimentation and safeguarding the newly discovered corals.

A Gujarat Forest Department report by H.S. Singh, Chief Conservator of Forests, published in early 2007, talked
about ‘drastic losses of mangrove forest stem’ mainly from industrial activities, specifically in the Gulf of Kutch. ‘In certain areas like Mundra and Hazira, they disappeared overnight,’ Singh stated. Quoted in this report, the Mundra SEZ area had 3,000 hectares of mangroves and much of these had already been cleared (Kohli and Samdariya, 2010).2

As mentioned earlier, activities under the WFDP project had been initiated even before the CRZ cum environmental clearance was granted for this project. What this means, in effect, is that the mangrove destruction had already started much earlier and had continued even after approval was received along with Specific Condition No. (i). While the show-cause notice of the MoEF already listed this as a violation, the evidence gathered through a community-led research and mapping exercise also pointed to the extent of the impact.

The Writ Petition (PIL) No. 12 of 2011 by the Kheti Vikas Seva Trust (through its office-bearers Naran Bharu Seda Gadhvi, Ram Devdas Kanani and Bharu Ranshi Sakhra, all residents of Zarpara village) pointed out that the Adani Group’s activity, as part of MPSEZL’s WFDP, was severely destroying mangroves in and around Zarpara. On 12 July 2011, the Gujarat High Court also directed that:

6. During the pendency of the writ petitions, no developer or industry will cut any mangrove or any other forest, without prior permission of the Forest and Environment Department of the State.…

Successive submissions and rejoinders pertaining to this case highlighted that the destruction of mangroves had continued despite the warning by the high court. The MPSEZL used ‘heavy machinery’ for the destruction of mangroves.

Several newspapers, including the Hindu Business Line on 21 September 2011, reported that the Gujarat High Court had directed an enquiry into the alleged destruction of mangroves by the Adani Group in Mundra. This was while hearing a petition moved by the Kheti Vikas Seva Trust of Mundra seeking contempt of court proceedings against the Adani Group—MPSEZL as well as Adani Power Limited (APL). The high court then ordered the constitution of a special team, which would visit the coastal areas near Mundra in Kutch district to find out whether the Adani Group was involved in the destruction of mangroves in violation of the directions by the court.

According to Naran Ghadvi, the petitioner in the case and a member of the community-led ground truthing of violations, the destruction of mangroves had been continuing since August 2012. This was also confirmed by the members of MASS and the community representatives residing around the WFDP project area.

The construction of the North Port started in 2007 without environmental clearance in the area south-west of the Indian Oil Corporation depot and near the proposed North Port. Before this construction started, a system of creeks branching out of the Bocha Creek existed with an extensive mangrove cover. Around 200 ha of mangroves were indiscriminately destroyed during the North Port construction.

An article in Tehelka magazine, ‘Vibrant Gujarat? Your coast is not clear, Mr Adani’, dated 26 February 2011, stated that farmers from Zarpara village displayed photographs of the reserved mangrove forests which were indiscriminately cut by the Adani Group in January 2011. This area which is part of the WFDP project is located at 22°46’5.90”N 69°40’9.24”E.
Specific Condition No. (ii)
THERE SHALL BE NO FILLING UP OF THE CREEK AND RECLAMATION OF THE CREEKS.

Satellite image taken in 2008 showing the impact on the Bharadi Mata Creek and its adjacent area.
The impact of the WFDP has largely been on the creeks in two regions: Bharadi Mata and Kotdi. These areas also had an extensive growth of mangroves which too were destroyed alongside the creeks. While area-wise description of the violations and impacts is detailed later in the section, presented here are the overall changes in this eco-fragile landscape that have affected the main and supporting creek systems.

Impact on creeks in the Bharadi Mata area (2000–2011)

There are no recent photographs of this area as entry into the area is prohibited by the project authorities. However, the satellite maps reveal the gradual change in land use in the area where the creeks have been bunded and mangroves cut down. A huge change is visible between 2008 and 2011, which is the crucial time period when the WFDP project was under construction.

The specific areas indicated with squares and circles in the maps have been further described in this section. The colour red represents mangroves, white represents salt pans, blue is for water (including the sea and the various creeks), and the shades of brown are for the landmass in the intertidal area.

Specific Condition No. (ii)
THERE SHALL BE NO FILLING UP OF THE CREEK AND RECLAMATION OF THE CREEKS.
Impact on creeks in the Kotdi area (2000–2011)

Since entry into the area is prohibited by the project authorities, there are no recent photographs of this area either. Creeks in the area have suffered the same fate as those in the Bharadi Mata area. In both cases, the imagery in 2011 clearly indicates the disappearance of creeks and mangroves as well as the salt pans that were interspersed in this ecosystem.

The indicators used here are the same as for the maps on the previous page: red for mangroves, white for saltpans, blue for water and brown for the landmass in the intertidal area. The imagery also indicates the areas where massive dredging has taken place towards the seaward side for the construction of the West Port.
**AREA NO. 1**
Mouth of the Bharadi Mata Creek  
Area west of the existing Adani port  
22°45'6.66"N; 69°40'11.05"E

VIOLATION: The course of the Bharadi Mata Creek was modified by bunding due to the construction on the South Port, which started without environmental clearance. Prior to the construction, Bharadi Mata Creek used to flow eastwards for a few kilometres before entering the sea. The construction work still continues in this ecologically sensitive zone.

**AREA NO. 2**
Mouth of the Kotdi Creek  
1. 220 46.374’ N 690 33.553’ E

VIOLATION: Creek blocked by road. Before the West Port construction started, Kotdi Creek used to run eastwards for nearly 500m before entering the sea (the 2000 and 2005 images reveal this). Post 2008, the mouth of the creek was blocked by an approach road to the West Port. The surrounding area is being completely reclaimed by bunding and dredged material.
AREA NO. 3
South of the Adani power plant
VIOLATION: Bunding without permission. Before West Port construction started, the area didn’t have any bunds. During the construction, a bund was built across the Kotdi Creek area leading to several creeks getting blocked. Construction of this bund has not been permitted. A letter from the MoEF states:
The area shall be demarcated on ground by erecting 4 feet high RCC pillars with forward and backward bearing and distance from pillar to pillar. (See Annexure 4, paragraph 6) The letter from the Central Empowered Committee (CEC) states:
...the diversion of forest land in a phased manner as a part of expansion of Mundra Port and Special Economic Zone Limited may be rejected. (See Annexure 3, last paragraph)

AREA NO. 3A
Location: 22°48'19.95"N 69°33'55.33"E
South of the Adani power plant
VIOLATION: Creek blocked by bund.

AREA NO. 3B
Location: 22°48'44.42"N, 69°34'8.77"E
South of the Adani power plant
VIOLATION: Creek blocked by bund.

Before the West Port construction started, a small branch of the Kotdi Creek existed in this area. Due to the construction of a bund for the West Port, the creek has been blocked.

Before the West Port construction started, a small branch of the Kotdi Creek existed in this area.
AREA NO. 4
Area between Kotdi Creek 1 and Kotdi Creek 2
VIOLATION: Bunding without permission. Before the West Port construction started, the area didn’t have any bund. During the construction, a bund was built across the Kotdi Creek area leading to several creeks getting blocked.

Before the West Port construction started, a small branch of the Kotdi Creek existed in this area. Due to the construction of a bund for the West Port, the creek has been blocked.

There are no recent photographs of this area as entry into the area is prohibited by the project authorities.

Photos of the bund, 26 January 2009
AREA NO. 5
Road from the Adani power plant to the Adani port near Mundra

VIOLATION: The road constructed by the MPSEZL, leading from the Adani power plant to the West Port, has led to several creeks being blocked. Before the WDP started contracting here, several branches of the Bharadi Mata Creek existed in this area.

There are no recent photographs of this area as entry into the area is prohibited by the project authorities.

AREA NO. 5A
Location: 22°48'17.33"N, 69°37'33.06"E

Road and railway track leading from the Adani power plant to the Adani port near Mundra

VIOLATION: Creek blocked by road.

Before the West Port construction started, a small branch of the Kotdi Creek existed in this area.

Due to the construction of a bund for the West Port, the creek has been blocked.
AREA NO. 5B
Location: 22°48’14.70”N, 69°37’59.18”E
Road and railway track leading from the Adani power plant to the Adani port near Mundra
VIOLATION: Creek blocked by road.

