



# THE PRICE OF STEEL

Human Rights and Forced Evictions  
in the POSCO-India Project





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## ABOUT THE AUTHORS

The International Human Rights Clinic (IHRC) at New York University (NYU) School of Law provides high quality, professional human rights lawyering services to community-based organizations, nongovernmental human rights organizations, and intergovernmental human rights experts and bodies. The Clinic partners with groups based in the United States and abroad. Working as researchers, legal advisers, and advocacy partners, Clinic students work side-by-side with human rights advocates from around the world. The Clinic is directed by Professor Smita Narula, Associate Professor of Clinical Law and Faculty Director of the Center for Human Rights and Global Justice (CHRGJ) at NYU School of Law. Susan Hodges is Clinic Administrator.

All publications and statements of the IHRC can be found on its website:  
<http://chrhj.org/clinics/international-human-rights-clinic/>

The International Network for Economic, Social and Cultural Rights (ESCR-Net) is a collaborative initiative of groups and individuals from around the world working to secure economic and social justice through human rights. Over 250 non-governmental organizations (NGOs), social movements, and advocates, across 70 countries, strengthen solidarity and collective capacity, develop new tools and resources, and undertake joint advocacy through ESCR-Net, united by a shared mission to build a global movement to make human rights and social justice a reality for all. International working groups are the primary platform for common action through Network; in particular, the collective efforts of Members through the Social Movements and Grassroots Group Working Group and the Corporate Accountability Working Group were vital to this project.

More information about the collective work of ESCR-Net can be found on its website:  
<http://www.escr-net.org/>

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## FOREWORD

**BY MILOON KOTHARI, FORMER U.N. SPECIAL RAPPORTEUR  
ON THE RIGHT TO ADEQUATE HOUSING**

The POSCO project in India is a story all too familiar. This is a story about attempts to forcibly evict thousands of families from their homes, their fields, and their forests to make way for a massive steel plant to be built and operated by the South Korea-based multinational corporation POSCO, through its wholly-owned subsidiary POSCO-India. Should the project move forward, entire villages will be decimated, livelihoods will be destroyed, and families will be rendered homeless, all in the name of “development.”

In its obsessive determination to secure foreign direct investment and facilitate the POSCO-India project, the government of India is offering up lands that its citizens have farmed and lived on for generations, in total disregard for the severe impacts that these evictions will have on the communities affected. Forced evictions present serious threats to human rights. The impact on those affected can often be characterized as a human tragedy. In the wake of forced evictions, people are often left destitute, deprived of a means of earning a livelihood and often homeless. People affected by forced evictions seldom enjoy effective access to legal or other remedies. Generally, forced evictions affect the poorest, the socially and economically most vulnerable and marginalized sectors of society, including in this case indigenous peoples, forest dwellers and Dalits. Forced evictions intensify inequality, contribute to social conflict and add to the swelling ranks of the urban poor. Women also experience particular impacts as a result of forced evictions, particularly as a consequence of their loss of sustainable livelihood, adequate health services and access to income for their families, as well as disruptions to social relationships, and increased vulnerability to violence. Further, forced eviction has an acute and lasting impact on children, often disrupting their access to education and leaving a long-standing inter-generational footprint on the lives and the families of those affected.

Unfortunately, the POSCO-India project is far from unique in terms of the severe human rights threats it poses. In fact it is in many ways emblematic of a global human rights crisis, induced by mega-development projects that lead to the forced migration of more people today than conflict or environmental disasters combined. Every year more than 15 million people are forced from their homes and lands as a result of large-scale development projects, ranging from hydroelectric dams to city beautification, mining and oil extraction to urban renewal programs, and agribusiness plantations to slum-clearance drives. India’s record in this dynamic of displacement has led to over 60 million people displaced by development induced projects. That’s almost one million per year since India’s independence in 1947. POSCO represents, in that context, a story of lessons not learnt, of dispossession of people and communities being seen as an acceptable price to pay for the “development” of a modern nation.

This global reality has led different bodies in the United Nations and at national levels towards considerable advances in the recognition of the human rights of people facing evictions at constitutional, legal and policy levels. However, these achievements have not led to perceptible improvement in the lives of people who face real threats of being forced out of their homes and off of their land. Judicious laws must be consolidated in binding, operational policies. In the case of India, the country still lacks a national law or policy on population

resettlement and rehabilitation, in spite of the numerous social conflicts that have arisen in the context of large dams, mining and infrastructure projects that have displaced tens of thousands of people at a time. Such a policy is sorely needed for India, as well as for many rapidly developing countries. These policies need to be informed by prevailing international standards, including the Basic Principles and Guidelines on Development-Based Evictions and Displacement.<sup>1</sup> Among other provisions, these Guidelines urge States, consistent with their human rights obligations, to take steps to minimize evictions and displacement by: undertaking human rights impact assessment studies; searching for alternative development strategies; and adopting comprehensive housing policies and legislation on forced evictions based on human rights standards. States must also ensure close consultation with those affected at the planning stage and with respect for the right to participation in decision-making when such decisions have real impacts on their lives and livelihoods.<sup>2</sup>

This Report, produced by the International Human Rights Clinic (IHRC) at New York University School of Law and the International Network for Economic, Social and Cultural Rights (ESCR-Net), offers yet another contribution to efforts to advance human rights analysis in the context of development-induced forced evictions. The Report is unique in that it combines expert legal analysis, based on India's international human rights commitments, and insights gained from testimonies gathered directly from affected community members. Based on numerous prior documents from official and civil society inquiries into the POSCO-India project, the Report presents evidence of serious and ongoing attempts at illegal forced evictions. The Report also documents ongoing human rights violations taking place against project-affected communities and grassroots leaders that have been targeted by Indian authorities and project proponents precisely because they have mobilized to defend their right to remain on their lands. The Report additionally documents the impact on human rights of families who have given up their lands and who have, since 2008, been living in dismal conditions in POSCO-India's Transit Camp.

Affected people and communities are struggling, as eloquently detailed in this Report, for their rights to land, housing, and access to natural resources that have sustained them and their environment for generations. Their struggle against the POSCO project represents a defense of nothing less than their right to self-determination as contained in the International Covenant on Economic, Social and Cultural Rights. This right is mirrored in national law as well, such as the Indian Forest Rights Act. The government, in complete disregard for these international and national laws, continues to move ahead with the POSCO project. The Report calls on the Government of India, the POSCO corporation, its investors, and the Republic of Korea, to take immediate action to ensure the protection of human rights in connection with the POSCO-India project. These recommendations should be taken seriously by all actors concerned. No nation can be said to have progressed by so systematically denying the rights of its residents. For that compelling reason alone the POSCO project should be immediately cancelled.

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<sup>1</sup> See U.N. Human Rights Council, Miloon Kothari, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, U.N. Doc. A/HRC/4/18 (Feb. 5, 2007); *Forced Evictions – Adequate Housing*, UNITED NATIONS OFFICE OF THE HIGH COMMISSION FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx> (last visited June 25, 2013).

<sup>2</sup> *Id.* In the context of the POSCO project see in particular paragraphs 21-40 of the Basic Principles and Guidelines aimed at safeguarding the human rights of the people and communities struggling for their rights to stay in their homes and lands. For those that have already been displaced the pertinent paragraphs of the Guidelines are 52-67.



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## EXECUTIVE SUMMARY

*“I have a dream that POSCO will go away from this land, and we will get a chance to live our life like we did previously. We don’t want to become beggars; we don’t want to depend on anybody. We want to live an independent life of our own, which is based on our hard work. We want to have a dignified life.”*

- D.R., a father of two young children in Jagatsinghpur district, Odisha (real names withheld due to security concerns)<sup>1</sup>

*“The last time I felt safe was before POSCO came.”*

- C.G., a betel farmer who was injured in a police firing and whose brother was jailed as a result of resisting forced evictions for the POSCO-India project<sup>2</sup>

On June 22, 2005, the South Korean steel giant POSCO entered into a Memorandum of Understanding (MoU) with India’s eastern state of Odisha to facilitate the construction of an integrated steel plant, captive port, and iron ore mines in Odisha. Worth approximately US\$12 billion, the POSCO-India project represents the largest single instance of foreign direct investment in India to date, and will require over 12,000 acres (29,653 hectares) of land.

Since the signing of the MoU, the project has made little progress in part due to significant and sustained opposition from affected communities who have used non-violent protest and democratic processes to resist their forced evictions from lands that they have cultivated for generations. The project threatens to displace over 22,000 people in the plant and port area alone, and thousands more face destruction of their livelihoods.

This Report documents ongoing human rights violations taking place in the area proposed for the integrated steel plant and captive port in Jagatsinghpur district, Odisha (formerly known as Orissa). Testimonies gathered directly from project-affected communities evidence significant and ongoing attempts to illegally evict people from their lands, as well as serious human rights violations against individuals and communities who are resisting forced eviction and defending their human rights.

Indian authorities have actively targeted those who speak out against the POSCO-India project with violence and arbitrary arrests and detentions. Local police have barricaded villages, occupied schools, leveled thousands of fabricated criminal charges against individuals opposing the project, and have refused to protect individuals from consistent attacks by private actors who are allegedly motivated by the interests of the company and of the State. As a result of these abuses, and for the past eight years, entire communities in the project-affected area have been living under siege and have suffered clear violations of their rights to security of person and freedom of movement, as well as their rights to be free from arbitrary arrest and detention, and from discrimination—particularly on the basis of political or other opinion. Living under siege has also affected a host of economic and social rights, including villagers’ rights to work, health, education, and food. Finally, should the project move forward as planned, displaced communities face a serious risk of impoverishment, which in turn would undermine a range of human rights and their ability to live a life of dignity.

