



FIAN INTERNATIONAL

FOR THE RIGHT TO FOOD & NUTRITION

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Heidelberg, 2nd September, 2019

Dear Mr. Chief Minister,

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 would like to express our concern regarding the recent government handover of people's land in Jagatsinhpur district of Odisha to JSW Utkal Steel Ltd. (JUSL). The affected people of Nuagaon, Dinkia and Govindpur villages have been facing eviction and loss of livelihood ever since their land was forcibly acquired for the, now abandoned, POSCO project. Instead of returning the land to the villagers after POSCO withdrew in March 2017, the Government handed over this land to another steel major, JUSL, in September 2018, for the same purpose of setting up a steel plant. Faced with continuous protests, JUSL recently decided to not conduct a survey for setting up of its plant¹, however, the land has still not been returned to the villagers. On the basis of a human rights analysis of the situation and in line with the demands brought forth by Posco Pratirodha Sangram Samiti (PPSS), we have enlisted our requests on page eight of this letter.

A progressive legislation granting legal recognition to the rights of traditional forest dwelling communities over forest and community resources, namely- the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA, 2006) finds application in this case, as most part of the land sanctioned for the steel plant in Jagatsinhpur district is officially classified as forest land². Additionally, a large number of documentary and oral evidence have indicated the presence of forest dwelling Scheduled Tribes (STs) and other traditional forest dwellers (OTFDs) in the proposed POSCO project area, contrary to the claim

¹ *Faced with protests, JSW decides to not conduct survey without prior permission from Odisha villagers*, The New Indian Express, 20 June 2019 available at <http://www.newindianexpress.com/states/odisha/2019/jun/20/faced-with-protests-jsw-decides-to-not-conduct-survey-without-prior-permission-from-odisha-villagers--1992589.html>

² *Iron and Steel: The POSCO-India Story*, Mining Zone Peoples' Solidarity Group, (October 20, 2010) available at <http://miningzone.org/wp-content/uploads/2010/10/Iron-and-Steel.pdf>



made by the district administration and the Odisha Government that there are none³. It is, therefore, imperative that the rights and claims of the affected communities under FRA, 2006 are settled before their land is transferred to another project proponent.

1. Disregard of free, prior and informed consent

Reports suggest that ever since POSCO, a South Korean steel giant, entered into a Memorandum of Understanding with the Odisha Government in June 2005 to facilitate the construction of an integrated steel plant in Jagatsinghpur district, various laws and procedures have been openly defied, illegal clearances awarded, and deliberate attempts have been made to understate the costs and overstate the advantages of the project⁴. FRA, 2006 vests significant decision-making power in village councils (Gram Sabhas), and requires proponents of industrial projects diverting protected forest resources, to secure the consent of the affected villages via Gram Sabha resolutions before advancing such projects⁵. On several occasions in the past, the Gram Sabhas of the affected area have passed majority resolutions against any handover of their lands and community forest resources, which have been routinely disregarded by the Government⁶. Specifically, in October 2012, the Dhinkia Gram Sabha attended by over 2,000 people passed a unanimous resolution reaffirming their refusal to allow lands to be diverted for the POSCO-India project and demanded restoration of rights under the FRA, 2006⁷. Section 4(5) of the Act states that no member of a forest dwelling ST or OTFD can be evicted until forest rights claims have been formally adjudicated. However, applications submitted by the residents of Nuagaon, Dhinkia and Gobindpur villages to claim rights over forestland under FRA have not been processed since 2011. Three different official committee reports i.e., the Saxena Committee⁸, the POSCO Enquiry

³Majority Report of the POSCO Enquiry Committee, (October 18, 2010) https://forestrightsact.files.wordpress.com/2016/04/posco_enquiry_committee_report.pdf. See also Majority Report of the Committee Constituted to Investigate into the proposal submitted by POSCO India Pvt. Limited for establishment of an Integrated Steel Plant and Captive Port in Jagatsinghpur District, Orissa, p. 4