AREA NO. 5C
Location: 22°47’47.60”N, 69°39’53.01”E
Road and railway track leading from the Adani power plant to the Adani port near Mundra
VIOLATION: Creek blocked by road.

AREA NO. 5D
Location: 22°47’49.10”N, 69°40’10.96”E
Road and railway track leading from the Adani power plant to the Adani port near Mundra
VIOLATION: Creek blocked by road.

AREA NO. 5E
Location: 22°48’14.70”N, 69°37’59.18”E
Road and railway track leading from the Adani power plant to the Adani port near Mundra
VIOLATION: Creek blocked by road.

Before the WFDP construction started, a branch of the Bharadi Mata Creek existed in this area.

During the WFDP construction, a branch of the Bharadi Mata Creek was blocked due to the construction of the road.

2000

2005

2008

2011
AREA NO. 6
Area adjacent to the West Port
22°46'28.02"N, 69°33'32.70"E

VIOLATION: The mouth of the Kotdi Creek is being filled up with dredged material. Before the West Port construction started, the Kotdi Creek used to flow east for nearly 500m before entering the sea (See satellite images of 2000 and 2005). With the construction, the mouth of the Kotdi Creek was blocked by an approach road to the port. Further, the surrounding area is being completely filled up with dredged material. This construction, which is part of the West Port plan, was started without environmental clearance (See satellite images of 2008 and 2011 and photographs), and continued thereafter.
AREA NO. 7
Road and railway track leading from the Adani power plant to the Adani port near Mundra and the Kotdi Creek
VIOLATION: Several creeks in the Kotdi area have been blocked by the construction of the road and the railway track.
**AREA NO. 8A**
Location: 22°48'52.50"N, 69°34'49.00"E
Road and railway track leading from the Adani power plant to the Adani port near Mundra
VIOLATION: Creek blocked by road.

**AREA NO. 8B**
Location: 22°48'53.86"N, 69°35'16.81"E
Road and railway track leading from the Adani power plant to the Adani port near Mundra
VIOLATION: Creek blocked by road.

**AREA NO. 8C**
Location: 22°48'55.11"N, 69°35'36.18"E
Road and railway track leading from the Adani power plant to the Adani port near Mundra
VIOLATION: Creek blocked by road.

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Before the West Port construction started, a small branch of the Kotdi Creek existed in this area.

Due to the construction of a road leading to the West Port, the Kotdi Creek has been blocked.

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Before the West Port construction started, a small branch of the Kotdi Creek existed in this area.

Due to the construction of a road leading to the West Port, the Kotdi Creek has been blocked.

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Before the West Port construction started, a small branch of the Kotdi Creek existed in this area.

Due to the construction of a road leading to the West Port, the Kotdi Creek has been blocked.
Specific Condition No. (viii)

IT SHALL BE ENSURED THAT DURING CONSTRUCTION AND POST CONSTRUCTION OF THE PROPOSED JETTY THE MOVEMENT OF THE FISHERMEN’S VESSELS OF THE LOCAL COMMUNITIES, ARE NOT INTERFERED WITH.

WFDP construction activity blocking regular route to the fishing harbour.
The construction of the different components of the Adani Group’s WFDP project has severely impacted the movement of fishermen to their existing fishing commons. While Specific Condition No. (viii) is limited to the movement of the fishermen’s vessels, it is important to link it to the fact that ever since the project was proposed, the existence of pagadiya fishing in the area has been severely undermined. As mentioned in the section ‘Judgement of the National Environment Appellate Authority’, the EIA report of the WFDP project concealed information about the impact on the fishing communities using the fishing harbours in the area.

In this regard the submission by SETU—an organisation working with the Panchayat and local communities in the Kutch region including Mundra—in November 2008 highlighted that the construction of the WFDP project would have an irreplaceable impact on the access of fishing communities to the fishing harbours and would also affect the movement of fishing vessels in the area covered by the project.

The letter dated 11 November 2008 pointed out to the MoEF and its relevant Expert Appraisal Committee that

Connected with the local mangrove ecosystem are more than 1000 fishing families of the area, who are suffering as a result of the loss of spawning grounds. These are fisherfolk who fish on small boats and on feet. Besides fishing in high seas, about 229 people are involved in direct vending; 73 people are involved in net making & repairing; where as about 1037 people are involved in processing of fish. The port and SEZ have been blocking their traditional fishing routes apart from completely destroying their traditional fishing creeks and harbours. There are 11 fishing harbours in almost 12 villages, which will be affected as a result of the waterfront development plan and construction of 55 berths along the coast.

The marine fishing settlements are transient fishing villages, which are rehabilitated 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 communities return back to their formal 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.

Tuna Vandhi is one of the affected villages in the WFDP is a part of the Rampar Panchayat. 15 families of the vaghers who fish on Takra Bandhar will also be affected by the expansion by the KPT (Kandla Port Trust). ‘We have written to the KPT that its new jetties will impact the fishing communities but we can’t do more than ask for alternative livelihoods.’ Say the locals from the area. Now the fishing communities of this village sandwiched between the Kandla Port and the Mundra SEZ are likely to be completely displaced.

The mangrove forests are also important for the local communities at different levels. At local or community level, it is used for fodder, fuelwood, timber, protection from strong winds and salinity ingress. With clearing of mangrove forest and setting up of SEZ, The destruction of mangrove cover is already leading to a decline in fish catch, as mangroves serve as an ideal place for fish breeding. As per estimation, just 100 cu m of mangrove area shelters 54,600 prawns. The total loss from the marine economy is estimated to be to the tune of several hundred crores a year if the SEZ and related projects come up in the area.

Despite this and further contestations before the NEAA (discussed in the section ‘Judgement of the National Environment Appellate Authority’), the project was granted approval and went ahead with the construction. The impacts and violation of the aforementioned condition gets clearer when one draws evidence from photographs and also refers

Specific Condition No. (viii) IT SHALL BE ENSURED THAT DURING CONSTRUCTION AND POST CONSTRUCTION OF THE PROPOSED JETTY THE MOVEMENT OF THE FISHERMEN’S VESSELS OF THE LOCAL COMMUNITIES, ARE NOT INTERFERED WITH.
to the article by Tehelka that reported the impacts on the fishing communities. Titled ‘Vibrant Gujarat? Your coast is not clear, Mr Adani’ (26 February 2011), the article said:

*KHAMISA ALI Mohammad squints against the glare of the sea, inspecting his fishing net. For the third time this season, ships sailing down the Kutch coast to India’s largest private port at Mundra have damaged his fishing net. His earnings are down by more than Rs. 45,000 per season...*

Khamisa Ali Mohammad is from Vandi in Bhadreshwar taluka. Earlier, in the 1990s, he used to fish at the Mundra bandar and had then moved to the Juna bandar. The Juna bandar was impacted by the combined intake channel of the Adani and the Coastal Gujarat Power Ltd’s (CGPL) power plants. This channel as well as the outfall channel of the Adani power plant were approved as part of the WFDP project. The current access to the fishing harbours is through between the boundaries of the Tata Ultra Mega Power Project (UMPP) and the Adani thermal power plant.

The Tehelka article also quoted others from the local communities as well as the officials. Anwar Wagher, a fisherman from Navinal village, was quoted saying:

*Since Muharram they [the Adani Group] have been asking us to fill forms for their fishing nets. If creeks and our access to the sea are blocked, what use are the nets.*

Source: MASS-Kutch
General Condition No. (v)

THE SAND-DUNES, CORALS AND MANGROVES IF ANY, ON THE SITE SHALL NOT BE DISTURBED IN ANY WAY.

Satellite image taken in 2000 showing the initial construction in the Kotli Creek areas
In the course of several discussions among the affected villages it was revealed that before the construction of the West Port the area did not have any bunds and had, instead, sand dunes and creeks in the area between Kotdi Creek 1 and Kotdi Creek 2. The bunding activity undertaken in the region without permission led to the destruction of several sand dunes and creeks.