## *State Repression through Violations of Civil and Political Rights*

On several occasions, Indian authorities have engaged in the illegal use of force against project-affected communities, resulting in serious bodily injuries to many individuals, whose access to medical care was then restricted. In one incident that took place in May 2010 at Balitutha, the entrance to the proposed POSCO steel plant site, police attacked fleeing protestors using tear gas, rubber bullets, metal pellets, and *lathis* (police batons), injuring over 100 people, five of them seriously. Recalling the incident, an elderly Dalit (Scheduled Caste) woman, M.D. insisted:

This is our only land, even though we have no land rights. If you take away our land we will die. You should tell the government: don't take away our land. You are trying to frighten us with bullets and guns. We have already taken a lot of bullets, like at Balitutha Bridge. I was hit and people had to pick me up and bring me back. When the police started firing we couldn't find any way to escape. We had to jump in the water and even then they kept firing.<sup>3</sup>

Project-affected communities face a constant threat of arrest and detention on fabricated or inadequately-investigated charges. A local lawyer defending affected communities estimated that 3,000 charges had been filed by Indian authorities against individuals opposing the POSCO-India project and resisting their forced evictions. Indian authorities often issue warrants that specify only a few individuals by name, and then implicate dozens or hundreds of unspecified "others," opening the door for abuse and arbitrary arrests. Many of those affected do not know what charges have been brought against them. And once arrested, it can be difficult for individuals to afford bail. Some have been detained for months, and few, if any, actual trials have taken place. Police have also targeted leaders of the POSCO Pratirodh Sangram Samiti (PPSS, known in English as the Anti-POSCO People's Movement), a grassroots movement of affected community members who are resisting their forced evictions. PPSS President Abhay Sahoo, for instance, has been arrested three times, spending months in pre-trial detention, where he remains at this writing.

The fear of arrest, combined with the intermittent physical barriers that the Indian police put in place to cordon off the villages, has had the effect of placing the affected villages under virtual siege. Many community members interviewed indicated that they had not left their villages for six to seven years. A female leader of the movement, Manorama Khatua, explained:

Because I have been at the front of the movement, the police has lodged [42] cases against me.... I have not left this village for almost 8 years. I have not left the village because I worry that, if I do, the police will arrest me, and anti-social elements will attack me, meaning the goons that POSCO has mobilized.<sup>4</sup>

Indian authorities have also failed to protect project-affected communities from consistent attacks by private actors. Villagers repeatedly used the term "POSCO goons" to describe these actors, although the Research Team was unable to verify any direct links between POSCO and these so-called "goons." Those resisting the project have, on several occasions, been attacked with crude bombs by these so-called goons, and at least four individuals have died as a result of these attacks. Indian authorities seem chronically unwilling to address or effectively respond to these attacks, despite a heavy police presence in the villages.

## *The Impact of State Repression on Economic and Social Rights*

Police barricades and school occupations, as well as threats of violence or arbitrary arrest, have severely restricted residents' freedom of movement and have effectively cut off affected communities' access to schools, health care facilities, as well as crops and local markets that residents depend on to earn a living or procure food and basic supplies. These restrictions have undermined these villagers' human rights to education, health, work, and an adequate standard of living. As one villager, N.Y., articulated:

[W]e are at great loss.... The agriculture we were doing, the business we were running, all have been disturbed. Our children cannot study.... We are not able to go outside. We also cannot go to doctors. So they have put us in difficulty. Our agriculture has collapsed. We have become jobless.<sup>5</sup>

Living under siege has had significant impacts on affected community members' health. As told by C.G., who continues to suffer from injuries as a result of the police firing at Balitutha in May 2010:

I have severe pain down my arms and on my shoulders. I am alive today because of the money I earn from cultivating betel leaf. Without that I would have died. I will die but I will not leave this land. My motherland.... People can't see their relatives or go out to earn money. We have to spend a lot of money to bring doctors in. Those who don't have money, some have died. Others are suffering from disease.<sup>6</sup>

In February 2013, a joint investigation by the civil society groups Alternative Law Forum and Delhi Forum revealed that at least 30 women in the affected areas were in desperate need of medical attention.<sup>7</sup>

The environment of insecurity has also had serious effects on mental health, and several residents described experiencing stress, insomnia, chronic anxiety and depression. Echoing the sentiments of many community members, V.T., a 65-year-old male villager commented:

We do not feel safe. Both POSCO and the government administration keep oppressing us forcibly.... We cannot sleep well at night, watching our village throughout the night. In every village, check gates are there.... Even in the night they are arresting us, fabricating false charges.<sup>8</sup>

Another resident, H.N., added:

I am depressed, nervous, and the police have destroyed some of my betel vine, so my income has been reduced. My entire family protested against destroying the betel vines. But the police arrested the entire family and thereafter, they destroyed our most valuable betel vine. So the whole family is depressed and nervous. I am not in a position to think about what I am going to do with my future, not even formulate a plan for what to do to generate our income for the family.<sup>9</sup>



Living under siege has also compromised children's ability to access educational facilities. In several instances, armed police have occupied school buildings for extended periods of time. Many children in the project-affected area have had their schooling interrupted, and parents report that many who do attend school have difficulty concentrating because of the prevailing climate of fear. In some cases, school occupations by police have interfered with India's obligation to ensure access to adequate food and health care for the students, as the occupations have interrupted the operation of *Anganwadi* (basic child health/nutritional service) centers. In July 2011, when India's National Commission for Protection of Child Rights (NCPCR) visited to investigate conditions in project-affected areas, they found numerous government violations of the right to education. However, the students spoke with clarity and conviction about their situation. As the NCPCR reported:

The children too submitted a joint memorandum written in Oriya [the local language] to the Team-Members at that place. The most remarkable sentence in the memorandum is that a few lakhs of Rupees cannot compensate the loss to their future and that for a plant of 30 years' life span, they should not be reduced to a penny-less state.<sup>10</sup>

*The Forced Evictions of Project-Affected Communities are Illegal under Domestic and International Law*

The Indian government's attempts to forcibly evict project-affected communities from their lands violate both domestic and international law. International legal standards require that India exhaust all feasible alternatives to forced evictions; engage in genuine consultation with project-affected communities; follow procedures established by law; and ensure the provision of adequate compensation for affected properties. The government has systematically failed to live up to each of these standards.

The residents who stand to be forcibly evicted from their lands and their homes were neither notified nor consulted before the MoU for the POSCO-India project was signed. Since learning of the MoU—through media announcements—these residents have made multiple attempts to participate in the decisions that will affect their lives, including by engaging in political processes recognized under Indian law. In particular, forest dwellers who have cultivated forest lands in the project area for generations have made multiple attempts to claim their legal rights under the Forest Rights Act (FRA) of 2006. The FRA prohibits any evictions while rights claims are outstanding, and several villages have initiated the necessary steps to have their rights determined under the FRA. Despite the fact that there are outstanding claims, however, the government has sought to move forward with the project.

Once rights are recognized, the FRA also requires the government to defer to the will of affected communities with respect to plans to divert forested land. Affected villages with recognized rights-holders must give their consent through a *gram sabha* or village resolution before any utilization of forest resources or any action that would endanger their cultural or natural heritage. Affected villages have passed several such resolutions, including in 2008, 2010, and 2012, and have fervently rejected the diversion of forested lands for the project—

resolutions that the Indian government has effectively ignored. As B.D., an affected farmer with four children and four grandchildren, emphasized:

We have repeatedly told to the government that we don't want POSCO, [but the government] just determines that the project must happen here.... We are not satisfied with the government. [The] government is snatching our food, at the same time, our children's future, at the same time our crops. They are leaving nothing for us.<sup>11</sup>

The Orissa Resettlement and Rehabilitation Policy does not cover all affected villagers or guarantee land. Instead, it offers one-time cash compensation to a subset of those affected. Under the policy, displaced individuals and families are eligible for employment in the project, but families may only nominate one family member for this work, which is likely unsuited to their skills as cultivators of betel leaf—an occupation that employs all family members. While POSCO's offer of compensation for acquired land is greater in amount and scope, the compensation offered still only amounts to approximately one year's worth of a family's earnings, which fails to compensate for the loss of a sustainable, profitable, inter-generational livelihood.

The Indian government's ongoing efforts to advance forced evictions and land confiscation also disregard the rulings of India's National Green Tribunal (NGT) which in March 2012 suspended the environmental clearance of the Ministry of Environment and Forests for the plant and port, calling for “a fresh review of the Project” due to multiple concerns with the original environmental impact assessment. The NGT then reiterated the project's lack of environmental clearance in May 2013, and ordered POSCO to cease deforestation activities.

The residents of the project-affected area risk further human rights violations should the project move forward as planned or should the current situation persist. If displaced, affected communities face a serious risk of impoverishment, which in turn would undermine their realization of a range of human rights. Project-affected communities repeatedly emphasized that losing their lands is tantamount to losing their livelihoods, dignity, and access to resources that are critical to realizing their rights to an adequate standard of living, including adequate housing, food, and water.

For generations, thousands of farmers, fisherfolk, forest dwellers, and laborers living in the plant and port area have secured their livelihoods from these lands using traditional and sustainable farming practices. The area's high water table and unique soils have enabled a sustainable, robust, and high-quality production of betel leaf, cashew, and rice. In addition, residents have long sustained themselves through family gardens, animal husbandry, shrimp ponds, and fishing. Many also rely on forest products for sustenance. A farmer and father of two teenagers commented:

We get everything from this land, from this earth. We heard POSCO wants to come. We will die but we will not leave our land and neither will our children.<sup>12</sup>

No less than a third of those who stand to be displaced in the plant and port area are Dalits or Scheduled Caste community members who are afforded special protections under Indian and international law as a result of their historic and ongoing persecution and marginalization as so-called untouchables. India must take special and concrete measures to ensure the adequate development and protection of Dalits, an obligation it has failed to uphold.

### *Conditions in the POSCO-India Transit Camp*

This Report also documents the deplorable living conditions of 52 families who reportedly left their villages following a 2007 clash between those opposing and supporting the project, and who were then relocated in 2008 to a so-called “Transit Camp” built by POSCO-India. Since leaving their villages and resettling in the Transit Camp, these villagers have suffered clear and dramatic declines in their enjoyment of a number of rights, including but not limited to their rights to housing, food, water, health, education, and work. Transit Camp residents live in cramped and sweltering one-room homes with roofs containing asbestos. These accommodations fail to protect residents from both heat and rain and pose serious health risks. While they previously enjoyed access to abundant, clean water in their villages, residents now share one tubewell and complain of irritation to the throat and skin upon contact with the water. The sanitary facilities are limited and in poor condition, and women and girls lack privacy when using these facilities for bathing.

