



FIAN INTERNATIONAL

FOR THE RIGHT TO FOOD & NUTRITION

Shri. C.K.Mishra
Secretary
Ministry of Environment Forests and Climate Change (MoEFCC)
Indira Paryavaran Bhawan, CGO Complex, New Delhi
Email: secy-moef@nic.in

Heidelberg, 29th June 2020

Dear Mr. Secretary,

FIAN International is an international human rights organization, with consultative status with the United Nations (UN) Economic and Social Council that works towards the worldwide implementation of the right to food and nutrition. We write this letter as a follow up to our previous letter addressed to the Chief Minister of Odisha, wherein we expressed concern over handover of people's land in Nuagaon, Dinkia and Govindpur villages, Jagatsinhpur district, Odisha to JSW Utkal Steel Ltd. (JUSL) by the State Government. We underscored that such a transfer of people's land is not only in disregard of established legal frameworks and free, prior consent of the affected communities but also has severe negative consequences for the environment and results in grave human rights violations for the villagers.

FIAN International is concerned that instead of following the due procedure provided in the Environmental Impact Assessment Notification of 2006¹ (EIA Notification, 2006) and settling the rights and claims of the affected villagers under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA, 2006), the unlawful process towards the establishment of the intended JUSL projects is being allowed to proceed.

According to community members, the two public hearings conducted on 20-12-2019 at Gadakujang by the State Pollution Control Board, Odisha upon the application of JUSL to obtain environment clearance from the Ministry of Environment, Forest and Climate Change (MoEFCC), were unlawfully conducted, as the procedure stipulated for obtaining environmental clearance for integrated and interlinked projects² was not followed. Following are the major areas of concern with respect to the negative human rights and environmental impacts of the JUSL project:

¹ Ministry of Environment and Forests, New Delhi 14th September, 2006 Notification (Environment (Protection) Act, 1986) Notification section 8 (vi) states: *"Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."* Available at <http://www.environmentwb.gov.in/pdf/EIA%Notification,%202006.pdf>

² MoEFCC Memorandum, No. J-11013/41/2006-IA.II(I), 24 December 2010



1. Selective clubbing of projects and incomplete information in public hearing notices

The projects proposed by JUSL comprise of an integrated 13.2 million tonne per annum steel (MTPA) steel plant, a 10 MTPA cement grinding unit, a 900 megawatt (MW) captive power plant, all-weather, multi cargo, green field, captive jetties with a handling capacity of 52 MTPA at Jatadhari creek, and a township spread over 2,215,000 sq. km. The notices for public hearing, as published on the website of State Pollution Control Board, Odisha presented these separate projects as only ‘two’ in number, whereas, in effect, they comprise of at least five separate components. It appears that components of an integrated and interlinked project were selectively clubbed and broken up in order to bypass detailed scrutiny and comprehensive assessment by all applicable Expert Appraisal Committees (EAC), as stipulated under the MoEFCC Office Memorandum (OM) dated 24-12-2010 (No. J-11013/41/2006-IA.II (I)). The OM also mandates holding of public hearing of each component of such an integrated and interlinked project, as per the provisions of EIA Notification, 2006. The two public hearings conducted on 20-12-2019 therefore did not adhere to the procedure stipulated for obtaining environmental clearance for integrated and interlinked projects. The public was also misled by the presentation of the project as two separate projects with components that do not have a cumulative impact on the land and environment that they aim to use and impact.

Additionally, the draft Environment Impact Assessment (EIA) report prepared by JUSL made a mention of a residential township to be constructed for the project in an area of 22,15,000 sq. kms. This component was not disclosed as part of the project in the public hearing notices. According to information received by us, this township is a building and construction project and attracts a separate approval from the Odisha State Impact Assessment Authority (SEIAA)³.