A letter from the MoEF (Annexure 4) in 2006 states:

*The area shall be demarcated on ground by erecting 4 feet high RCC pillars with forward and backward bearing and distance from pillar to pillar.* (Paragraph 6)

The Writ Petition (PIL) No. 12 of 2011 by the Kheti Vikas Seva Trust, mentioned earlier in this report, pointed out that the Adani Group’s activity was destroying sand dunes which were the identity of the area. The PIL stated that these sand dunes were situated in the area that fell within the jurisdiction of the Forest Department and were actually spread over nearly 3,000 acres of land, out of which—according to the best of the knowledge of the petitioners—nearly 1,800 acres had been handed over to Respondent No. 4 for the development of the SEZ. In its turn, Respondent No. 4, with a view to level the ground, was in the process of destroying these sand dunes, which were in some places 40 to 50 feet high. The petition also pointed out that sites of religious importance for the Hindu and Muslim communities were also located in these sand dunes, namely the temple of Khetar Pal Dada, Kakkarwado Peer, Kadi Peer, Gebi Peer, Bavdi Peer, Dhajawalo Peer and the temple of Bal Bhramani Maa.
Sand dunes impacted in the Bharadi Mata area (2000–2011)

Due to the construction of the WFDP project the sand dunes in the area adjoining the Bharadi Mata hill, which is in the project area, have been completely destroyed. Evidence of this is available in the current satellite image provided here. It is also visible in the satellite imagery from 2000 onwards where one can see that the sand dunes have gradually flattened and been built over. The yellow squares indicate those areas where sand dunes have been destroyed due to the construction of the WFDP project.
Sand dunes impacted in the Kotdi Creek area (2000–2011)

Like the sand dunes in the Bharadi Mata area, the sand dunes in the Kotdi Creek area have also been completely destroyed because of the WFDP project. The current satellite image given here provides evidence to this fact. The gradual flattening of the sand dunes and their being built over is also visible in the satellite imagery from 2000 onwards. The yellow squares again indicate the areas where sand dunes have been destroyed by the WFDP project.
Mundra Hit Rakshak Manch (Forum for Protection of Rights in Mundra) is an informal collective of villagers impacted by large-scale land use change due to extensive industrial expansion in the Mundra region. These persons and organisations have been regularly raising concerns about the social and environmental impacts of these projects through memorandums, direct confrontations, street actions as well as courts. The forum was organically formed in June 2012 during discussions related to the findings of the community-led ground-truthing exercise.

Machimar Adhikar Sangharsh Sangathan (MASS-Kutch) is a trade union of the fishing community in Kutch district, Gujarat. MASS is also associated with the National Fishworkers’ Forum (NFF), a national-level collective of fisherfolk and support organisations.

Kheti Vikas Seva Trust is a grassroots group based in the Mundra region which has been highlighting concerns related to the impacts of indiscriminate industrialisation on farming and fishing communities in Kutch district. They are currently involved in several public interest litigations on these issues in the Gujarat High Court.

Ujjias Mahila Sangathan is a women’s collective working on several advocacy issues with women at the core of their efforts and actions. In recent times they have also looked at issues of women and industrialisation in the Kutch region.

SETU in Bhadreshwar is an initiative of the Kutch Navnirman Abhiyan that works especially to strengthen local governance in the rural and least-developed areas of the Kutch district. The 18 SETUs help communities and local governments realise their development needs.

Namati-CPR Environmental Justice Program is the India chapter of Namati-Innovations for Legal Empowerment. In partnership with the Centre for Policy Research (CPR), New Delhi, Namati’s India work concentrates on environment justice issues.

Roles of the Forum
1. It will be responsible for the assessment of development issues in the Mundra area and will attempt to coordinate efforts to solve the problems.
2. It will act as a local-level pressure group.
3. It will try and regularly update information related to upcoming projects in the area.
4. It will be directly responsible to the village community.
5. It will help the community fight for their rights and establish linkages to their ecosystem-based livelihoods.
6. It will take steps towards resolving the land issues in the Mundra area. (There are about 5,000 pending applications to get land. On the one hand, the government is not taking any action on these, and on the other, it is gifting Shree Sarkar Land to the industries.)
7. It will take the assistance of subject area experts to carrying out and strengthen their activities.

- Mundra Hit Rakshak Manch Meeting 17 June 2012
No.10-128/2008-IA-III
Government of India
Ministry of Environment and Forests
(IA-III Division)

Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi-110003.

Dated the 15th December, 2010

To,
M/s Mundra Port and Special Economic Zone Limited,
"Adani House",
C-105, Anand Niketan,
New Delhi -110021.

Sub: Show Cause Notice under Section 5 of Environment (Protection) Act, 1986

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Whereas, the Ministry of Environment and Forest (MoEF) had received a representation from Shri Bharat Patel, General Secretary, Machimar Adhikar Sangathan vide e-mail indicating gross violation of the Coastal Regulation Zone area for establishing various facilities of M/s Mundra Port & SEZ Limited, attached at Annexure-I of this notice; and

2. Whereas, the Ministry had directed Dr. A. Senthil Vel, Additional Director, Ministry of Environment and Forests (MoEF) to undertake site visit and submit a report; and

3. Whereas, a site visit was undertaken by Dr. A. Senthil Vel, Additional Director alongwith the officials of the Gujarat Pollution Control Board and Gujarat Ecological Commission on 6th and 7th December, 2010; and

4. Whereas, a site visit report has been submitted by Dr. A. Senthil Vel, Additional Director, MoEF on 14th December, 2010, a copy of which is at Annexure-II of this notice; and

5. Whereas, the site visit report indicates that large scale reclamation using dredged material is being carried out on mangrove area behind the West and North port site; and

6. Whereas, a dredging disposal pipeline has been laid in the intertidal area carrying the dredged material to the landward side of the port to reclaim the land area on the West and North port side and which pipeline has been obstructing the tidal flow due to which the mangroves stretches on the western and northern port side have been seriously affected and at several places the mangroves have dried up; and

7. Whereas, at several places there has been large scale destruction of mangrove areas, especially at the northern port side abutting the dredge disposal pipeline; and

8. Whereas, the creeks systems and the natural flow of seawater is being obstructed by reclamation along the creeks, with destruction of mangroves being observed at several stretches; and

9. Whereas, M/s Mundra Port & SEZ Limited have developed an airport the sign board at the site indicating "airport", which is located close to the shore and it is noted that the clearance letter from Civil Aviation Department dated 30th October, 2008 provided by M/s Mundra Port & SEZ Limited internal refers to development of a Munda aerodrome while development of a aerodrome/airport requires prior environmental clearance under the Environmental Impact Assessment Notification, 2006; and

10. Whereas, a township named as “Samundra Township”, which has been accorded clearance under the EIA Notification, 2006 by Gujarat SEIAA on 20th February, 2010, is observed to be located in the Coastal Regulation Zone area of the creek and no clearance under the Coastal Regulation Zone Notification, 1991 has been obtained therefor; and

11. Whereas, a hospital named as “Sterling” has been constructed in the Coastal Regulation Zone area of the same creek thereby requiring a clearance under the Coastal Regulation Zone Notification, 1991, which clearance has not been obtained; and

12. Whereas, under the provisions of the CRZ Notification, 1991 as amended from time to time interalia stipulate the following:-

(a) In Para 6(i), sub-heading CRZ-I; the areas that are ecologically sensitive such as mangroves, areas close to breeding and spawning ground of fish and other marine life, areas of outstanding natural beauty, areas rich in genetic diversity are classified as CRZ-I(i); while, the area between Low Tide Line and High Tide Line are classified as CRZ-I(ii).

(b) Under Para 2(xi) and (xii), construction/developmental activities indicated therein, such as reclamation and destruction of mangroves, construction of path in the mangrove area, developmental activities in the mangrove area are prohibited.

(c) Under Para 2(viii), land reclamation, bunding or disturbing the natural course of seawater by undertaking such developments indicated above is a prohibited activity, further, under this para reclamation for commercial purposes such as shopping and housing complexes, hotels and entertainment activities are not permissible.

(d) Under Para 2, the projects with the investment more than Rs.5crores are to be accorded clearance under the Coastal Regulation Zone Notification, 1991 by the Ministry of Environment and Forests after obtaining necessary recommendations from the State Coastal Zone Management Authority.; and

13. Whereas, Ministry of Environment and Forests had accorded clearance to the Coastal Zone Management Plan of Gujarat with conditions and modifications on 27th September, 1996.