According to an official investigation of the NCPCR, Indian authorities have failed to ensure Transit Camp residents’ access to essential health, education, and child welfare services, which has had an acute impact on young children and girls residing in the camp. Relocation to the Transit Camp—which is located far from work opportunities or land on which to farm—has impoverished residents and pushed previously self-sufficient families into economic dependence. Residents told the Research Team that without sufficient employment opportunities they are forced to rely on a daily allowance provided by POSCO: Rs. 20 (US\$0.33) per person, an amount that is grossly insufficient to meet their needs and the needs of their families. As one resident stated:

We used to grow betel leaves and earn a minimum of Rs. 20,000 per month. Now we get Rs. 20 per day from POSCO. It is not enough even to meet our basic needs. We used to get all we wanted back in the village; cashew, betel leaves, paddy, fruits, fish were all abundantly available. We grew the best betel leaves there, and now we have to go buy betel leaves from outside at a higher rate.<sup>13</sup>

Transit Camp residents have no idea when they will be resettled, and many expressed a desire to return to their villages. When asked what message they would like to give the government, one resident responded:

POSCO company should not come here. When the company and the government can’t compensate even 52 families, how will they meet the needs of the people from the rest of the villages if they are evicted from there?<sup>14</sup>

There is no public evidence to suggest that POSCO has attempted to either rectify the sub-standard living conditions in the POSCO-India Transit Camp, or take any public action to request a halt to the illegal land acquisition process or the widely-reported human rights abuses being committed by Indian authorities against those resisting their forced eviction. Instead, in an April 2013 letter to ESCR-Net, an author of this Report, the company stated, “As per POSCO’s understanding, authorities are not using any force to evict any people.”<sup>15</sup>

### *Key Recommendations*

Human rights obligations and responsibilities attach to a number of actors involved in the POSCO-India project. Specifically, as a State Party to numerous international human rights treaties, India has an obligation to respect, protect, and fulfill the human rights of individuals and communities affected by the project. South Korea, where POSCO is based, also has an obligation to protect those affected by POSCO’s activities, and must take necessary measures to ensure that POSCO does not undermine the enjoyment of human rights in its operations abroad. In addition, POSCO has a responsibility to respect the human rights of those who are affected by its operations, as affirmed under the U.N. Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the U.N. Global Compact. POSCO has publicly accepted its human rights responsibilities under these instruments, and has reflected its commitment to comply with international human rights treaties in its Code of Conduct.

ESCR-Net and IHRC call on all relevant actors to take immediate action to fulfill their respective obligations and responsibilities, and ensure that human rights are not violated in connection with the POSCO-India project. Detailed recommendations conclude this Report; here we briefly outline overarching recommendations for:

The Government of India to:

- Suspend the POSCO-India project until and unless international human rights standards are fully complied with.
- Ensure full implementation of the provisions of the Forest Rights Act and cease all land clearance and acquisition until and unless the rights claims of forest-dwelling communities are adjudicated and recognized rights-holders consent to the diversion of forest land.
- Take decisive steps to ensure that police officials act in accordance with international standards on the use of force and do not engage in arbitrary arrests and detentions.
- Provide effective protection for project-affected communities against acts of violence committed by private actors.
- Ensure project-affected communities unencumbered access to work, adequate food, healthcare, and education services.
- Ensure that the living conditions in the POSCO-India Transit Camp abide by international human rights standards.

- Devise a permanent resolution to the temporary housing situation of Transit Camp residents, in a manner that realizes their right to an adequate standard of living and involves their informed consent.

The Government of the Republic of Korea to:

- Take all necessary steps to ensure that POSCO respects human rights throughout the course of its activities, including in its projects in India.
- Establish a legislative framework that requires companies domiciled in Korea, such as POSCO, to adopt measures to prevent and mitigate adverse human rights impacts in their operations overseas.
- Ensure access to effective judicial and non-judicial remedies for those affected by the POSCO-India project.
- Avoid facilitating or investing in projects that fail to meet human rights standards.

POSCO to:

- Prevent or mitigate adverse human rights impacts that are directly linked to its operations in India, even if it has not caused or contributed to those impacts.
- Ensure compliance with Indian laws and regulations.
- Ensure that the corporation's commitment to upholding international human rights standards is clearly communicated in all business relationships and fully implemented by company officials.
- Provide for or cooperate in the remediation of any adverse impacts to date.

In addition, ESCR-Net and IHRC call on investors in POSCO, including ABP, Berkshire Hathaway, Blackrock, Deutsche Bank, JPMorgan Chase, NBIM, and Bank of NY Mellon to:

- Take reasonable and prudent measures to ensure that POSCO: respects human rights throughout its operations; complies with domestic law; and seeks to prevent or mitigate adverse human rights impacts that are linked to its operations.
- In the case that POSCO does not fully comply with human rights standards, investors should consider withdrawing their investment.



## METHODOLOGY

This Report is the outcome of systematic research and analysis conducted over the course of a year in collaboration with a broad range of organizations and experts, and in close consultation with communities directly affected by the POSCO-India project. The Report's findings are based on extensive primary and secondary source research gathered through in-country investigations, as well as active and regular engagement with project-affected persons, community leaders, human rights advocates, and journalists and academics knowledgeable about the project and its impacts.

This Report focuses primarily on human rights concerns in the area targeted as the site of the proposed steel processing plant and captive port, and in the so-called “Transit Camp” set up by POSCO-India in 2008. Although not the focus of this Report, it is important to note that the POSCO-India project also stands to significantly affect communities residing in the proposed iron ore mine area.

This Report includes testimonies gathered in Odisha, India in November and December 2012 by members of the Research Team, which was comprised of members of ESCR-Net,<sup>16</sup> IHRC,<sup>17</sup> and Video Volunteers—an India-based community media and human rights organization.<sup>18</sup> The Research Team conducted dozens of detailed interviews with a broad range of project-affected people. These included: project-affected persons from the villages of Bara Buda, Dinkia, Govindpur, and Patana, as well as residents of the POSCO-India Transit Camp near Badagabapur, Erasama block, Odisha. Interviews with Transit Camp residents were conducted in focus groups.

Interviews were also carried out with: the leadership of the POSCO Pratirodh Sangram Samiti (PPSS); experts on the human rights and environmental impacts of the POSCO-India project, including academics, journalists, and representatives of human rights and environmental organizations, and other social movements active in land-related struggles in India; an attorney defending project-affected communities against false criminal charges that have been filed against them; and a former government official who has had extensive contact with the affected area as well as with other industrial projects in the vicinity.

Interviews took place in Jagatsinghpur district, in Odisha's capital Bhubaneswar, and in an undisclosed location which was chosen to protect the safety of those interviewed. Interviews were conducted in Oriya, Hindi, and English, with the assistance of interpreters where necessary. Interviews were documented using written notes, as well as audio and video recordings, which were later transcribed. Members of the Research Team held themselves to the highest standards of ethical and professional conduct, which included ensuring the informed consent of interviewees, as well as the protection of interviewee identities where necessary. In this Report, initials have been used as aliases for many of the individuals interviewed, which itself is an unfortunate indicator of the state of insecurity in project-affected areas today.

Significant security concerns impeded full access to individuals affected by the POSCO-India project. As detailed in this Report, project-affected communities face ongoing harassment, intimidation, arbitrary arrests, and violence due to their opposition to their forced eviction. Members of the Research Team were under surveillance by plainclothes individuals when conducting research at the steel plant and port area, and at the POSCO-India Transit Camp.

Transit Camp residents alleged that the camp is under constant surveillance by individuals who they believe are “employed by POSCO to control the information flow to and from the camp.”<sup>19</sup> These prevailing safety and security concerns, which have hindered many residents from leaving their villages for years, further underscore the importance of the testimonies included in this Report, and stress the need for the Indian government, as well as other actors involved in the POSCO-India project, to take immediate action against ongoing human rights abuses.

This Report has been conceptualized and framed according to the established norms and standards of international human rights law. It is grounded in the recognition that project-affected persons are rights-holders who are entitled to specific rights protections and guarantees and to effective remedies when those rights are violated. The legal framework that forms the basis of this Report was developed through an analysis of India’s human rights obligations, primarily as reflected in international human rights treaties to which India is a State Party, as well as interpretations of these obligations by U.N. treaty monitoring bodies and special procedures. The Report’s legal framework also reflects recent and significant developments with respect to international standards on the responsibility of businesses, such as POSCO, to respect human rights, and on the obligations of States—including POSCO’s home state the Republic of Korea—to protect human rights outside their territory.

This Report draws on the expertise of ESCR-Net and IHRC in the area of international human rights law including, in particular, our expertise on business and human rights<sup>20</sup> and on the human rights impacts of large-scale land acquisitions and development-induced displacement.<sup>21</sup> The Report builds on the long-standing efforts of a range of social movements, civil society organizations, independent experts and others who have worked to raise awareness and generate public debate about the POSCO-India project. The Report additionally cites the results of official investigations and of committees constituted to review the POSCO-India project. As a result of these efforts, human rights concerns relating to the POSCO-India project have already garnered significant attention from various offices and authorities of the Indian government, and from the international community. At the same time, ongoing attempts to forcibly acquire land for the project continue to result in a number of human rights abuses and cause growing alarm amongst project-affected communities, demonstrating both the urgency of and need for this Report.

## I. CONTEXT

### A. The POSCO-India Project: An Overview

POSCO, a South Korean multinational corporation and the world's fourth largest steel producer,<sup>22</sup> seeks to establish an integrated steel venture in India's eastern state of Odisha (formerly known as Orissa).<sup>23</sup> POSCO, via its wholly-owned and operated subsidiary POSCO-India Pvt. Ltd.,<sup>24</sup> plans to invest approximately US\$12 billion in the project, making it the largest single instance of foreign direct investment in India to date.<sup>25</sup> The proposed project, which will be referred to in this Report as the "POSCO-India project," consists of iron ore mines, a steel processing plant, a captive port facility, and related transportation and water infrastructure. The project aims to have a production capacity of 12 million tons per year, requiring 600 million tons of iron ore over a period of 30 years.<sup>26</sup>

The government of Odisha entered into a Memorandum of Understanding (MoU) with POSCO on June 22, 2005.<sup>27</sup> Since that time, Odisha has taken numerous steps to help facilitate the project. It agreed to support designation of the proposed project area as a Special Economic Zone (SEZ), a status that affords POSCO significant tax breaks, among other benefits.<sup>28</sup> Odisha also agreed to facilitate "all environmental approvals and forest clearances from the Central Government within the minimum possible time for the project."<sup>29</sup> In 2005, POSCO committed to pay Odisha a royalty of Rs. 27 [US\$0.46]<sup>30</sup> for each ton of iron ore that it extracts.<sup>31</sup> In May 2013, the market value of a ton of iron ore was US\$124.<sup>32</sup> The MoU for the POSCO-India project expired in 2010, and has not been renewed,<sup>33</sup> notwithstanding this fact, efforts to acquire land for the project continue.