2. Lack of Integrated Environment Impact Assessment (EIA) and Cumulative impacts not being assessed

The first application made by JUSL for seeking Environmental Clearance is for an integrated steel plant for the production of 13.2 MTPA crude steel, a 10 MTPA cement grinding unit and a 900 MW captive power plant whereas the second application for Environmental Clearance is for all-weather, multi-cargo, greenfield, captive jetties for handling of 52 MTPA capacity cargo at Jatadhari muhan river. Both these projects are integrated and interlinked in as much as the power requirements of the steel plant would be

³This amounts to “false and misleading” data, which also makes the projects liable to be cancelled as per Section 8 (vi) of the EIA notification, 2006.



served by the captive power plant and, in turn, the cargo requirement for the Integrated Steel Plant, Captive Power Plant and Cement Plant would be brought in by sea through the proposed captive jetty.⁴

The MoEFCC OM clearly mandates the preparation of a common EIA report by the project proponent for integrated and inter-linked projects having multi sectoral components, covering impact of each of the component in a comprehensive manner after obtaining Terms of References (TORs) from each of the respective sectoral Expert Appraisal Committees (EACs). No such common EIA has been prepared for the present project as per publicly available documents. Without a common EIA report in their local language, affected people do not have the opportunity to review the cumulative and comprehensive impacts of all components of an integrated/interlinked project such as the above.

3. Implications on the Right to Water

According to the draft EIA report for the integrated steel plant, power and cement plant prepared by JUSL, water needed for the operations will be brought from Mahanadi River through an 87 km long pipeline.⁵ Environment ministry's K. Roy Paul committee report, which was set up to review the viability of the steel plant and port of M/s POSCO India Ltd – in the exact same region as that proposed for the present project by JUSL - observed, that the water availability and source sustainability needed close scrutiny. POSCO was advised to look for other sources to augment water availability⁶. The committee had also recommended that a "source sustainability study of water requirement" be carried out. These steps were not carried out in the planning of the present project, despite the rising evidence that the Mahanadi River is already water stressed.⁷

4. Environment Ministry's recommendation to carry out drainage assessment due to history of floods and cyclone

⁴Form 1 of both these projects clearly acknowledges that the projects are "interlinked". As per MoEFCC Office Memorandum (OM) dated (No. J-11013/41/2006-IA.II (I)) for 'consideration of integrated and inter related projects for grant of environmental clearance', integrated and interlinked projects are required to prepare a "Common EIA report". The OM states:

"Integrated and inter-linked projects having multi sectoral components shall prepare a common EIA report, covering impact of each of the component comprehensive manner after obtaining TORs from each of the respective sectoral Expert Appraisal Committees (EACs)." Further: "The proponent shall prepare a common EIA report covering all the sectors comprehensively and hold public hearing based on the EIA report so prepared, for each component as per provision of EIA Notification, 2006"

⁵"Jobra barrage of Mahanadi River near Cuttack has been identified as the source of river water for the proposed Steel Plant". This would be done by laying an "87 km long pipeline to bring water from Jobra barrage to the plant." (EIA-Report)

⁶ Therefore, adequacy of the water available for the project needs very close scrutiny. The Committee came to know that the State Water Resources Department has advised POSCO to "look for other sources of to augment water availability".

⁷Mahanadi: Coal Rich, Water Stressed;

https://in.boell.org/sites/default/files/uploads/2019/04/report_mahanadi_water_dispute_2018_final.pdf; and ; State of India's Rivers for India Rivers Week, 2016; (Table 18- Water Availability Scenario, Pg. No. 97, and Pg No.1250) accessed from <https://indiariversblog.files.wordpress.com/2017/05/state-of-river-report-odisha.pdf>



As the proposed project site is prone to cyclones and floods, the environment ministry's Roy Paul committee had recommended to undertake a comprehensive drainage study.⁸ However, no such assessments have been carried out in the draft EIA report.

5. Missing assessments in the EIA report

As mentioned above, there is no impact assessment in the draft EIA report for important aspects of the projects. This also attracts Section 8 (vi) of the EIA notification (mentioned earlier) that relates to deliberate concealment of data. For instance, two of these aspects are:

- There is no impact assessment of the residential township of 22,15,000 sq. km, which will be constructed for the project.
- Water for the project will be drawn from Jorba barrage through the laying of an 87-kilometer pipeline. There is no impact assessment for the same.

Based on the information above, it can be concluded that such an Environmental Impact Assessment is incomplete in its content. A public hearing conducted on such poor assessment has very little basis and is, in fact, a real disservice to the intent of the EIA notification, 2006. Of particular concern in this context are the amendments proposed in the EIA Notification 2006 vide Draft S.O. 1199 (E) published on 23rd March 2020, according to which India's environmental governance and protections provisions will be further weakened.