14. Whereas, the Ministry of Environment and Forests had issued environmental clearance vide letter No.10-47/2008-IA-III, dated 12th January, 2009 for “Coastal Regulation Zone clearance for proposed waterfront development project at Mundra district, Kachchh, Gujarat of M/s Mundra Port & SEZ Limited”; and
15. Whereas, the Specific Condition at item No.i) of the above clearance letter stipulated that, “No existing mangroves shall be destroyed during construction/operation of project; and

16. Whereas, the Specific Condition at item No.ii) of the above clearance letter stipulated that, “There shall be no filling up of the creek and reclamation of the creek”; and

17. Whereas, the General Condition at item No.(i) provides that, “Construction of the proposed structures, if any in the Coastal Regulation Zone area shall be undertaken meticulously conforming to the existing Central/local rules and regulations including the Coastal Regulation Zone Notification, 1991 & its amendments. All the construction designs/drawings relating to the proposed construction activities must have approvals of the concerned State Government Departments/Agencies”; and

18. Whereas, the General Condition at item No.(v) stipulates, “Sand dunes, corals and mangroves if any, on the site shall not be disturbed in anyway”; and

19. Whereas, in view of the above forgoing paras, the Ministry is of the opinion that M/s Mundra Port & SEZ Limited have violated the Coastal Regulation Zone Notification, 1991, approved Coastal Zone Management Plan of Gujarat dated 27th September, 1996 and have not complied to the conditions listed in the environmental clearance letter issued by the Ministry vide letter No.10-47/2008-IA-III dated 12th January, 2009;

20. Now, therefore, under Section 5 of Environment (Protection) Act, 1986, you are hereby directed to show cause within fifteen days of the issue of this Notice as to why:-

i. (a) the clearance accorded vide letter No.10-47/2008-IA-III dated 12th January, 2009 and an Addendum vide letter No.10-47/2008-IA-III, dated 19th January, 2009 for the West port and North port should not be cancelled;

(b) the environmental clearance accorded to the Township Project by Gujarat SEI AA vide letter dated 20th February, 2010 should not be cancelled;

(c) the pipeline carrying the dredged material for reclamation should not be dismantled and removed and the channels opened up for the inflow of the tidal water flow;

(d) all reclamation that have been carried out in the mangrove area should not be dismantled and removed;

(e) all channel/creek systems which have been reclaimed should not be opened up in order to provide for the natural flow of seawater.

(f) a mangrove afforestation of additional 1000ha should not be undertaken in and around the project site in consultation with the organizations like Gujarat Ecological Commission and with provision necessary funds for this purpose by M/s Mundra Port & SEZ Limited.

21. It may be noted that if no response is received within fifteen days or receipt of these directions, appropriate orders as deemed fit will be passed under the circumstances of the case without any further notice to you. In case personal hearing is desired, it may be so indicated in your response.

22. The following directions are issued for compliance by the Gujarat Coastal Zone Management Authority:-

1. The Gujarat Coastal Zone Management Authority shall enquire into and submit a report to MoEF within four weeks regarding the construction of the Samudra Township and the “Sterling” hospital in the Coastal Regulation Zone area without any clearance being obtained under the Coastal Regulation Zone Notification, 1991.

2. The Gujarat Coastal Zone Management Authority shall within four weeks have the revised Coastal Regulation Zone area prepared for the site and the layout plan with permissible activities will be superimposed, thereupon, whereafter those activities which have been undertaken or the structures which have been constructed or are in the process of being constructed in violation of the Coastal Regulation Zone notification, 1991 shall be removed/dismantled forthwith, following the due process.

23. These directions issue with the approval of the Competent Authority.

Encl’s: As above

Sd/-
(Dr. A. Senthil Vel)
Additional Director

Copy to:-

1. Member Secretary, Gujarat Coastal Zone Management Authority, Forests & Environment Department, Government of Gujarat, Block No. 14/8, Sachivalaya, Gandhi Nagar – 382010.

2. Shri Bharat Bhushan, Director, IA Division, Ministry of Environment and Forests, New Delhi.

Sd/-
(Dr. A. Senthil Vel)
Additional Director

Annexure 1: The MoEF show-cause notice
BY SPEED POST

July 22, 2000

TO

1. Shri Surya Ganguly
   Advocate for Appellants
   25/4, Sector 15A, Noida
   Uttar Pradesh

2. Shri R.K. Mishra
   Advocate for Respondents 1-2
   10-11, National Law University
   Near Rajiv Chowk, New Delhi

3.现出 Agarwal
   Advocate for Respondent 3
   3/11, Shakti Khand, Indirapur
   Sonipat, Haryana

4. The Hon’ble Member
   REAPPEAL NO. 3 OF 2000
   HONOURABLE MEMBER DR. K. MANIVANNAN
   FAMOUS MEMBER SHRI J.C. KALA

BETWEEN

1. Mangal Bhagat
   45, Tathkhand, Bikaner, Rajasthan

2. Shri R.K. Mishra
   Advocate for Respondents 1-2
   10-11, National Law University
   Near Rajiv Chowk, New Delhi

3. The Hon’ble Member
   REAPPEAL NO. 3 OF 2000
   HONOURABLE MEMBER DR. K. MANIVANNAN
   FAMOUS MEMBER SHRI J.C. KALA

NOTE: Appeal No. 37 of 2000 (Mangal Bhagat and Others Vs. Union of India and Others)

As directed, the order dated 20th July, 2000 the National Environment Appellate Authority in the above appeal is enclosed. Please acknowledge the receipt of the same.
Annexure 2: The NEAA judgement
Annexure 2: The NEAA judgement

(iii) The WHPD itself seems to be an afterthought where several activities have been cleared and is likely to be segregated from the NEAA to avoid the pending cases in the High Court of Gujarat as well as the Hon'ble Supreme Court.

(iv) Even though NPCB has rejected "Consent to Establish" for the project on 15th September, 2008 for want of adequate details, Respondent-6 has been carrying out the activities. This calls for urgent step of implementation of the NEAA.

(v) The public hearing was defective in the sense that the genuine grievances of the affected families were not incorporated in the NEAA.

(vi) Whether the NEAA was defective in the sense that the public hearing was not held?

(vii) Whether the NEAA was defective in the sense that the affected families were not incorporated in the NEAA?

(viii) Whether the NEAA was defective in the sense that the public hearing was not held?

(ix) Whether the NEAA was defective in the sense that the affected families were not incorporated in the NEAA?

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(xxix) Whether the NEAA was defective in the sense that the affected families were not incorporated in the NEAA?

(3) Whether the Public Hearing conducted on 11.1.2008 is defective?

(4) Whether the Public Hearing conducted on 11.1.2008 is defective?
Annexure 2: The NEAA judgement

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The NEAA judgement

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The NEAA judgement
It would therefore be very clear that the issue of mangroves has been sufficiently addressed in the EIA Report.

116. The Marine EIA Report was prepared by NIO in July 2008 and Rapid EIA Report for coastal area, by IIT (ON) Environment Service Pvt. Ltd. Both of these organisations are experienced in the field of preparation of EIA. The data collected and analyzed by these organisations are comprehensive and based on actual field visits. The claims of the Applicant is therefore contrary to fact.

117. As regards the issue of dredging and its impact, Chapter 6 of the EIA Report, prepared by NIO deals with all issues of dredging including the impact of dredging, how the marine sediment would be dredged, physical and biological characteristics of marine sediments and the place for disposing the dredged sediment. NIO has also noted the presence of some coral reefs in the area covered by the Project and the reference to the study of Hulsbosch is therefore irrelevant.

118. The Applicant have misrepresented and misconstrued portions of EIA out of context. During the hearing of the Applicant’s Respondent has clarified the EIA Report has correctly described the area that the land is not forest, large area of land and there is no growth except for degraded vegetation. There are no other growth in shallow water or in tidal mud flats except small patches of sparse mangroves. Para 2.24 of Marine EIA Report prepared by NIO also indicates measures taken by them for mitigation and afforestation for plantations of mangroves.