The POSCO-India project requires over 12,000 acres of land, including 4,004 acres for the steel processing plant and port (12 km south of the existing Paradeep Port) in coastal Jagatsinghpur district, 2,000 acres for a company town and associated infrastructure<sup>34</sup> and a further 6,177 acres for the iron ore mine in an area roughly 200 km inland known as Khandadhar Hills.<sup>35</sup> The company additionally seeks an unspecified amount of land to facilitate transportation of millions of tons of raw materials and to supply the water needed for the processing of the steel.<sup>36</sup>

### B. Projected Impact on Local Communities

The proposed plant and port projects in Jagatsinghpur district affect a total of eight villages across the three *gram panchayats*<sup>37</sup> of Dinkia, Nuagaon, and Gada Kujanga.<sup>38</sup> According to the 2001 census, a total of 22,000 people reside in these areas, one-third of whom are Dalits, or members of Scheduled Castes.<sup>39</sup> Of the 4,004 acres of land at issue, approximately 3,566 acres (89%) is government land (forest land included) and approximately 437 acres (11 %) is private land.<sup>40</sup> Seventy-three percent of total land to be acquired belongs to the three villages of Dinkia, and Govindpur (in Dinkia *gram panchayat*) and Nuagaon (in Nuagaon *gram panchayat*).<sup>41</sup> The POSCO-India project faces strong opposition from residents of these villages, although these villages also include families who are not opposed to the project.<sup>42</sup>

In January 2008, the Xavier Institute of Management, Bhubaneswar, released the results of a socio-economic study covering seven villages affected by the project. The study, which was commissioned by POSCO-India, identified 3,578 families who would be affected, and suggested that 718 families stood to lose their homes. However, the study also noted gaps in the research data as a result of the conditions under which the data was collected. Further, the study stated that over 60 percent of families cultivated betel on forest lands and the majority of families had been living on and cultivating these lands since their forefathers' time.<sup>43</sup> In reviewing the Xavier Institute study, the committee constituted by the Ministry of Environment and Forests (MoEF) to examine the POSCO-India project concluded:

All families in these villages (total number of 3578 families as per census 2001) are going to lose land whether partial or total and have come under the category of PAFs [Project Affected Families].<sup>44</sup>

As noted by the MoEF committee, "loss of one's land or source of livelihood is as devastating as physical displacement from one's homestead land."<sup>45</sup> The acquisition of land for the project will destroy the thriving local economy and residents' livelihoods (described in more detail below), and will result in the effective displacement of the area's 22,000 residents.<sup>46</sup>

In addition to the area's residents who stand to lose their lands and livelihoods, thousands of non-residents who participate actively in the local economy stand to lose their source of income.<sup>47</sup> In addition, the proposed port threatens access to the sea, which provides food and jobs for residents and non-residents alike. Some reports indicate that the livelihoods of as many as 20,000-25,000 local fishermen stand to be negatively affected by the project.<sup>48</sup>

Thousands more stand to be affected at the proposed mining site in Odisha's Khandadhar Hills, Sundargarh district.<sup>49</sup> The Khandadhar hills are popular with local tourists for their beauty and powerful waterfalls.<sup>50</sup> The area's Khandadhar forest is also home to the *Paudi Bhuiyans*, a particularly vulnerable tribal group<sup>51</sup> that sustains itself from the forest, either by cultivating rice and indigenous lentils and grains on fixed plots of land, or by practicing a shifting agriculture method known as *podu*.<sup>52</sup> The land that the *Paudi Bhuiyans* inhabit also boasts rich deposits of iron ore that is desired by many steel companies, including POSCO.<sup>53</sup>

### C. Existing Local Economy

*"We have everything here: rice paddy, betel leaf, fish, drumstick [a vegetable]. The environment and atmosphere are great."*

- Manorama Khatua, PPSS leader<sup>54</sup>

The site targeted for the proposed steel plant and port is home to a predominantly rural population<sup>55</sup> that has created a vibrant, productive, and sustainable local economy. For generations, residents have secured their livelihood by capitalizing on the area's unique environmental features, such as a high water table, rich soil composition, and proximity to the sea, which provides many ways for families to sustain themselves throughout the course of the year. In addition to cultivating betel leaf, local residents grow cashews for sale, operate shrimp

farms, engage in fishing, cultivate rice paddies, tend fruit and vegetable gardens, gather forest produce, and practice animal husbandry.

Many of those at risk of displacement from the area are farmers who have cultivated plots of land for generations, yet many of them do not possess formal title.<sup>56</sup> Although many villagers have applied to have their claims over forest lands recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006,<sup>57</sup> the process is allegedly rife with red tape, and residents have met with limited success.<sup>58</sup>

## 1. Betel Leaf Farming

Local farmers cultivate betel leaf, the area's primary cash crop, throughout the year. According to one estimate there are 5,000 betel vineyards grown in the area's three *gram panchayats*, which are tended by 10,000 cultivators.<sup>59</sup> Betel leaves are mixed with lime, spices, and sometimes tobacco to produce *paan*, which is widely consumed throughout Asia. A single betel leaf sells for between 0.60 and 1.0 rupees,<sup>60</sup> and farmers often enjoy strong profits from cultivating betel leaf. For example, a vineyard of 100-150 vines in Jagatsinghpur district produced an annual profit of about Rs. 200,000 [U.S. \$ 3374.40] in 2010.<sup>61</sup> As one farmer told the Research Team:

In our area one betel leaf is worth one rupee. There is no other area in the world where a leaf has such worth. If I sell 40,000 leaves a month then I earn Rs.40,000 [U.S.\$669.40]. What can the government and POSCO offer me that is better than that? If I need to leave then I lose it all. My children have earned a BA [Bachelor of Arts] and MA [Master of Arts] but they don't want to work outside because my betel vines are so profitable. They want to work with me.<sup>62</sup>

Betel leaves grow on vines inside sheltered gardens or sheds. Farmers build the sheds mostly from material gathered locally and from the nearby forest, along with bamboo sticks purchased at market. Betel vineyards do not require large amounts of land to produce a high yield. In fact, the largest area of betel leaf cultivation reported by farmers is only 0.30 acres, and some vineyards are as small as 0.02 acres.<sup>63</sup>

Though betel vineyards require little space, they need both fresh water and a particular type of soil that is unique to the area. The local water table is notably high, with potable fresh water available roughly 3-4 feet below the surface in most places.<sup>64</sup> In addition to providing easy access to water for the betel vineyards, fresh water is readily available for personal and household use in many of the area's homes. This steady supply of safe drinking water stands in contrast with the reality of many rural people in India, who are compelled to struggle for access to adequate water.<sup>65</sup>

The area's sandy coastal soil is surprisingly low in salinity and is known locally as "sweet sand."<sup>66</sup> Farmers mix the local sand with mustard seed husks and use it to revitalize the soil in betel vineyards on a monthly basis.<sup>67</sup> Farmers do not use chemical fertilizers in the cultivation process; instead they rely almost exclusively on organic products.<sup>68</sup> Family members help tend the soil and participate in the harvesting of betel leaves, while laborers assist in



processing the leaves and assembling the packets of *paan*. Betel cultivation employs both men and women, from childhood to old age.<sup>69</sup> According to a female PPSS leader from Dinkia village, betel cultivation also has a beneficial impact on gender dynamics in the community. As she told the Research Team:

With cultivation of betel, both men and women work under conditions of equality. There is no discrimination in the work culture of betel. The work is not too physically demanding, and women are able to contribute financially to their families.<sup>70</sup>

## 2. Cashew, Rice, Shrimp Ponds, and Fishing

During the summer months, many farmers grow cashew to supplement their income. A single cashew tree produces 100kg of nuts each year, providing an average seasonal income of Rs. 20,000 (U.S.\$334.70).<sup>71</sup> Farmers grow cashew on lands that they either own or rent, and often use the same lands to cultivate rice paddies.<sup>72</sup>

Shrimp ponds dot the landscape throughout the region,<sup>73</sup> and almost half of the local population practices aquaculture of some kind.<sup>74</sup> The ponds are reportedly located on private lands,<sup>75</sup> and yield high returns on owners' investments; an acre of shrimp pond can produce up to Rs. 700,000 (U.S.\$11,714.50) worth of shrimp in a year.<sup>76</sup> Shrimp production often requires the hiring of laborers, making it a valuable source of employment.<sup>77</sup>

Fishing is an integral part of life in the area, both as a source of food and income. Local estuaries are rich with marine life, and many villagers rely on fish for protein in nearly half their meals.<sup>78</sup> In some areas, villagers' sole source of income is fish from the estuary, which they sell both locally and in neighboring districts.<sup>79</sup>

## 3. Family Gardens, Forest Produce, and Animal Husbandry

The average family depends very little on food products from outside the region. With the exception of oil, sugar, salt, and *daal* (lentils), villagers by and large eat food that is locally grown or gathered.<sup>80</sup> In addition to paddy cultivation, families cultivate vegetable gardens and fruit orchards near their homes, utilizing even small spaces as planting areas. Pumpkin vines are trained to grow up the sides of houses, and thatched roofs sprout pumpkins during the growing seasons.<sup>81</sup>

Local residents also rely on the bounty that their natural environment offers. Fruits, vegetables, seeds, and roots gathered from the forest are mainstays of local meals.<sup>82</sup> The average family owns five to ten cows and goats, and makes use of a sheltered area near the beach as a common grazing area.<sup>83</sup> Milk from these animals is an important source of nutrients as well as income, and the sale of goats contributes to the local economy.<sup>84</sup> Coconuts are another important part of the local diet. Coconut trees are grown in almost every household and are harvested throughout the year.<sup>85</sup>

## **D. Projected Environmental Impacts**

### **1. Environmental Concerns**

Given the unique natural features of the area described above, the POSCO-India project has given rise to significant concerns related to the diversion of the local water supply and to environmental impacts, including potentially irreversible effects on endangered species and on coastal sand dunes that act as natural barriers against powerful storms.