Additionally, the transfer of forest clearance in favour of M/s JSW Utkal Steel Ltd was approved by the Government of Odisha via an order dated 30-10-2019 with the condition that, the State Govt. shall ensure complete compliance of the FRA, 2006, if not done already. The existence of this condition indicates that the transfer of forest clearance to JUSL under Forest Conservation Act, 1980 was conditional to the recognition of forest rights under FRA, 2006 which makes it mandatory for the free informed consent of the Gram Sabha (village assembly) to be sought before villagers are evicted or their land is acquired. Therefore, it was mandatory for the consent of the Gram Sabha to be sought before the forest clearance was transferred. So far, however, the district administration had not organized any such village assembly. Pursuant to this, villagers themselves, organized a Palli Sabha in village Dhinkia on 25-2-2020 where villagers confirmed their long-standing residence in the area and their traditional dependence on the

⁸ K. Roy Paul committee report stated, *"The Committee, therefore, recommends that a comprehensive area drainage study taking into account the topography, the severe historical floods and cyclones occurred and reported for the region may be carried out. The satellite Imageries of the area for the period of severe historical floods need to be analysed and the impact of the project on the natural drainage pattern should be, assessed and adequately addressed by the project proponent. Reputed national Institutions like NRSC and SAC may be engaged to 'carry out these assessments.'"* A Note on the Report of the K.Roy Paul Committee Report on POSCO can be found here- [https://www.sol-asso.fr/wp-content/uploads/2013/06/Note_on_POSCO_Roy_Paul_committee_report_full_note_12-4-2013_1 .pdf](https://www.sol-asso.fr/wp-content/uploads/2013/06/Note_on_POSCO_Roy_Paul_committee_report_full_note_12-4-2013_1.pdf)



forest land for hundreds of years for survival.⁹ They also renewed their demand for immediate recognition of rights under FRA, 2006, and refused consent for diversion of forest land for the proposed projects in favor of JUSL.

6. International Commitments

The human rights violations we documented in our previous letter, are inextricably linked to and compounded by negative environmental impacts. The protection of the environment is not only enshrined in India's constitution¹⁰, but is also an essential element of a number of international instruments to which India is a party. The government's handover of communities' land and forests to JUSL frustrates and undermines commitments by India under these instruments.

India's National Biodiversity Target (NBT) 6, formulated under the Convention on Biological Diversity,¹¹ commits India to conserve effectively and equitably "ecologically representative areas on land and in inland waters, as well as coastal and marine zones, especially those of particular importance for species, biodiversity and ecosystem services (...)."¹² India has further committed as follows: "By 2020, values of biodiversity are integrated in national and state planning processes, development programmes and poverty alleviation," and "Strategies for reducing rate of degradation, fragmentation and loss of all natural habitats are finalized and actions put in place by 2020 for environmental amelioration and human well-being."¹³ So far, these elements have been completely absent in the planning of the JUSL project. The disastrous implications on biodiversity through the felling of 500 000 trees and subsequent destruction of natural flora and fauna, and the obvious negligence of the Odisha government to adhere to orders by the Green Tribunal as well as conduct assessments are in stark contrast to the declared ambitions.

Similarly, India's Intended Nationally Determined Contribution (INDC) under the Paris Agreement commits India to increase the country's forest cover through a number of programmes, e.g. the Green India Mission (GIM).¹⁴ India further committed to "Planning and implementation of actions to enhance

⁹ Dhinkia Palli Sabha unanimously votes against the proposed JSW project, March 1, 2020 <https://www.groundxero.in/2020/03/01/dhinkia-palli-sabha-unanimously-votes-against-the-proposed-jsw-project/>

¹⁰ Article 48-A of the Indian Constitution states that "*The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.*" Article 51-A spells out the fundamental duty of every citizen to "*protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures*". Available at <https://www.india.gov.in/my-government/constitution-india/constitution-india-full-text>

¹¹ The Convention on Biological Diversity (CBD) mandates each party to prepare a National Biodiversity Strategy and Action Plan (NBSAP) and to ensure that this is mainstreamed in to relevant plans, policies and programmes. Subsequently, India has identified national diversity targets (NBTs).