119. The method of study of environmental baseline of the impact area has been elaborately dealt with in the Comprehensive Marine EIA Report prepared by the NIO, Mumbai. This is at one with the EIA Manual, 2001 issued by MoEF. In furtherance to the direction mentioned in EIA Manual, each stage of the survey and data collection has been explained in the Marine EIA Report under the various heads. Similarly, the Rapid EIA prepared by IIT (ON) Environment Service Pvt. Ltd. on the method of study of various parameters of environment has been explained in the EIA Report under the various heads. It is worth noting that the IIT (ON) Environment Service Pvt. Ltd. has also identified a comprehensive method of survey of the environment baseline has been indicated in EIA Reports.

120. The application of the Applicant on water balance diagnosis is vague and inarticulate. The Water Balance Diagram provided in Figure 2.10 of the EIA Report prepared by M/s. Godrej Consultants Ltd. are expressions of the processes involving the rainfall, the runoff, the evaporation and the infiltration losses and the available water. Figure 2.11 of the EIA Report prepared by M/s. Godrej Consultants Ltd. is the expression of the water balance equation. However, the Applicant has not provided any method of calculation of the rainfall or the evaporation or the infiltration or the runoff or the losses or the balance equation.

121. The Applicant’s response to the objection is inadequate and does not address the concerns highlighted in the EIA Report. The Applicant’s response is based on the assumption that the data provided in the EIA Report is not reliable. The Applicant’s response is also ambiguous and does not address the concerns highlighted in the EIA Report.

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131. Both the sides of the Appeal have put forth their respective arguments in favour of their point of view. The EIA Reports, prepared by NIO and MoEF are comprehensive and detailed. The EIA Reports deal with various aspects of ecological significance of the Kochi Estuary including Marine Environment. Marine Environment Water quality, sediment quality, flora and fauna etc. The EIA Reports also give a detailed account of the condition of the marine environment. Para 11 of the EIA Report prepared by M/s. Godrej Consultants Ltd. deals with the coastal zone of Kochi Estuary and Para 22 deals with the coastal zone of Kochi Estuary. The EIA Reports are comprehensive and detailed. The EIA Reports are well researched and detailed. The EIA Reports are based on the best available data and are supported by evidence. The EIA Reports are also supported by expert opinions and scientific studies. The EIA Reports are also supported by the findings of various studies and researches conducted in the area. The EIA Reports are also supported by the findings of various studies and researches conducted in the area. The EIA Reports are also supported by the findings of various studies and researches conducted in the area. The EIA Reports are also supported by the findings of various studies and researches conducted in the area. The EIA Reports are also supported by the findings of various studies and researches conducted in the area. The EIA Reports are also supported by the findings of various studies and researches conducted in the area.
Annexure 2: The NEAA judgement
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Annexure 2: The NEAA judgement
corporate citizens fully aware of the social responsibilities, Project Proponent has submitted that:

1. There is an extensive area of fishery 5th and therefore there are no issues relating to rehabilitation. As the Appendices are located far away from the area of development, they are not affected by the project at all. Likewise, any of the representatives of the fishermen who participated in the PFA Hearing have welcomed the project as it will aid in overall development of the region and provide better livelihood opportunities.

ii) Infringement of freedom of movement and the right to a National Security Jurisdiction: The movement in this area is sensitive and any and all Appendices have been notified by the Hon’ble Gujarat High Court in its orders dated 07-07-2007 while acting a permission filed by the fishermen in the context seeking access to sea. In order to keep the balance between security concerns of the State and interests of the fisherman, the Project Proponent has undertaken a comprehensive plan to ensure that proper facilities are created for allowing fishermen access with due care to their lives and goods and also meet the security needs of the State. These efforts are being undertaken in coordination with various governmental and semi-governmental authorities. Some amount of regulation of the fisheries-facilitated access to the coastal area have been made in order to account for increased security threat perception.

iii) There will be no disposal of waste during the course of development and access to open seas and marine areas is available to fishermen.

iv) Respondent 1 has already provided substantial financial support to the local community and it will carry out appropriate programmes in coordination with the relevant government authorities for addressing all the issues relating to fishermen.

v) In this regard decisions 8 and 9 of Section 6, clauses of Part-A of the Environmental Impact Assessment are also relevant, and

vi) The issues relating to filling up of creeks, alleged destruction of mangroves, livelihood of fishermen, etc. have been raised by the Appellants on numerous occasions and they have been dealt with by the High Courts and Supreme Court in the following cases:

(a) SCA No. 1209 2003 in the Gujarat High Court
(b) Civil Suit No. 78/1995 by Civil Court, Bhuj
(c) SCA No. 250/2004 by High Court of Gujarat
(d) C/C No. 2008 and SCA No. 555/2005 by Gujarat High Court
(e) CS No. 3390/2008 by Gujarat High Court

7.3 Respondent 1 has submitted that since the specific conditions incorporated in Environmental Clearance have a direct bearing on the local community. Such conditions include prohibition of destruction of mangroves during the operation of the Project, the construction of the Project is to be carried out exclusive of creeks, opening of mangroves in at least 5% of the coastal area, non-interference with the conservation of nilem and crocodile during construction and post-construction of the project. In this regard, it is contended that the area in which the project is to be executed is devoid of mangroves and therefore the conditions are not applicable. It is submitted that the areas concerning the fishermen and their livelihood have been adequately addressed and therefore EC has been granted to the Project.

7.4 The Counsels of the Respondent have highlighted the apprehension of the Appellants in general, the Respondent has also addressed these apprehensions in detail. In this regard, the Respondent has further submitted that steps have been taken to ensure that the project is implemented in the most beneficial manner to the local community and the environment.

7.5 It is observed that the development project undertaken by the Respondent is the most beneficial one for the local community and the environment. Therefore, the project is approved for implementation.

Annexure 2: The NEAA judgement
5. **The FOURTH AND LAST ISSUE is whether it was legal on the part of Respondent-2 to issue EC by subsuming different activities into a new category “Waterfront Development”**.

8.1 The Counsel for the Appellants have argued that it was illegal on the part of MoEF (Respondent-1) to have granted Environmental Clearance for the Project under the banner “Waterfront Development Project (WFDP)” by amalgamating different activities into a nebulous category of WFDP and therefore the said approval - IA Notification, 2006. The following arguments have been placed in support of their contention -

C. The CRZ Clearance and Environmental Clearance are two different statutory processes under two different statutory notifications i.e., CRZ Notification, 1998 and IA Notification, 2006. These clearances have to be treated as such. As per the IA Notification, 2006, there are specific project activities that required prior EC. By subsuming the apparently unrelated activities into one nebulous categorisation called WFDP, the Respondent-2 has tried to circumvent the requirement of the Public Hearing in respect of all the sub-activities with a view to abuse the legal process under IA Notification, 2006. By condoning the legal process under two different notifications into one, the Respondent-2 committed an irregularity by not following the due process. Hence, EC granted for WFDP is illegal and therefore invalid - IA Notification, 2006 in force.

8.2 The WFDP Project itself seems to be an afterthought wherein several activities have been clubbed and segregated from SLP to avoid the ongoing cases in Gujarat High Court as well as Supreme Court of India. Without waiting for the outcome of these cases, Respondent-1 has shown unnecessary expedition in the matter, and altered the WFDP Project so as to subsume the ongoing cases in respect of the project.

C.2 The subsuming of different activities into new category “Waterfront Development” at the behest of the Principal Secretary of the State Government who decided which is not only illegal but also fraught with eminent danger of subsuming several activities for administrative convenience which will defeat the very purpose for which the IA Notification was issued.
Annexure 2: The NEAA judgement

The Project Proposal submitted Rapid EIA Report, Environmental Management Plan, recommendations from the Gujarat State Coastal Zone Management Authority, High Tide Line and Low Tide Line demarcation carried out by SAC, Harmedabad, and Environmental Impact Assessment Notification 1994 and Environmental Clearance under Coastal Regulation Zone Notification, 1991 and Environmental Impact Assessment Notification, 2000 was issued on 15th January, 2000. An addition to the order was issued on 17th January, 2000 incorporating certain additional information accepting the report of the Expert Appraisal Committee and the report of the NEAA. The report of the NEAA was submitted in accordance with the procedures laid under Coastal Regulation Zone Notification, 1991, and Environmental Impact Assessment Notification, 2000 for the purpose of securing clearance to the said project.