The construction of the proposed plant and port threatens the area's unique biodiversity. Many species of animals live and breed in the area's waters, lush estuaries, and dense forest. Among them is the endangered olive ridley turtle, which is protected under Indian law.<sup>86</sup> The site of the proposed captive port includes beaches which serve as a nesting site for over 100,000 olive ridley turtles every year, one of only three such sites worldwide and the only site in the Eastern Hemisphere.<sup>87</sup> Ecologically important horse shoe crabs also depend on the sediment along the coast in the port area,<sup>88</sup> and fish and shrimps use the estuaries and coastal waters as breeding grounds.<sup>89</sup>

There also exist well-founded concerns regarding air pollution<sup>90</sup> and the diversion of water resources. POSCO has already received approval from Odisha's Department of Water Resources for the daily withdrawal of 10 million gallons of water from sources that supply drinking water to the cities of Cuttack and Bhubaneswar, and irrigation water to the four districts of Cuttack, Jagatsinghpur, Kendrapada, and Khurda.<sup>91</sup>

Large sand dunes near Paradeep currently act as a storm barrier, sheltering coastal villages and forests from the full impact of cyclones that devastate nearby regions.<sup>92</sup> In 1999, for instance, a super-cyclone devastated much of the Odisha coastline. However, thanks to the presence of the sand dunes, and the mangroves and other kinds of vegetation that anchor them, people's homes in the villages of Dinkia and Govindpur were largely spared.<sup>93</sup> The building of the captive port for the POSCO-India project would result in a removal of these dunes, leaving the area more exposed to the harmful effects of powerful storms.<sup>94</sup>

### **2. Concerns about the Environmental Impact Assessment Process**

Despite significant environmental concerns, the Government of Odisha has expedited environmental clearances for the project. According to the Environment Support Group, a national organization that advocates for reforms in environmental decision-making,<sup>95</sup> POSCO "delinked" the proposed mine area from the proposed plant and port area in order to more easily obtain environmental clearances for the project.<sup>96</sup> Odisha subsequently required POSCO to conduct "rapid Environmental Impact Assessments," (rapid EIAs) for the plant and port.

In 2006, POSCO conducted the two rapid EIAs, both of which were severely criticized by environmental groups for ignoring key issues such as the impact of waste disposal, large-scale diversion of water supply, and air pollution.<sup>97</sup> In April 2007, villagers and social movement leaders sent a written appeal to India's Ministry of Environment and Forests (MoEF), protesting the rapid EIAs.<sup>98</sup> The letter pointed to MoEF regulations that mandate comprehensive EIAs for

large projects and called on the MoEF to require such assessments for the proposed plant and port.<sup>99</sup> Among a host of other grievances, villagers alleged that POSCO had falsified reports by “entirely concocting” focus group surveys in the affected villages.<sup>100</sup> Their appeal went unheard: In June 2007, the MoEF granted environmental clearances for the project plant and port.<sup>101</sup>

A local environmental activist appealed in 2011 to India’s National Green Tribunal (“NGT”),<sup>102</sup> a specialized body set up to handle environmental disputes and deliver “speedy environmental justice.”<sup>103</sup> In March 2012, the NGT suspended the final MoEF order (issued in 2011) for the plant and port.<sup>104</sup> The NGT found unacceptable the government’s 2007 provision of environmental clearance for the 12 million ton per year project, when its assessment was based on a rapid EIA that considered only the potential impacts posed by Phase One of the project (i.e., 4 million ton per year).<sup>105</sup> The NGT also noted serious inaccuracies in the rapid EIA that Odisha chose to ignore when granting its approval, such as the claim that zero waste would be generated, when the NGT found that the project would discharge over 47 cubic meters of waste water per hour into the sea.<sup>106</sup> Additionally, it expressed concern at the large amount of water that would be diverted from the water supplies of nearby populated areas.<sup>107</sup>

The NGT also commented on Odisha’s “casual” regard for the environmental clearance process, which was carried out without “any comprehensive scientific data regarding the possible environmental impacts. No meticulous scientific study was made on each and every aspect of the matter leaving lingering and threatening environmental and ecological doubts unanswered.”<sup>108</sup> Ultimately, the NGT called for “a fresh review of the Project.”<sup>109</sup> Despite the NGT’s findings, efforts to clear trees and acquire land in the proposed plant area have continued, prompting the NGT to issue a Daily Order on May 28, 2013, ordering the tree felling to stop and declaring that “it is undisputed that as of today the Project Proponent [POSCO-India] does not have Environmental Clearance.”<sup>110</sup>

### **E. Economic Assessments and Critiques**

The POSCO-India project has been widely promoted in India because of its purported economic benefits.<sup>111</sup> In 2007, for instance, the National Council for Applied Economic Research (NCAER), which lists POSCO as one of its sponsors,<sup>112</sup> published a study of how the POSCO-India project would affect employment and tax dollars in Odisha.<sup>113</sup> The NCAER report claims that the project will generate 870,000 jobs over 30 years.<sup>114</sup> The report’s conclusions, however, have been the subject of pointed critique. A study by the Mining Zone People’s Solidarity Group points to the following inconsistencies:

A careful breakdown of the much-touted “8.7 lakh jobs for 30 years” claimed by NCAER study shows only 7000 direct jobs and a maximum of 17,000 direct and indirect jobs in the next 5-10 years. This represents a maximum of 1.7% reduction in current unemployment levels as against the exaggerated claims by POSCO who have used the figure of 8.7 lakh jobs to suggest that the project will almost entirely wipe out unemployment in Odisha! Further, due to issues of skill mobility and mechanization, most of these jobs will not go to the project-affected population.<sup>115</sup>

More fundamentally, the NCAER study was confined to only two possible alternatives: that POSCO mines and exports ore, or that POSCO mines and processes steel in Odisha.<sup>116</sup> As such, the study does not consider the pre-project baseline economy in the affected areas, and therefore fails to take into consideration the total amount of economic agricultural activity that would be lost should the project go forward.<sup>117</sup> The failure to assess current socio-economic conditions also leads to problems in determining actual costs and benefits of the proposed project, as well as setting adequate compensation amounts.<sup>118</sup>

On the subject of tax revenues, the Mining Zone study goes on to point out that:

When the MoU was initially signed in 2005, the Orissa government forecast that the project would bring Rs. 89,000 crores in tax revenues to the central government, and Rs 22,500 crores in taxes to the Orissa government over a period of 30 years. Even though the MoU obliged the government to seek an SEZ [Special Economic Zone] status for the project, these tax projections did not take the SEZ status into account and include levies such as sales tax, excise tax, service tax and local taxes, from which SEZ developers and units are normally exempt.<sup>119</sup>

On January 18, 2013, and for seventh consecutive year, the SEZ Board of Approval granted another extension of the in-principle approval for POSCO's SEZ status.<sup>120</sup> This, despite the fact that in 2009 the Board had stated that in the "existing SEZ Rules, there is no provision for grant of third extension in respect of in-principle approvals."<sup>121</sup> In November 2010, this rule was amended by the Ministry of Commerce and Industry but still only permitted a fourth, one-year extension upon request and Board approval.<sup>122</sup>

Ultimately, while the social and environmental costs of the POSCO-India project are increasingly clear, as described above, the extent of the project's economic benefits remain uncertain. This uncertainty is further compounded by the minimal royalties to be paid by POSCO per ton of mined iron ore.<sup>123</sup>

## **F. Grassroots Resistance to the POSCO-India Project**

*"Till the last drop of our blood, we will not allow POSCO to do their project. We will be dying there. We will not be displaced. This is our life; we have been here for centuries. We won't easily be displaced."*

- C.G., a betel farmer and area resident.<sup>124</sup>

The POSCO-India project has given rise to a formidable grassroots resistance that began to take shape soon after the signing of the project MoU. Formed in August 2005, the POSCO Pratirodh Sangram Samiti (Anti-POSCO People's Movement, "PPSS") is a local social movement that represents the residents of areas that stand to be directly affected by the steel plant and captive port project. In September 2005, PPSS formed a blockade around the three affected *gram panchayats*, refusing access to POSCO or state representatives.<sup>125</sup> Both women and men play a prominent role in the PPSS movement, staffing roadside checkpoints throughout

the night and assuming leadership positions.<sup>126</sup> As noted by one female PPSS leader, referencing the 2008 arrest of PPSS President Abhay Sahoo:

Both men and women work together in betel farming. Similarly, men and women are fighting alongside one another in PPSS... [W]e held a rally and each of us wore a band across our forehead that said Abhay Sahoo. We shouted, “You put one Abhay Sahoo in jail, we still have thousands more.”<sup>127</sup>

As a democratic movement the PPSS represents the common views of many villagers interviewed by the Research Team. As noted by one villager, echoing the views expressed by many others:

We don’t want POSCO. We just want the green land, with natural beauties. We don’t need outside companies. We want the outside companies to go and leave us alone.<sup>128</sup>

The PPSS has repeatedly asserted area residents’ preference for their current mode of livelihood and development. As villager J.H. explained:

Since 300 years we have been living in this place. And we are living very comfortably.... If POSCO comes, then what type of job will it offer us? We ourselves employ 50-60 laborers in a month in our betel vineyard. What type of project will POSCO run and in what capacity will it employ people?<sup>129</sup>

The PPSS has undertaken numerous strategies to participate in decisions related to the POSCO-India project, and express their concerns about the government’s forcible acquisition of land. They have carried out protests and lengthy non-violent sit-ins, or *dharnas*,<sup>130</sup> participated in village resolutions denying consent for diversion of forested land,<sup>131</sup> made submissions to government committees,<sup>132</sup> issued press statements,<sup>133</sup> and even held a demonstration in New Delhi, the capital of India.<sup>134</sup>

As described below in Part III.B, India has responded to organized, peaceful, non-violent opposition to the POSCO-India project by restricting the movement of villagers, engaging in violence, and arbitrarily arresting and detaining those resisting the project. These actions in turn have given rise to significant human rights critiques from official and non-governmental sources at the national and international level. In July 2011, for instance, India’s National Commission for Protection of Child Rights (NCPCR) released a report raising significant concerns about violations of children’s rights in the project-affected area.<sup>135</sup> India’s National Human Rights Commission (NHRC) also visited the area in 2011 and 2012. At this writing the official findings of these NHRC investigations had not been made public, although media reports note that following the 2011 visit, the NHRC issued orders to Odisha to cease the police occupation of schools in the project-affected area and address other human rights concerns including the forcible demolition of betel vineyards.<sup>136</sup> And during its 2012 visit, one NHRC member told reporters that “the team has realized the gross negligence to these villagers.”<sup>137</sup>



Indian civil society groups have also conducted numerous fact-finding missions to the proposed steel plant area. One such report, released in February 2013 by the Alternative Law Forum and the Delhi Forum, detailed Odisha's use of false criminal charges as a tool to repress protest against the POSCO-India project.<sup>138</sup> Human rights abuses against people resisting the POSCO-India project have also drawn international attention. In February 2013, for instance, over 250 human rights organizations from around the world, including ESCR-Net, issued a joint appeal calling on Indian authorities to take immediate steps to stop ongoing human rights violations in the project-affected area.<sup>139</sup> The sections that follow build on and cite to the findings of the above-mentioned initiatives, and examine in detail how the actions of the various duty-bearers involved have failed in different ways to respect, protect and fulfill the human rights of people affected by the POSCO-India project.