⁴Supra note 2

⁵Section 5 and section 6, Forest Rights Act, 2006

⁶Report of the Committee Constituted to Investigate into the proposal submitted by Posco India Pvt. limited for establishment of an integrated steel plant and captive port in Jagatsinghpur district, Orissa, (2010) at 64, See also, The Price of Steel: Human Rights and Forced Evictions in the POSCO-India Project, International Human Rights Clinic, ESCR-Net, (New York, NYU School of Law, 2013) p. 31

⁷ 'Dhinkia Gram Sabha Unanimously Resolves NOT to Divert Forest Land for POSCO', Press Release, POSCO PRATIRODH SANGRAM SAMITI, (Oct. 21, 2012) available at <http://www.indiaresists.com/dhinkia-gram-sabhaunanimously-resolves-not-to-divert-forest-land-for-posco/>

⁸Report National Committee on Forest Rights Act, (December 2010) p. 104, available at http://www.indiaenvironmentportal.org.in/files/file/Final%20Report_MoEF_FRA%20Committee%20report_Dec%202010.pdf



Committee⁹ and the Forest Advisory Committee¹⁰ have highlighted the blatant disregard for Gram Sabha resolutions and other statutory rights under FRA, 2006 by the State Government.

Obtaining the consent of Gram Sabha before diverting forestland is a statutory requirement and the State Government must ensure that forest rights over these lands are ensured and vested after the withdrawal of POSCO in March 2017. Failure to do so will entail liability upon the Government under FRA as well as the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act) 1989 (The Atrocities Act), which makes interference with the enjoyment of forest rights of members of a Scheduled Caste or a Scheduled Tribe an ‘atrocious’ punishable with imprisonment¹¹. The Atrocities Act also makes punishable willful neglect of duties that are required to be performed by a public servant¹².

2. Illegality of land bank deposition

The 2980 acres of land acquired by POSCO for their project was saved in a land bank of the State Government to be ultimately given to another steel major – JUSL, for the construction of a steel plant. Instead, according to statutory procedures established under relevant legislations such as the FRA 2006 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (LARR) Act 2013, the land should have been returned to the affected people of Nuagaon, Dhinkia and Govindpur villages.

As per Section 101 of LARR Act 2013, “Land acquired and possession taken over but not utilized within a period of five years from the date of possession shall be returned to the original owner or owners or their legal heirs or to the Land Bank of the appropriate government.” The Government of Odisha, by way of a revised policy for land acquisition, on February 7, 2015 notified in Rule 43 that such an unutilized land shall in all cases revert to the state and be deposited in the Land Bank automatically¹³. Even though ‘land’ is a State subject, ‘acquisition and requisitioning of property’ is a subject of the Concurrent List, implying that both the central and state legislatures can make laws on the subject. In a situation where a provision of a law made by a state legislature is repugnant to any provision of a central legislation, the Constitution of India provides that the

⁹ Supra note 3

¹⁰ ‘FAC advises environment ministry to reject forest nod to Posco’, November 3, 2010 available at <https://www.livemint.com/Politics/IXn0OA4brWnaCgPTrILRRK/FAC-advises-environment-ministry-to-reject-forest-nod-to-Pos.html>

¹¹ Section 3(1)(g) of the Atrocities Act, 1989 (Inserted by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015)

¹² Section 4 of the Atrocities Act, 1989 (Inserted by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015)

¹³ Odisha Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, February 7, 2015 available at https://www.igrodisha.gov.in/pdf/ORTFCTLARR_Rules_2015.pdf



latter would take precedence over the state rules¹⁴. Therefore, such a state rule mandating the deposition of unutilized land only in the Land Bank with no provision for repatriation to original owners should, in as much as it is repugnant with the central act of LARR 2013, be declared void.

The Supreme Court of India, in another case involving industrial land acquisition for ‘public purpose’, has also specified that unutilized acquired land was to be returned to the original landowners, particularly where such owners belong to impoverished agricultural communities for whom the land is the only source of livelihood¹⁵. Additionally, the Government of another Indian state of Chhattisgarh, as recent as in December 2018, decided to return unutilized land acquired for an industrial project to farmers, who were the original owners, after months of protests¹⁶. FIAN International, therefore, urges an immediate intervention by the State Government to take similar action in this case and return the land to the original inhabitants who are directly dependent on it for their livelihood instead of transferring it to JUSL.