The issue of clearance under EIA Notification 2000 and CRZ Notification 1991 as amended up to date, in single clearance order for the project "WPLC" is not illegal, and the contents of the Appellate may therefore be rejected unconditionally.

The proposed project was considered under Coastal Regulation Zone Notification 1991 and Environmental Impact Assessment Notification, 2000. Accordingly, the proposal was placed before the Expert Appraisal Committee (Infrastructural Development and Miscellaneous Projects) on 23rd and 24th April, 2000. The Committee after examining the proposal suggested additional Terms of Reference including conduct of a Public Hearing.

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related activities like jetting etc. Therefore, there is no question of challenging the two decisions. Further, all the conditions, including the condition of Public Hearing have been complied with in respect of both the regulations, and therefore the clearance accorded in the present case is therefore valid and valid.

The NEAA judgement has replied to the queries of the Board in their letter dated 26th December, 2006. The Company has submitted copy of the clearance to them. No activity is being carried out by the Project Proponent, as per the direction of NFA as alleged. But it is clarified that the activities carried out by Project Proponent in respect of the intake channel were covered by the EC order dated 15th August, 2007 issued in their favour.

8.4 Discussion and Findings: The Water Front Development Project over a planning horizon of 18-20 years. The Project was proposed to construct 2 ports, one shipyard, intake channel, desalination plants, road network, marine conservation area comprising 55 bays including existing 12 bays, covering waterfront length of about 4 km, with a total quay length of about 22,000 metres over a port back up area of 3300 ha. The cargo handling capacity is likely to go up to 225 MMT from the existing level of 29 MMT in 2005. The activities forming part of Phases I and II of the Development include 2 Ports, two shipyards and port terminals such as Dry Bulk Terminals, Container Terminals, Liquid Terminals and LNG Terminals. The Port uses advanced technology in the construction of the project. The Company has obtained CGC for the development of the Port and has submitted the application for the same to the High Court and Supreme Court.

The Project Proponent has not sought for delegation of any conditions other than those permissible which requires examination by National Coastal Zone Management Authority. As per the direction of the Court, the Company has committed itself to ensure that no existing marine shall be destroyed during the construction or operation of the Project and that the Project shall, in fact, be considered only as a result of the decision of the Port. It is evident that the Company has accepted the conditions that will result from examination of the project by the National Coastal Zone Management Authority. Any irregularity has therefore been committed.

It is true that the EC has issued in their letter dated 16th September, 1998 has pointed out certain deficiencies in the applications for issue of EC. The Project Proponent has replied to the queries of the Board in their letter dated 26th December, 2006. The Company has submitted copy of the clearance to them. No activity is being carried out by the Project Proponent, as per the direction of NFA as alleged.

Annexure 2: The NEAA judgement
within the CCRZ only if it requires Water Front and Foreland facilities. Furthermore, under para 5.2.3.2(b), "offshore construction for ports, harbours and light houses and construction for activities of deeper, quay and slipways, pipelines, conveying system including transmission" are permissible activities subject to Environmental Clearance granted by MoEF.

(b) Under paragraph 5.2.3.2(b), the facility for receipt and storage of petroleum products and LNG as specified in Annexure II of the Notification and facilities for receiving and unloading of LNG are prohibited within the said zone in the area to be classified as CCRZ. The areas subject to implementation of safety regulations prescribed by the concerned Government.

(c) Conservation and development of mangrove zones in CCRZ, one of the major objectives of the said Notification. The project has planned to create and manage mangrove plantation in about 200 ha.

(d) A Brunetti panel is proposed to be taken up along the perimeter of the proposed ports. However, all such areas were to undergo classification as well as impose additional condition in the proposed 200 ha areas. Suitable criteria are proposed to be planned for the purpose.

It is thus clear that all the components of the WECC project proposed by the Project Proponent are permissible activities satisfying the criteria laid in CCRZ Notification 1991 as amended up to date.

II.6 As regards the contention of the Applicant that the project should have been examined by National Coastal Zone Management Authority prior to the Notification dated 8th January 2003, constituting the National Coastal Zone Authority and defining their powers and functions, is espoused. Under paragraph 5.2.3.2 of the Notification, National Coastal Zone Authority shall have the power to pass an action involving violation of the provisions of the Environment Act, 1986 and the rules made thereunder or any other law which is applicable to the objectives of the said notification. In this case, no objection has been raised to the project. However, there is an urgent need to get the recommendation of the National CZA Authority. The Authority accepts with the condition of the Respondent 6 for this project.

II.7 As regards the contention of the Applicant that the issue of Consent to Establish is still pending with Respondent 2, Respondent 2 has been satisfied with the declaration Respondent 2 and 4 will only have taken a final decision in the application for EC. As per Para 6.1 of the Notification, Respondent 2 makes every clear that process involved in issue of EC is independent of the requirements of all other statutory requirements. The claim of the Applicant is not tenable.

8.8 The other test is whether the Project satisfies a 15% provision of IAA Notification 2006 or not. As 15% has been approved by Respondent 1 under this Notification.

(i) The IIA Notification 2006, which is a representation of projects of Notification 1991, mandates the following stages:

- Stage 1: Screening (for all projects & activities)
- Stage 2: Scoping
- Stage 3: Public Consultation
- Stage 4: Appraisal

(ii) The first stage of screening does not apply to the Project as it belongs to category 'A'. Under the second stage, the West Port was considered by the Committee and the TORs were submitted on 15th October 2007. The North Port was considered by the Expert Appraisal Committee and additional TORs were submitted on 19th October 2007. The North Port is an existing port and a threshold was considered on 21st and 24th April, 2008, and 25 additional TORs were suggested for preparing draft IIA Report.

- The expressions of objections raised by the Public Hearing - Public Consultation along with the response of Project Proponent should be incorporated in the draft IIA Report and submitted for consideration of the MoEF.

(ii) The request of Project Proponent, HPRC (Respondent 1) has conducted the Public Hearing at village Lahari on 11th May 2008 and recorded its views, opinion and suggestions by the participants. The response of the Project Proponent to these views was not mentioned in the minutes of the Public Hearing. The written letters of various organizations, groups and individuals including the representation of SCAs at Koraput, District and Kutch District were taken on record and forwarded to MoEF. The Project Proponent (Respondent 6) is informed that the issues raised during the Public Hearing constitute a process have already been incorporated in the IIA Report and submitted by their.

Finally, the EAC Provisions and Memorandum Project considered the Project in their meeting held on 26th November 2008 and 14th and 20th December, 2008 and recommended it for Environmental Clearance subject to the following conditions:

(a) No existing mangroves shall be disturbed.

(b) Mangroves plantation shall be carried out in an area of 200 ha and the project proposed shall submit a detailed plan of the mangroves.

Annexure 2: The NEAA judgement
Annexure 2: The NEAA judgement

There will be no illegality of the project and procedures, hence, allowing it.

5th - Project Proponent shall comply with the directions given by the Hon’ble High Court of Gujarat and Supreme Court.

As the Authority finds that all the requirements of the DA Notifications, 2006 have been fully met and that based on the recommendations of the EAC concerned, Respondent 1 has issued Divisional Circular for the Project.

9. This brings up the crucial claim of the Appellants that it is illegal on the part of Respondent 1 to have combined the clearance required under the above two separate Notifications and issued a single order. The claim of the Appellants is that in view of a combined order having been done with a view to circumvent the conduct of Public Hearing. The records presented by the parties prove that the Public Hearing was conducted by Respondent 2 on 21-11-2006 providing ample opportunity for the representatives of the project proponents to present their views along with the details of response of the Project Proponent were forwarded to Respondent 1.

The issues raised during the Public Hearing have been incorporated in the EIA Report and Environmental Management Plan already submitted. The EIA Act, Environment (Protection) Act, 1986 and other allied Acts were referred to by the respondents to answer the queries of the EAC. The EAC has recommended that the issues be referred to the Ministry of Environment and Forests for a final decision. The Government has decided to hold the programme in the same manner as the previous one.

10. Thus all the four issues indicated in para 9 above have been thoroughly examined, and answered accordingly. In the light of the above discussion and decision of the Authority on these issues, the following specific orders are passed:

(i) The project of the Appellants for the tough & strategic construction of the project was already rejected during the course of initial hearing of the Appeal.