## II. LEGAL FRAMEWORK

This Report analyzes the human rights impacts of the POSCO-India project under international law, as well as India's obligations under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ("Forest Rights Act" or "FRA"). Human rights obligations and responsibilities attach to a number of actors involved in the POSCO-India project. Specifically, India has an obligation to respect, protect, and fulfill the human rights of individuals and communities affected by the project; POSCO has a responsibility to respect the human rights of those who are affected by its operations; and South Korea, where POSCO is based, has an obligation to protect those affected from the activities of South Korean corporations. These obligations and responsibilities are outlined in the section below. This overview is not exhaustive; rather, it represents several of the most pertinent human rights issues at stake in the POSCO-India project. More detailed analyses of legal standards, and the application of these standards to the Research Team's findings, are included in Part III.

### A. India's Human Rights Obligations

#### 1. India's Obligations under International Law

As a State Party to numerous international human rights treaties, India must abide by international human rights law,<sup>140</sup> and must do so in full recognition that all human rights are universal, indivisible, interdependent, and interrelated.<sup>141</sup> The following treaties are of particular relevance to this Report: the International Covenant on Economic, Social and Cultural Rights (ICESCR);<sup>142</sup> the International Covenant on Civil and Political Rights (ICCPR);<sup>143</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);<sup>144</sup> the Convention on the Rights of the Child (CRC);<sup>145</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).<sup>146</sup>

The ICESCR guarantees, among other rights, "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions,"<sup>147</sup> as well as the right to health,<sup>148</sup> work<sup>149</sup> and education.<sup>150</sup> Although the ICESCR allows for "progressive realization"<sup>151</sup> of these rights, India must take immediate steps toward their realization.<sup>152</sup> The economic, social, and cultural rights also include a "minimum core" of attendant obligations that India must realize as soon as possible.<sup>153</sup> Additionally, India may not engage in conduct that causes this realization of human rights to regress.<sup>154</sup>

The ICCPR prohibits the arbitrary deprivation of the right to life<sup>155</sup> and arbitrary arrest or detention.<sup>156</sup> The ICCPR also guarantees the rights to: security of the person;<sup>157</sup> freedom of opinion and expression;<sup>158</sup> freedom of assembly<sup>159</sup> and association;<sup>160</sup> and freedom of movement;<sup>161</sup> as well as the right to take part in the conduct of public affairs.<sup>162</sup> These rights must be guaranteed in a non-discriminatory manner, and both the ICESCR and the ICCPR prohibit discrimination on the basis of political or other opinion.<sup>163</sup>

International human rights law additionally recognizes that States must pay heightened attention to women and children, and to groups that are vulnerable to human rights abuses. Specific treaties, which India has ratified, build upon the rights recognized in the ICCPR and

ICESCR, with the aim of providing specific protections for these members of the population, particularly ensuring they are guaranteed equality in the realization of rights. For example, CEDAW requires India to eliminate discrimination against women by any person, organization or enterprise,<sup>164</sup> as well as take temporary special measures to accelerate de facto equality between men and women.<sup>165</sup> CEDAW obliges India to also undertake specific activities that are tailored to assisting rural women to realize their rights.<sup>166</sup>

The CRC guarantees that in all actions concerning children, the best interests of the child shall be a primary consideration.<sup>167</sup> The CRC also ensures that all children have an inherent right to life, and India, as well as all other States parties to the Convention, shall ensure their survival and development, to the maximum extent possible.<sup>168</sup> Importantly, where children are capable of forming their own views, they have the right to be heard.<sup>169</sup> And ICERD calls on India to provide special protections for Dalits, known in Indian legal parlance as Scheduled Castes. ICERD requires India to eliminate discrimination against Dalits, and to take special measures to ensure their adequate development and protection.<sup>170</sup> As noted in Part I.B no less than a third of those who stand to be displaced in the plant and port area are Dalits.

India has a duty to *respect, protect, and fulfill* all human rights.<sup>171</sup> Under the duty to protect, India must exercise *due diligence* to ensure that non-state actors, including corporations and private individuals, are not interfering with human rights.<sup>172</sup> This includes a duty to investigate all instances in which non-state actors may be interfering with human rights,<sup>173</sup> and to take steps to remedy violations that have taken place.<sup>174</sup> States also have the obligation to provide effective remedies when human rights violations have taken place.<sup>175</sup> That there are multiple levels of governance capable of addressing human rights issues—including at the state and national level—does not lessen the obligations on the national government under international human rights law. As such, federalism is not an excuse for the non-performance of international law obligations.<sup>176</sup>

Although not the focus of this Report, the issues of concern in the POSCO-India project also implicate fundamental rights and freedoms as enshrined in the Indian Constitution, including but not limited: to the right to life and personal liberty (art. 21);<sup>177</sup> the rights to peaceful assembly, to freedom of movement, and to reside and settle in any part of the territory of India (art.19);<sup>178</sup> and protection in situations of arrest and detention (art. 22).<sup>179</sup> In addition, the Supreme Court of India has held that the right to adequate housing is a fundamental human right deriving from articles 19 and 21 of the Indian Constitution.<sup>180</sup>

## 2. Legal Standards Governing Forced Evictions and the Right to Participation

Forced evictions are defined as the involuntary removal of individuals, families or communities from the homes or land which they occupy, without appropriate legal protections.<sup>181</sup> Under international law forced evictions are considered “a gross violation of human rights,”<sup>182</sup> that “can only be justified in the most exceptional circumstances,”<sup>183</sup> and only then if they comply with specific standards. These standards derive from a variety of sources, which collectively call on India to ensure:

- Exhaustion of all feasible alternatives to forced evictions;<sup>184</sup>
- Genuine consultation with those affected, as well as prior notice before evictions take place;<sup>185</sup>
- Provision of legal remedies in cases where abuses are committed;<sup>186</sup>
- Adequate compensation for any property affected;<sup>187</sup> and
- Compliance with procedures established by law.<sup>188</sup>

The *Forest Rights Act* (FRA) of 2006 is also central to determining India's obligations related to the forced evictions that are the subject of this Report. The Act protects individuals and communities' land rights in forested areas, and applies to two distinct groups of forest-dwelling people—members of Scheduled Tribes who primarily reside in and depend on the forest for their livelihood and “other traditional forest dwellers.”<sup>189</sup> This second category includes individuals or communities who have primarily resided in and depended upon the forest for their livelihood for at least 75 years.<sup>190</sup> These individuals and groups are granted a wide range of customary rights, including the right to use forest land and resources.<sup>191</sup> Specifically, Section 3(1) grants individuals and communities: the right to “hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood”;<sup>192</sup> the “right of ownership access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries”;<sup>193</sup> and the “right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.”<sup>194</sup>

There are two key provisions that directly limit the government's ability to evict individuals or divert forest resources. First, the FRA sets out a detailed procedure for determining whether an individual or community should be granted property rights under the Act.<sup>195</sup> The Act clearly states that it is illegal to evict any traditional forest dweller until all forest rights claims have been fully determined.<sup>196</sup>

Second, once protected forest rights have been formally recognized, the local community is given significant powers and responsibilities for land management. The local *gram sabha* (village bodies comprised of all persons on the village electoral rolls),<sup>197</sup> is directly empowered to take the decisions necessary to, among other things:

- i. “ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage”; and
- ii. “ensure that the decisions taken in Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.”<sup>198</sup>

As a result, proponents of projects that would divert protected forest resources must secure the consent of the affected villages via *gram sabha* resolutions before advancing the project. Although there are some provisions that allow the government wider latitude to confiscate land

for specific public purposes, there is no public evidence available that suggests that these exceptions would apply to land confiscated for use in the POSCO-India project.<sup>199</sup>

International law also lays out specific conditions that apply to the forced evictions of indigenous peoples. The 2007 Declaration on the Rights of Indigenous Peoples stipulates that “[i]ndigenous peoples shall not be forcibly relocated from their lands and territories... without the free, prior and informed consent of indigenous peoples concerned....”<sup>200</sup> The Declaration also requires that the government and indigenous peoples reach agreement on “just and fair compensation and, where possible, with the option of return” prior to evictions taking place.<sup>201</sup> As mentioned above, domestic Indian law reinforces this obligation through the Forest Rights Act, which specifically protects the forest property rights of Scheduled Tribes.<sup>202</sup> As outlined in the Context section, there is a significant indigenous presence in the area slated for mining operations.<sup>203</sup> As this Report focuses on human rights concerns in the port and plant areas, however, the specific obligations to indigenous peoples will not be analyzed in detail.