3. Loss of livelihood

Several people whose land and beetle vines were forcibly destroyed and acquired by the Government for POSCO have lost their livelihood sources and are now reduced to daily wagers. Most of these families have no other employable skills and have farmed beetle leaves for generations to earn a livelihood. In addition to the income stream provided by the cultivation of betel or cashews, families in the affected villages also supplement their livelihood in significant ways by accessing common resources, including rice, fish and forest products that are gathered locally and used for household consumption¹⁷. Diversion of forestland and community resources on which villagers are directly dependent on has thereby negatively impacted on their ability to secure adequate food and sustain themselves. Additionally, severe restraint on their freedom of movement has reduced their ability to get work, access educational facilities and access crops and markets, forcing them to pay inflated prices for everyday necessities that are brought in. Highlighting concerns over gross human rights abuses, former UN Special Rapporteur on the Right to Food, Olivier De Schutter also warned that the forcible eviction of people from their

¹⁴ The Constitution of India, 1950, Art. 254(1)

¹⁵ *KedarNath Yadav v. State of West Bengal & Others*, Civil Appeal No. 8438 of 2016

¹⁶ *Lands acquired for Tata Steel plant in Chhattisgarh to be given back to farmers*, The Hindu Business line, December 25, 2018, available at <https://www.thehindubusinessline.com/companies/lands-acquired-for-tata-steel-plant-in-chhattisgarh-to-be-given-back-to-farmers/article25825127.ece>

¹⁷ *Supra* note 2, p. 37-38



lands could tantamount to depriving them of their means of subsistence and violating their right to adequate food and nutrition¹⁸.

In July 2017, villagers filed a petition with the Kolkata bench of the National Green Tribunal (NGT) against the construction of a boundary wall around the forestland by the Industrial Development Corporation Odisha (IDCO) and asserted that no valid Forest Clearance, as required under the Forest (Conservation) Act of 1980, exists for another project proponent (JUSL) to carry on construction. Recognizing an unfair encroachment on the land, the NGT subsequently ordered against any further construction activity on said land and removal of any construction already made. However, according to our information, this judgement has not been implemented yet and the boundary wall continues to obstruct enjoyment of bona fide livelihood needs of the communities.

4. Impact on the environment

In addition to completely disrupting the livelihood of local communities, acquisition of forest, land and rampant deforestation for the purpose of this project has also negatively affected the environment¹⁹. The Centre for Science and Environment (CSE) prepared a marine environmental impact assessment of the proposed POSCO project²⁰ and highlighted several possible impacts of the project on the local environment and the fishing community including a heightened vulnerability to natural disasters. Construction activities can lead to flattening of sand dunes that act as a natural barrier to water entering into villages. In the past, the NGT has pointed out several deficiencies in the environmental clearances given to the project. Specifically, in May 2013, NGT reiterated the project's lack of environmental clearance and restricted illegal tree felling in the area²¹. Even though POSCO has withdrawn from the project, subsequent chopping down of betel vines and of over five lakh (500 000) cashew nut and other fruit-bearing trees, crucial for sustaining the livelihood of the locals, has caused large-scale environmental destruction²². On

¹⁸ 'India: Urgent call to halt Odisha mega-steel project amid serious human rights concerns', OHCHR Geneva, October 2013 available at

<https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13805&LangID=E>

¹⁹ Summary of Environmental Impacts of POSCO Project, Note submitted by National Centre for Advocacy Studies (NCAS) based at Pune, India to Ministry of Environment and Forest (MOEF) available at <http://miningzone.org/wp-content/uploads/2012/04/Summary-of-Environmental-Impacts-of-POSCO-Project.pdf>