(ii) In the light of the apprehension raised by the Appellants over the possible damage by the project activities over fishing activities of local fishermen, Respondent 1 is directed to ensure that any proposed activities of WP-01 do not hinder the fishing activities of fishermen in the sea through the traditional access to the sea.

(iii) If the Appellants are aggrieved that the Respondent 1 has directed the costs of the project and the cost of the project and that the Respondent 1 has directed the said costs of the project.

(iv) The Appeal filed by the Appellants is hereby dismissed for the reasons mentioned above.
has sought clarification on a number of issues. It would therefore be appropriate that before approving the project, (a) a view is taken on the final alignment of the transmission line; (b) exact area requirement and number of trees to be felled is worked out; and (c) the clarification sought from the Himachal Pradesh Forest Department by the Regional Office of the MoEF is considered.

VIII. (i) RECONSIDERATION OF DIVERSION OF 1850 HA (APPROVED AREA 1840 HA) OF FOREST LAND FOR HIGH PURITY SALT WORKS IN FAVOUR OF M/S ADANI CHEMICALS LIMITED IN KUTCH DISTRICT OF GUJARAT FOR DEVELOPMENT OF MUNDRA SPECIAL ECONOMIC ZONE (File No. 8-149/97-FC)

And

(ii) RECONSIDERATION OF DIVERSION OF ONE CONSOLIDATED PATCH IN SURVEY NO. 169/38 ADMEASURING 168.41 HA OF FOREST LAND FOR THE SALT WASHERY, DESALINATION PLANT AND CONTAINER DEPOT NEAR DHRUB VILLAGE IN KUTCH DISTRICT OF GUJARAT FOR DEVELOPMENT OF MUNDRA SPECIAL ECONOMIC ZONE (File No. 8-2/99-FC).

11. The proposal for diversion of 2400 ha of forest land in favour of Adani Chemicals Limited for high purity salt works in District Kutch, Gujarat was recommended for rejection by the FAC in its meeting held on 26.6.1998 after observing that the area contains about 19.42 lakh mangrove trees.

12. Further as per the then existing CRZ Notification the project was not permissible as the area falls in CRZ I. However, the project remained under examination between 1998 to 2002. On 21.5.2002 the CRZ Notification was amended whereby the project became a permissible activity under CRZ-I. In the meanwhile the original proposal was modified by reducing the forest area from 2400 ha. to 1850 ha. excluding 530 ha. of mangrove forest.

13. The project was discussed by the FAC in its meeting held on 17.7.2002 when the following recommendation was made:

"........ the Committee is of the view that the proposed project site is situated in eco fragile area and the project would adversely affect the marine flora and fauna including the mangrove eco system. The user agency should be asked to revise the proposal to exclude the bio diversity rich eco fragile area and take other suitable measures to contain the adverse impacts of the project...... "

14. The project was again examined by the FAC in its meeting held on 26.9.2002 after considering the fresh site inspection report of the Regional Office, Bhopal. The FAC recommended diversion of 1840 ha. of forest land for the project after excluding 10 ha. of interspersed mangrove forest.
The proposal was granted in principle approval by the MoEF on 13.5.2004 along with another proposal of the same user agency for diversion of 168.41 ha. of forest land for salt washing, desalination plant and container depot by the MoEF.

15. Before grant of the in principle approval, the Ministry of Commerce and Industries, Government of India vide letter 12.2.2004 approved the proposal of M/s Mundra Special Economic Zone Limited for setting up of a Special Economic Zone at Mundra, Gujarat over an area of 10,000 ha out of which 2500 ha. land was to be developed in the first phase. As per the approval letter the zone would provide industrial, commercial and social infrastructure facilities and at least 25% of the SEZ area will be used for developing industrial area for setting up of units.

16. The applicant company filed a letter dated 26.4.2004 addressed to the Inspector General of Forests, MoEF stating that the project area falls within the boundary of Mundra SEZ being set up by its group company viz., M/s Mundra SEZ Limited and requested MoEF to make a mention in the approval letter that the diversion thus permitted will apply to related land use permitted in SEZ area.

17. While issuing the in principle approval letter, the MoEF permitted M/s Adani Chemicals Ltd. to include the diverted forest land in the Special Economic Zone. The decision to include the diverted forest land in the Special Economic Zone was taken without placing the matter before the FAC and the MEF.

18. On 23.6.2004, the MoEF accorded approval for change of name of user agency from M/s Adani Chemicals Ltd. to M/s Mundra Special Economic Zone Limited. This permission was accorded by the MoEF on a letter No. Nil dated 17.6.2004 from M/s Adani Chemicals Limited without placing the matter before the FAC or seeking approval of the MEF.

19. After the grant of the in principle approval by the MoEF, the Mundra Port and Special Economic Zone Limited, more than three years later, vide its letter dated 8th September, 2007 requested the MoEF to amend the in principle approval to include the following specific provisions:

   i) approval for change in land use as per Master Plan for Mundra Port and Special Economic Zone Ltd;

   ii) phasing out of payment of the NPV;

   iii) change in the name of the user agency from M/s Mundra Special Economic Zone Limited to M/s Mundra Port and Special Economic Zone Limited.
20. The proposal was considered by the FAC in its meeting held on 27th March, 2008 when the following observation was made whereby the proposal was to be treated as closed:

"The Committee considered the proposal and noted that the present proposal is for change of land use for which in principle approvals were accorded on 13.05.2004 subject to certain conditions. The original proposals were for diversion of 1840 ha of forest land for high purity salt works and 168.41 ha of forest land for Salt Washery and Desalination Plant and container depot in favour of M/s Adani Chemicals Limited, in Kutch District of Gujarat. The Committee also noted that the Ministry vide its letter dated 23.06.2004 has accorded the approval for change of name of user agency from M/s Adani Chemicals Limited to M/s Mundra Special Economic Zone Limited.

After examining the proposal, the Committee observed that the proposed changed land use completely changes the scope and purpose of the original diversion approvals accorded by the Ministry thereby rendering the entire EIA study and other special reports considered at the time of granting in principle approvals meaningless and desired that this proposal may be treated as closed and the State Government may be advised to submit the proposal afresh."

21. However, following a representation dated 3.4.2008 addressed to the Minister of State for Forests and Wildlife by M/s Mundra Port and Special Economic Zone Limited, the proposal was reconsidered by the FAC in its meeting held on 17th April, 2008 and the following was recommended:

"The Committee reconsidered the proposal and noted that the present proposal is for change of land use for which in principle approvals were accorded on 13.05.2004 subject to certain conditions. The original proposals were for diversion of 1840 ha of forest land for high purity salt works and 168.41 ha of forest land for Salt Washery and Desalination Plant and container depot in favour of M/s Adani Chemicals Limited in Kutch district of Gujarat. The Committee also noted that the Ministry vide its letter dated 23.06.2004 had accorded approval for change of name of user agency from M/s Adani Chemicals Limited to M/s Mundra Special Economic Zone Limited with the condition that for the purpose of development of Mundra Special Economic Zone, deviation from the sanctioned land use shall be included in the detailed Master Plan for the exclusive Economic Zone as per norms fixed by the Ministry of Commerce for which a consolidated proposal be sent for approval in due course.

After examining the proposal, the Committee recommended the proposal for in principle approval on
standard terms and conditions. The Committee also recommended the change in name from M/s Mundra Special Economic Zone Limited to M/s Mundra Port and Special Economic Zone Limited.

22. From the above it may be seen that at the time of the submission of the original proposal, the proposed activity was not permissible as the area was in CRZ-I and the FAC had recommended for rejection of the proposal. The proposal remained pending with the MoEF between 1998 to 2002. In the meanwhile the amendment of the CRZ Notification took place and the proposed activity became permissible in CRZ I. The FAC, after considering the revised site inspection report recommended the proposal for approval. Based on the representations from the user agency, the forest area was allowed to be included in the Special Economic Zone without considering whether the implementation of the project within the SEZ is feasible or otherwise. After grant of the approval in principle, on a representation received from the user agency, the approval was modified in favour of another company without examination by the FAC or approval of the MEF.