Finally, international human rights law establishes the rights of individuals to participate in public affairs.<sup>204</sup> The term “public affairs” has been broadly defined to include “all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels”<sup>205</sup> Because the right to participate in public affairs is not restricted to a specific issue and extends to all levels of governmental decision-making, it is more expansive than the right to consultation with respect to forced evictions. Forms of participation may be direct or indirect through the electoral process. Direct participation draws on the rights of freedom of expression, assembly and association.<sup>206</sup> Forms of direct participation may include “taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community,”<sup>207</sup> such as through *gram sabhas*, as well as “exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves.”<sup>208</sup>

## **B. POSCO’s International Human Rights Responsibilities**

Although States hold primary responsibility to ensure human rights, international law recognizes that human rights responsibilities also attach to non-state actors, including corporations such as POSCO. The Universal Declaration of Human Rights proclaims that “every individual and every organ of society,” must promote respect for human rights.<sup>209</sup> The International Labour Organization’s Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy adds that corporations “should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of the International Labour Organisation and its principles.”<sup>210</sup>

The U.N. General Assembly,<sup>211</sup> the then-U.N. Commission on Human Rights,<sup>212</sup> and the U.N. Human Rights Council<sup>213</sup> have all recognized that corporate activities can have an adverse impact on human rights, as have U.N. human rights treaty monitoring bodies.<sup>214</sup> Most recently, in a General Comment on the impact of the business sector on children’s rights, the Children’s Rights Committee stated that:

Duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises. Therefore, all businesses must meet their responsibilities regarding children's rights and States must ensure they do so. In addition, business enterprises should not undermine the States' ability to meet their obligations towards children under the Convention and the Optional Protocols thereto.<sup>215</sup>

In June 2011, the U.N. Human Rights Council unanimously adopted the Guiding Principles on Business and Human Rights.<sup>216</sup> These Guiding Principles call on business enterprises, "in all contexts," to "comply with all applicable laws and respect internationally recognized human rights, wherever they operate."<sup>217</sup> This corporate responsibility to respect human rights applies "to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure."<sup>218</sup> Business' responsibility to respect human rights covers the full range of rights included in the UDHR, the ICCPR, the ICESCR, and the eight International Labour Organization core conventions.<sup>219</sup>

Like all businesses, POSCO therefore has a responsibility to respect human rights throughout its operations, regardless of location. In particular, in fulfilling this responsibility to respect human rights under the Guiding Principles, POSCO should "avoid infringing on the human rights of others and should address adverse human rights impacts with which [it is] involved."<sup>220</sup> Furthermore, POSCO should "[s]eek to prevent or mitigate adverse human rights impacts that are directly linked to [its] operations, products or services by [its] business relationships, even if [it] has not contributed to those impacts."<sup>221</sup> The business relationships involved in the POSCO-India project include those relationships that the company has with Indian State actors and agencies, including officials who may be involved in perpetrating human rights abuses to acquire land for the POSCO-India project.<sup>222</sup> Under the Guiding Principles, POSCO must exercise due diligence to "become aware of, prevent and address adverse human rights impacts."<sup>223</sup> Such a process should involve "meaningful consultation with potentially affected groups."<sup>224</sup> POSCO should also establish grievance mechanisms and provide appropriate remedies for those affected by their operations.<sup>225</sup> These mechanisms should not infringe on the rights of affected people to engage judicial remedies if they so choose.<sup>226</sup>

POSCO is a corporation based in the Republic of Korea, which in turn is a member-country of the Organisation for Economic Cooperation and Development (OECD). The Republic of Korea has committed to uphold the OECD Guidelines for Multi-National Enterprises,<sup>227</sup> and these Guidelines make clear recommendations to corporations based out of adhering OECD states. Chapter IV of the Guidelines calls on corporations such as POSCO to "respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."<sup>228</sup> These guidelines also contain human rights due diligence expectations that are modeled on those contained in the U.N. Guiding Principles on Business and Human Rights.<sup>229</sup>

In addition, as of May 2012, POSCO committed itself to the U.N. Global Compact, which encourages businesses to "support and respect the protection of internationally proclaimed human rights" and "make sure they are not complicit in human rights abuses."<sup>230</sup> In a public



letter of commitment to the Global Compact, sent to the UN Secretary General on May 25, 2012, POSCO committed to “making the Global Compact and its principles part of the strategy, culture and day-to-day operations of our company.”<sup>231</sup>

Finally, in the company’s own Code of Conduct, POSCO promises that it will “abide by all national laws and regulations as a socially responsible citizen,” as well as “comply with international conventions on human rights...in every country [they] operate in” and “respect the traditions and culture of local communities.”<sup>232</sup> The corporation’s subsidiary in India also declares that POSCO “has committed itself to protect human rights through ethical practice.”<sup>233</sup>

### **C. Republic of Korea’s Extra-Territorial Human Rights Obligations**

#### **1. Korea’s Extra-territorial Obligations under International Human Rights Treaties**

The Republic of Korea, too, has human rights obligations vis-à-vis communities affected by the POSCO-India project. The Republic of Korea is a State Party to numerous international human rights treaties, including the ICCPR, ICESCR, CRC, CEDAW, and ICERD.<sup>234</sup> The ICESCR requires States to “take steps, individually and through international assistance and cooperation, especially economic and technical” toward the full realization of the rights under the Covenant.<sup>235</sup> The Committee on Economic, Social and Cultural Rights (ESCR Committee), which monitors States’ compliance under the covenant, has reaffirmed that States have human rights obligations that extend beyond their territorial boundaries.<sup>236</sup>

Treaty monitoring bodies have specifically noted that as part of these extraterritorial obligations (ETOs), States should ensure that their corporations do not adversely affect human rights abroad,<sup>237</sup> including through appropriate administrative and legislative measures to regulate corporate activity.<sup>238</sup> States should also provide access to effective remedies for those affected by the actions of their corporations.<sup>239</sup>

In its 2011 review of the Republic of Korea’s compliance with the CRC, the Committee on the Rights of the Child specifically recommended that Korea “further promote the adoption of effective corporate responsibility models by providing a legislative framework that requires companies domiciled in Korea to adopt measures to prevent and mitigate adverse human rights impacts in their operations in the country and abroad, whether by their supply chains or associates.”<sup>240</sup>

The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights—which were adopted in September 2011 by a group of experts in international law with an aim to further clarify the content of ETOs<sup>241</sup>—additionally note that “States must take necessary measures to ensure that non-State actors which they are in a position to regulate... such as... transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights. These include administrative, legislative, investigative, adjudicatory and other measures.”<sup>242</sup>

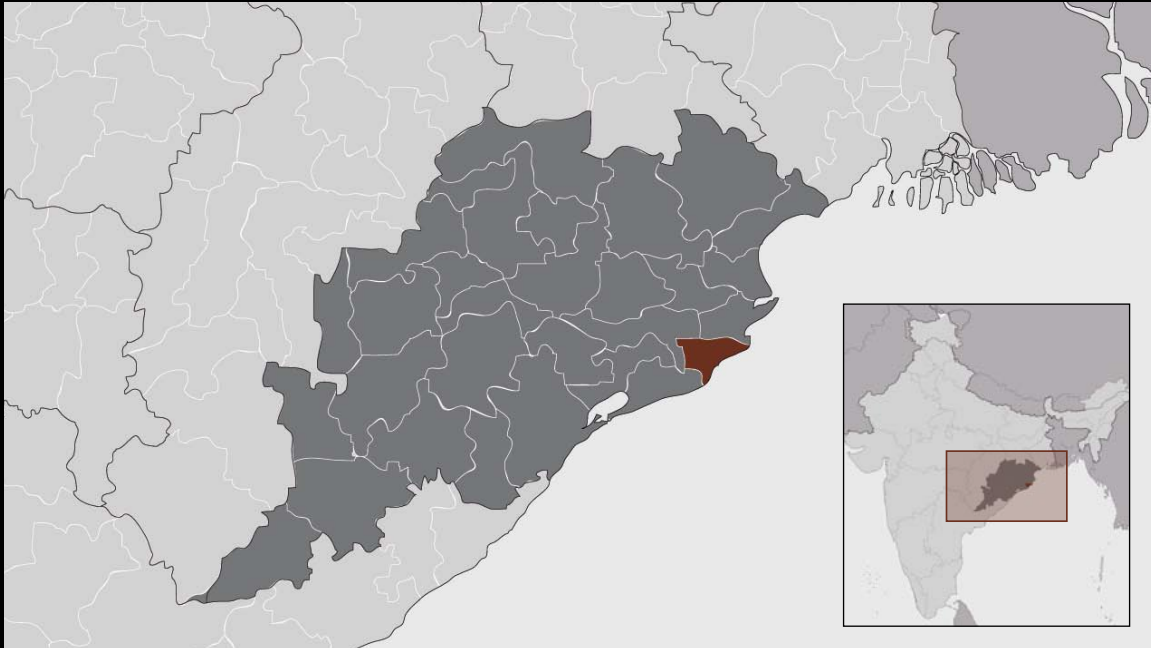
## 2. The UN Guiding Principles on Business and Human Rights

Under the U.N. Guiding Principles on Business and Human Rights, “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.”<sup>243</sup> The Guiding Principles also call on States to “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps.”<sup>244</sup> In accordance with the Guiding Principles, the Republic of Korea should develop, implement and enforce laws that would ensure that its corporations, including POSCO, do not adversely affect human rights in their operations abroad.

## 3. The OECD Guidelines for Multinational Enterprises

As a member country of the OECD and a signatory to the OECD Guidelines for Multinational Enterprises, the Republic of Korea is responsible for encouraging multinational enterprises headquartered in the Republic of Korea to follow the Guidelines in their domestic and extraterritorial operations. In accordance with these Guidelines, the Republic of Korea has set up a National Contact Point (NCP),<sup>245</sup> which aims to “assist enterprises and their stakeholders to take appropriate measures to further the observance of the Guidelines [and] provide a mediation and conciliation platform for resolving practical issues that may arise with the implementation of the Guidelines.”<sup>246</sup> As part of their role in providing assistance, the NCP must consider complaints and “make an initial assessment of whether the issues raised merits further examination and respond to the parties involved.”<sup>247</sup>

The next section applies the above standards articulating the human rights responsibilities of the Indian government, POSCO, and the Republic of Korea to the factual findings of the Research Team.