²⁰ Rapid Environmental Impact Assessment for 4 MTPY Integrated Steel Project to be Set up Near Paradip In Orissa, Volume- I, August 2006, available at http://ifmrlead.org/wp-content/uploads/2016/05/ESRA%20Report_CDF_IFMR.pdf

²¹ *Prafulla Samantray v. Union of India*, Original Application No. 123 of 2013

²² Priya Ranjan Sahu, 'As Posco exits steel project, Odisha is left with thousands of felled trees and lost livelihoods', March 22, 2017 available at



account of such large scale felling of trees and destruction of natural flora and fauna, the inhabitants of these villages will also have to directly face the brunt of climate change. As the trees acted as natural barriers and prevented seawater from entering villages, the villagers are now exposed to tidal surges, powerful storms and cyclones, which are common in the region. Some villagers have also reported a visible rise in temperature, widespread soil erosion and a shortage of firewood.

In 2012, the State Government had reconstituted a four-member committee of experts to find out what needs to be done to minimize the impact of tree cutting in the coastal belt²³. The committee gave their views to the Government, but nothing was done for the protection of green cover and no afforestation project has been taken up either by the district administration or the Forest Department so far.

5. Criminalization of human rights defenders

Several civil society groups and members of PPSS have reported registration of false and unfounded cases by state officials in order to curb resistance against land acquisition²⁴. A report established that, in February 2013, about 230 cases had been filed implicating about 1500-2000 villagers, most of who were taking part in peaceful protests against the project between 2006 and 2012²⁵. In most of these complaints, the number of accused is left open-ended which allows police to implicate any person in any case despite not being specifically named therein. These protestors are human rights defenders who are entitled to specific protection from the State from arbitrary arrest under false charges, use of force, or deprivation of liberty, under the United Nations General Assembly's Declaration on Human Rights Defenders 1998, in whose favor India had voted unanimously with other nations. Additionally, the International Covenant on Civil and Political Rights (ICCPR) also guarantees the right to liberty and protects individuals from arbitrary arrest or detention, and requires any deprivation of liberty to take place in accordance with procedures

<https://scroll.in/article/832463/as-posco-exits-steel-project-odisha-is-left-with-thousands-of-felled-trees-and-broken-job-promises>

²³ *Posco-hit villagers in Odisha reeling under deforestation heat*, The New Indian Express, March 22, 2017 available at <http://www.newindianexpress.com/states/odisha/2017/mar/22/posco-hit-villagers-in-odisha-reeling-under-deforestation-heat-1584234.html>

²⁴ Centre for Justice and Peace Online Petition, available at <https://www.change.org/p/join-cjp-s-campaign-to-quash-false-cases-against-advivasis-in-odisha>. See also, 'Human rights abuse, false cases filed against anti-posco protesters', Mohammad Ali, The Hindu, February 11, 2013 available at <https://www.thehindu.com/todays-paper/tp-national/human-rights-abuse-false-cases-filed-against-antiposco-protesters/article4401721.ece>

²⁵ Captive Democracy: A Fact-Finding Report On Abuse of the Criminal System to Curb dissent against the POSCO Steel Plant in Odisha, New Delhi, Alternative Law Forum, (February 2013), See *ibid*



established by law²⁶. Abhaya Sahoo, the President of PPSS was arrested on two occasions and has over 60 cases registered against him, including cases when he was not present in the villages on the day of the alleged offence. In addition, recent information suggests that warrants have been issued against around 2,500 people, including 500 women. Of these, according to PPSS' local legal counsel, approximately 400 of these individuals were, in fact, arrested. The remaining have remained at a permanent fear of arrests and have been unable to leave these areas - even to seek urgent medical assistance. Specifically, women, several of whom suffer from prolonged illnesses and neglected gynaecological disorders, fear accessing health services or seeking wage work outside of their villages²⁷. Reports have also documented instances of baton charge and ruthless beatings of women protestors and children by police officials, which lead to serious bodily injuries²⁸. The heavy monetary costs associated with seeking legal redress coupled with the inability to undertake regular livelihood activities, has made it impossible for the villagers to live a dignified life.