Though the original proposal was for a salt project and was approved for the same, however, at a later stage on a request made by the user agency the setting up of a SEZ by a sister concern of the original applicant has been permitted. What is more this has been done without seeking a formal proposal under the F.C. Act. It is also imperative to note that the FAC initially on 27.3.2008 recommended for the rejection of the modified land use of the forest land and thereafter on 17.4.2008 completely reversed its own decision. No reason for the change in the stand of the FAC has been recorded in the minutes of the meeting.

23. Thus initially the user agency had requested for forest land in an ecologically sensitive area for a site specific activity, namely salt project. Since this site specific salt project has been given up and keeping in view all the facts and circumstances as brought out above, 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 a part of expansion of Mundra Port and Special Economic Zone Limited may be rejected.

(M.K. Jiwrajka)
Member Secretary

Dated: 16.7.2008
more this has been done without seeking a formal proposal under the F.C. Act. It is also imperative to note that the FAC initially on 27.3.2008 recommended for the rejection of the modified land use of the forest land and thereafter on 17.4.2008 completely reversed its own decision. No reason for the change in the stand of the FAC has been recorded in the minutes of the meeting.

23. Thus initially the user agency had requested for forest land in an ecologically sensitive area for a site specific activity, namely salt project. Since this site specific salt project has been given up and keeping in view all the facts and circumstances as brought out above, 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 a part of expansion of Mundra Port and Special Economic Zone Limited may be rejected.

(M.K. Jiwrajka)
Member Secretary

Dated: 16.7.2008
5. User agency shall deposit the Net Present Value (NPV) of the diverted forest land with the State Forest Department as per the orders of the Hon'ble Supreme Court dated 30-10-2002 & 1-8-2003 in LA No.566 in WA (C) No.202/1992 and the guidelines issued by this Ministry vide letter No.5-1/98-FCC(Pt-II) dated 9-10-2000 and 22-9-2003 in this regard.

6. The State Government shall deposit all the above-mentioned funds with the Compensatory Afforestation Fund Management and Planning Authority (CAMPA), which has already been constituted and notified by the Central Government on 23-4-2004. Till such time the CAMPA intimates the Head of Accounts for deposit of funds, the funds will be maintained in the form of fixed deposits in the name of CAMPA by the State Government.

7. Other standard conditions.

After receipt of compliance report on the fulfillment of the condition no. 1, 3, 4 & 5 from the State Government, formal approval will be issued in this regard under Section 2 of the Forest (Conservation) Act, 1980. Transfer of forest land to user agency should not be affected by the State Government till the formal orders are issued by the Central Government. Further, the diverted area could be included in the Special Economic Zone. However, deviation from the sanctioned land use shall be got approved by the user agency from the Central Government under the Forest (Conservation) Act, 1980.

Yours faithfully,

[Signature]

(ANURAG BAIJPAL)
Asstt. Inspector General of Forests

Copy to:
2. The Nodal Officer, Forest Department, Government of Gujarat, Gandhinagar.
3. The Chief Conservator of Forests (Central), Regional Office, New Delhi.
4. PS to IGF (FC).
5. Monitoring Cell of FC Division.

[Signature]

(ANURAG BAIJPAL)
Asstt. Inspector General of Forests

Annexure 4: Letter from the MoEF, 2004

Annexure 5: CRZ clearance
Annexure 5: CRZ clearance

(iii) The project proponent shall comply with all the Orders/orders of the Hon'ble High Court of Gujarat and Supreme Court in the matter.

(a) Adequate safety measures for the offshore structure and ship navigation shall be taken in view of the high current in the area.

(b) The shore line changes in the area shall be monitored periodically and the report submitted every 6 months to Regional Office, Port.

(c) The recommendations of the risk assessment shall be implemented. Any change in the design of the project shall come before the committee for seeking necessary approval.

(d) Mangrove plantation of 20 ha to be done in consultation with the GOERGIC of Forest Department. A detailed plan shall be submitted within six months from the date of receipt of this letter.

(e) It shall be ensured that during construction and post construction of the proposed jetty the movement of fishing vessels and the local community are not interfered with.

(f) Relocation of the fishermen community if any, shall be done strictly in accordance with the norms prescribed by the State Government.

(g) Marine ecology monitoring shall be done regularly during construction of Breakwater and dredging/disposal operation.

(h) Regular monitoring of air quality shall be done in the settlement areas around the project site and appropriate safeguard measures shall be taken.

(i) Sewage mixing in the port area shall be done only after adequate treatment to conform to the standards stipulated by the Gujarat State Pollution Control Board and shall be followed by the cascading, plantation and irrigation.

(j) Adequate plantation shall be carried out along the mids of the Port premises and a green belt shall be developed.

(k) Water shall be used for abrasion of ground water in CRZ area for the project.

(l) Specific arrangements for rain water harvesting shall be made in the project design and the rain water so harvested shall be efficiently utilized. Details in this regard shall be furnished to this Ministry's Regional Office at Visakhapatnam within 2 months.

(m) All the relevant information shall be shared with the extent that it is essential for this project.

(n) No other project other than those particular in the Coastal Regulation Zone Notification, 1991 shall be stored in the Coastal Regulation Zone area.

B. General Conditions:

(i) Construction of the proposed structures, if any in the Coastal Regulation Zone area shall be undertaken meticulously conforming to the existing Central/State rules and regulations including Coastal Regulation Zone Notification, 1991 & its amendments. All the construction designs / drawings relating to the proposed construction activities must have approval of the concerned State Governments / Authorities.

(ii) Adequate provisions for infrastructure facilities such as water supply, fuel, sanitation etc., shall be made for construction workers during the construction phase of the project so as to avoid falling of unsanctioned pollution of water and the surroundings.

(iv) The project proponent shall make necessary arrangements for disposal of solid waste and for the treatment of effluents by providing a proper wastewater treatment plant outside the CRZ area. The quality of treated effluents, solid wastes and noise level etc., must conform to the standards laid down by the concerned authorities including the Central/State Pollution Control Board and the Union Ministry of Environment and Forests under the Environment (Protection) Act, 1986, whichever are more stringent.

(v) The proponent shall obtain the requisite consents for discharge of effluents and emissions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 from the Gujarat Pollution Control Board before commencing of the project and a copy of each of these shall be sent to this Ministry.

(vi) The final details, evas and intangibles, if any, on the site shall not be disturbed in any way.

(vii) A copy of the clearance letter will be sent to the concerned Purchase/Local NGO, if any, from whom any suggestion/representation has been received while processing the proposal.

(viii) The funds sanctioned for environment protection measures shall be maintained, in a separate account and these shall be no diversion of those funds for any other purpose. A year-wise expenditure on environment safeguard shall be reported to this Ministry's Regional Office at Visakhapatnam and the State Pollution Control Board.

(ix) Full support shall be extended to the officers of this Ministry's Regional Office at Visakhapatnam and the officers of the Central and State Pollution Control Boards by the project proponents during their inspection for monitoring purposes, by furnishing full details and action plans including the action taken reports in respect of substantive measures and other environment protection activities.

(x) In case of deviation or alteration in the project including the implementing agency, a fresh reference shall be made to this Ministry for modification in the clearance conditions or imposition of new one for ensuring environmental protection.

(xi) This Ministry reserves the right to revoke this clearance, if any of the conditions stipulated are not complied with the satisfaction of this Ministry.

(xii) Any other concern authority may stipulate any other additional conditions subsequently, if deemed necessary, for the environment protection, which shall be complied with.

(xiii) The project proponent shall advertise at least in two local newspapers widely circulated in the region around the project, one which shall be in the vernacular language of the locality concerned informing that the project has been accorded environmental clearance and copies of clearance letters are available with the State Pollution Control Board and may also be seen at Website of the Ministry of Environment & Forests at [http://www.mens.nic.in]. The advertisement shall be made within 7 days from the date of issue of the clearance letter and a copy of the same shall be forwarded to the Regional Office of this Ministry at Visakhapatnam.

(xiv) The Project proponents shall inform the Regional Office at Visakhapatnam as well as the Ministry the date of financial closure and final approval of the project by the concerned authorities and the date of start of pilot Development Work.

(xv) Any appeal against this environmental clearance shall lie with the National Environment Appellate Authority, if preferred, within a period of 30 days as prescribed under Section 11 of the National Environment Appellate Act, 1997.
Annexure 5: CRZ clearance

Annexure 6: Addendum to the CRZ clearance