¹² Sixth National Report by India, available at <https://chm.cbd.int/pdf/documents/nationalReport6/241351/1>

¹³ Ibid.

¹⁴ INDC 5: "*To create an additional carbon sink of 2.5 to 3 billion tonnes of CO2 equivalent through additional forest and tree cover by 2030*" supposedly to be achieved through full implementation of Green India Mission and other programmes of afforestation. India INDC to UNFCCC available at <https://www4.unfccc.int/sites/submissions/INDC/Published%20Documents/India/1/INDIA%20INDC%20TO%20UNFCCC.pdf>



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climate resilience and reduce vulnerability to climate change.”¹⁵ Furthermore, under the National Agroforestry Policy (NAP) “India aims at encouraging and expanding tree plantation in complementarity and integrated manner with crops and livestock. It will help protect and stabilize ecosystems, and promote resilient cropping and farming systems to minimize the risk during extreme climatic events. It will also complement achieving the target of increasing forest/ tree cover.”¹⁶ One of the main objectives of the National Water Mission (NWM) is conservation of water. India has also been identified as one of the countries which is most vulnerable to the impact of accelerated sea level rise due to global warming¹⁷.

The foreseen implications of the JUSL project with regard to these commitments, however, point in the opposite direction. The absence of a comprehensive drainage study, compounded by the absence of a source sustainability study of water, are concerning. In addition, the deficiencies of the environmental clearance procedures, particularly regarding the likely implications of climate change-induced increase in powerful storms and cyclones, as well as the disregard to suggestions for afforestation, indicate that Government authorities are not abiding by their commitments under the Paris Agreement.

According to India’s Voluntary National Review (VNR) 2020 to the United Nations High Level Political Forum for Sustainable Development 2020 “India has fully adopted the SDG framework and aligned its development priorities with the Global Goals.”¹⁸ Our analysis of the JUSL project shows, however, that the project undermines the realization of a number of SDGs, particularly SDGs 1,2,3,6,13,14,15, especially for the affected communities.

All these commitments by India are in stark contrast to the way the environmental legislative framework and JUSL’s project is being executed on the ground. The Government of India, and therefore also the Odisha Government, should ensure that relevant international commitments are both adhered to and mainstreamed in all relevant processes.

As already stressed in our previous letter, it is highly probable that the inhabitants of Dinkia, Gobindpur, Nuagaon, Bayanalkandha, Polang and Nolia Sahi villages will plunge into a much more perilous state of despair, if their land, which is a vital livelihood resource for them, is transferred to JUSL without addressing underlying human rights concerns and settling legal claims as per statutory procedures. The onset of the COVID-19 pandemic and the recent cyclone Amphan have further exacerbated the difficulties faced by these villagers and it is extremely important to ensure that their basic human rights, including the right to food and nutrition, are fully realized and restored.

¹⁵ Ibid.

¹⁶ National Agroforestry Policy (NAP), 2014 available at <http://agricoop.nic.in/sites/default/files/National%20Agroforestry%20Policy%202014.pdf>

¹⁷ Kulp, S.A., Strauss, B.H. New elevation data triple estimates of global vulnerability to sea-level rise and coastal flooding. *Nat Commun* 10, 4844 (2019). <https://doi.org/10.1038/s41467-019-12808-z>.

¹⁸ India VNR 2020, available at https://sustainabledevelopment.un.org/content/documents/26279VNR_2020_India_Report.pdf



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For the aforesaid reasons and as a human rights organization, we would like to ask you to:

- Quash the public hearings conducted on 20-12-2019 and require them to be re-conducted as per the procedure established by the EIA notification, 2006 after making relevant information available to the villagers in their local language.
- Ensure that free, prior and informed consent is acquired from the affected villagers for the aforesaid project and give due consideration to both recent and previous Gram Sabha resolutions rejecting diversion of forestland, as per FRA, 2006.
- Ensure that all of India's commitments under Convention on Biological Diversity, the Paris Agreement on climate change, and the 2030 Sustainable Development Goals (SDGs), are prioritized and implemented.

We would like to thank you for your attention and request you to kindly keep us informed about the action you intend to take on this matter.

Respectfully yours,

Sofia Monsalve
Secretary General
FIAN International

cc.

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