6. Violation of human rights

India is a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and is therefore duty-bound to progressively realize, among other rights, the right of everyone to an adequate standard of living for himself and his family²⁹, the right of everyone to be free from hunger³⁰ and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health³¹. The goal of full realization of economic, social and cultural rights also imposes tripartite obligations on the State to respect, protect and fulfill these rights³². Under the obligation to respect, India must refrain from interfering with or curtailing the enjoyment of human rights, while under the obligation to protect, India must ensure that non-state actors, including corporations and private individuals, are not interfering with human rights. The Government of India and therefore also the Odisha Government would have had to respect and protect the right to adequate food and nutrition and other human rights of the affected communities against the interference of third parties, like POSCO and JUSL. However, looking at the situation

²⁶Article 9(1), International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171

²⁷ Ranjita Behera, 'Rising voices of women against displacement of POSCO in Odisha', Journal of Management Research and Analysis, October-December, 2017;4(4):147-158 available at <http://oaji.net/articles/2017/1875-1524629715.pdf>

²⁸ *Ibid*

²⁹ Article 11(1), International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966

³⁰ Article 11(2), International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966

³¹ Article 12, International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966

³² See A Eide, The Right to Adequate Food as a Human Right, UN Doc. E/CN.4/Sub.2/1987/23, para 66



on the ground, it is evident that the Odisha Government has not complied with its obligations under international law.

More so, the Supreme Court of India, via an immensely progressive jurisprudence, has given a very expansive interpretation to the fundamental right to life guaranteed to all citizens under Article 21 of the Indian Constitution. The right to life, therefore, includes the right to health and medical care³³, the right to live a life of dignity in a proper environment³⁴, the right to economic empowerment of the poor and disadvantaged³⁵, the right to livelihood³⁶ and vests primary responsibility on the State to ensure that this right is not violated.

In light of the circumstances mentioned above, it is highly probable that the inhabitants of these villages will plunge into a much more perilous state of impoverishment and despair, if their land is transferred to JUSL without addressing underlying human rights concerns and settling legal claims as per statutory procedures. The Government of India has frequently reaffirmed their conviction in *Sabka Saath Sabka Vikas* (Development for All) including the most recent assurance of totally committing to achieving the 2030 Sustainable Development Goals (SDGs) in the United Nations General Assembly's Annual Debate last year³⁷. Given its rising world power status and prominent role in the formulation of the SDGs, India has a special duty to bring these goals to fruition. The aftermath of the POSCO project and the lackadaisical response of the Government towards improving the situation of those affected, however, paints a very dire picture of India's commitment to human rights and international obligations. Therefore, as a human rights organization, we would like to ask you to:

- Follow due procedure established by law and withdraw all false and fabricated cases against affected villagers and members of PPSS. Also, formulate a national legislation and related policies that specifically guarantee protection of human rights defenders.
- Urgently process individual and community forest rights claims of residents of Nuagaon, Dhinkia and Gobindpur villages on land taken over for the POSCO project instead of transferring the land to JUSL.

³³*State of Punjab v. M.S. Chawla* AIR (1997) SC 1225

³⁴*M.C. Mehta v. Union of India* (2006) 3 SCC 399

³⁵*Murlidhar Dayandeo Kesekar v. Vishwanath Pande Barde* (1995) Supp 2 SCC 549

³⁶*Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180

³⁷'India 'will not let you fail' to reach Sustainable Development Goals, Foreign Minister tells UN', 29 September 2018 available at <https://news.un.org/en/story/2018/09/1021612>



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FOR THE RIGHT TO FOOD & NUTRITION

- Ensure implementation of the judgement of NGT, Principal Bench, New Delhi dated 12-07-2018 and remove any construction already made on the forest land.
- Acquire explicit consent from affected villagers and give due consideration to previous Gram Sabha resolutions rejecting diversion of forestland. Also, require re-consultation as and when a project is formulated/abandoned or withdrawn to decide over the land intended to be acquired or already acquired after using wrongful means.
- Make an amendment in Rule 43 of Odisha Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules 2015 and include the option of reversion of unutilized land to the original owners.

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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