The POSCO-India project's integrated steel plant and captive port will affect the three *gram panchayats* (local governance structures) of Dhinkia, Nuagaon, and Gada Kujanga in Jagatsinghpur district (highlighted in red), in the eastern state of Odisha (highlighted on the map of India). (Photo from CC-by-sa PlaneMad/Wikimedia)



The project-affected area's high water table and unique soils have enabled sustainable farming practices and robust crops, as well as animal husbandry and aquaculture. Many villagers also cultivate family gardens and rely on forest products for sustenance. (Photo by Research Team, 2012)





Police shot this villager with a metal pellet on May 15, 2010, during the violent dispersal of protestors at Balitutha Bridge in which police injured over 100 people. More than two years later, the metal pellet remains lodged at the base of this villager's neck as a police blockade has hindered his access to medical care.

*(Photo by Research Team, 2012)*



Police platoons surround Dhinkia village in February 2013 in an attempt to advance forcible acquisition of land for the POSCO-India project. Heavy police presence and arbitrary arrests and detentions have restricted the freedom of movement of project-affected villagers, inhibiting their access to health care, schools, fields, and markets. *(Photo by local resident, 2013)*



Since 2008, some 52 families have resided in the POSCO-India Transit Camp where they live in deplorable conditions. These families have suffered clear and dramatic declines in their enjoyment of their rights to housing, food, water, health, education, and work. *(Photo by Research Team, 2012)*



Transit Camp residents live in cramped and sweltering one-room homes with roofs containing asbestos. These accommodations fail to protect residents from both heat and rain and pose serious health risks. *(Photo by Research Team, 2012)*





In February 2013 Indian authorities destroyed betel vineyards of project-affected communities in Govindpur and Dhinkia villages in order to forcibly acquire land for the POSCO-India project.  
*(Photo by local resident, 2013)*



Women, men and children in project-affected communities have engaged in sustained, non-violent resistance to forced evictions and land acquisition for the POSCO-India project.  
*(Photo by local resident, 2013)*



### III. HUMAN RIGHTS FINDINGS

#### A. The Forced Evictions of Project-Affected Communities are Illegal under Domestic and International Law

*“This development is not for the people and not at the call of the people... it is not through a democratic process.... It is a democratic state but the decisions have ignored the people. Peoples’ participation in the development process has been denied. They have been denied that right itself.... They are bringing [the POSCO] project to the people, without their consent, and using force on the villagers and violating the rule of law. This is unconstitutional, undemocratic, and anti-people.”*

– Prafulla Samantara, Lokshakti Abhiyan, Odisha, and National Convener, National Alliance of People’s Movements<sup>248</sup>

International legal standards governing forced evictions and the right of individuals to participate in public affairs are of particular relevance to the POSCO-India project.<sup>249</sup> The Government of India has failed to comply with these standards in its attempts to forcibly acquire land for the POSCO-India project’s integrated steel plant and captive port. Specifically, and as demonstrated in this section, India has failed to: exhaust all feasible alternatives to forced evictions; engage in genuine consultation with project-affected communities; and ensure the provision of adequate compensation for affected properties. India has also failed to comply with relevant procedures established by law, including the provisions established by India’s Forest Rights Act, 2006 (“FRA”), which require the government to refrain from evictions until outstanding rights claims are settled and defer to the will of certain affected communities with respect to plans to divert forested land.<sup>250</sup>

##### 1. India has failed to exhaust feasible alternatives to forced eviction

There exists little evidence to suggest that India has exhausted all feasible alternatives to forced evictions of communities in the plant area.<sup>251</sup> According to an independent fact-finding investigation conducted in 2007 by the advocacy group Sanhati,<sup>252</sup> Odisha explored but rejected one possible alternative site located 10 km away from the present site, both because of environmental concerns and because POSCO “finds the present site to be most appropriate and is not willing to shift because of access to Port base.”<sup>253</sup> The report concludes that the government’s “options assessment” process regarding location of the steel plant was “highly inadequate.”<sup>254</sup>

Over the years, a number of political opposition parties have suggested that the steel plant might be shifted to alternate locations, but the alternative sites were only vaguely described, and it is unclear whether the government ever seriously considered these proposals.<sup>255</sup> In 2012, a MoEF Committee, headed by Roy Paul (“the Paul Committee”), issued a report that refers a new plan for land acquisition that reportedly minimizes displacement.<sup>256</sup> The report states that it was informed by the Infrastructure Development Corporation of Odisha (IDCO) that IDCO had

decided to reduce the project area to 2,700 acres by exempting most of the private land in Govindpur and Dinkia villages, as well as forest land under betel cultivation in those villages.<sup>257</sup>

However, the practical effect of this proposal is unclear. According to the Paul Committee Report, the layout of the project would have to be “substantially altered” and it remains unclear how the steel plant will actually fit into the reduced land area.<sup>258</sup> The Paul Committee recommended that POSCO or IDCO “submit a revised layout plan” and that POSCO “state unambiguously whether the reduced project area would be adequate to accommodate all plans for future expansion of the steel plant.”<sup>259</sup> Moreover, neither the IDCO proposal for reduced land, nor the Paul Committee Report, was made public; rather the report and its references to IDCO’s plans was obtained in April 2013 pursuant to a request under India’s Right to Information Act.<sup>260</sup>

## 2. India has failed to engage in genuine consultation

*“The government is not coming to the people and listening to their voices... How can we inform the government?... The only way we are informing is through our protest.”*

– N.Y., an affected villager<sup>261</sup>

### a. Indian authorities entered into the MoU for the POSCO-India project without consulting affected communities

Villagers who stand to be displaced by the POSCO-India project received no prior information before the company began its exploratory activities in the area. Residents told the Research Team that they first came to realize that their lands were slated for an industrial project when POSCO began conducting aerial surveys and soil tests in January 2005, as part of its evaluation of the plant and port area.<sup>262</sup> At that point, none of those interviewed had received official government notice, and had not been invited to a public hearing on the matter.

Following the sighting of company officials in their area, residents told the Research Team that they had requested that the Chief Minister of Odisha come to their villages and explain the reasons behind the presence of company officials—a request that was allegedly ignored.<sup>263</sup> Neither POSCO nor the Odisha government reportedly took any initiative to inform local residents, whether in writing or through government representatives, or to address their concerns prior to finalizing the MoU for the POSCO-India project. In June 2005, affected communities learned about the signing of the MoU through the media.<sup>264</sup> Echoing the experience of many villagers interviewed by the Research Team, one affected villager, C.G., explained that he learned about the project MoU “only from the mixed media, no one ever came into the village.... There hasn’t been any written communication. We found out only from TV and newspapers.”<sup>265</sup> This failure of Indian authorities to provide information about the POSCO-India project and engage in genuine consultation with affected communities falls far short of internationally-recognized standards.<sup>266</sup>

- b. India failed to genuinely and adequately consult with affected communities in the environmental impact assessment process

As described in Part I.D, the POSCO-India project is a massive undertaking with potentially far-reaching environmental consequences. As per its MoU with POSCO, the government of Odisha agreed to “facilitate” environmental clearances for the project.<sup>267</sup> In 2006, POSCO undertook separate rapid environmental impact assessments (EIAs) for the plant and port, rather than assessing the environmental impact of the entire project in a comprehensive EIA.<sup>268</sup> A public hearing was eventually held by the Odisha State Pollution Control Board in April 2007, although the social impacts of the project were not discussed.<sup>269</sup> Government officials decided to hold the hearing in Kujanga, over 15km (9.3 miles) away from the affected area, which made it arduous for people to attend,<sup>270</sup> and effectively required laborers to choose between attending the hearing or receiving pay for a day’s work. As the hearing date approached, police officials reportedly deployed 12 paramilitary platoons, which conducted a “flag-march” in the area just six days beforehand.<sup>271</sup> Some civil society groups raised concerns about the hostile atmosphere leading up to the hearing and the impact it had on genuine community consultation and participation.<sup>272</sup> A representative from the anti-poverty agency ActionAid India,<sup>273</sup> who was in attendance, offered the following observation:

The atmosphere in the public hearing was of intimidation; those supporting the project verbally and physical assaulted those who raised objections. The public relations officer of POSCO was sitting on the dais and very few people from the affected area were present in the hearing. Several violations of the EIA notification 2006 were raised—these were submitted in writing by some NGOs and others from surrounding villages. The proceedings of the public hearing was abruptly wound up, without even allowing some persons to submit their memorandums.<sup>274</sup>

Indian authorities failed to effectively engage with affected communities in both the project development process, as well as the subsequent environmental clearance process. Deprived of an opportunity to be informed and express their views and concerns, affected communities decided to exercise their rights as forest-dwelling communities by attempting to have their rights recognized and utilizing legally recognized self-government structures to discuss and ultimately reject the project proposed by POSCO-India. Through several *gram sabha* resolutions, described in the next section, and as demonstrated by ongoing protests, the great majority of residents have rejected the diversion of their lands for the project.

3. India has failed to comply with procedures according to law

*“So government—the State—has been using its State power to repress the movement. It has to respect the public opinion – opinion of the general public. If you call the gram sabha—village meetings—and take their consent, then you can go for anything you want. But before taking any consent of the villagers... you cannot.”*

– Abhay Sahoo, President of the PPSS<sup>275</sup>

- a. India has failed to respect the rights of affected people as guaranteed under the Forest Rights Act, 2006

Historically, the property rights of many individuals and communities that have used and occupied India's forests for generations were not adequately recognized.<sup>276</sup> The Forest Rights Act (FRA), which came into force in January 2008, attempted to remedy this gap by setting up a process to recognize and vest forest property rights on ancestral forested lands that are essential for individuals' livelihood.<sup>277</sup> As stated by the Indian Supreme Court, the legislature was in part addressing "the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening the entire conservation regime...."<sup>278</sup>

As detailed in Part II.A.2, the FRA grants legal recognition to the rights of traditional forest dwelling communities, and gives such communities a voice in decisions related to forested lands. The Act vests significant decision-making power in local governance bodies, *gram sabhas*, which are authorized to adjudicate community and individual rights claims at first instance<sup>279</sup> and exercise managerial control over protected forest resources.<sup>280</sup> Individuals cannot be evicted until forest rights claims have been formally adjudicated.<sup>281</sup> Once rights are legally recognized, projects that would divert protected forest resources require the consent of affected communities.<sup>282</sup>

International law also complements the domestic protections of the FRA by requiring that evictions take place in accordance with established legal procedures<sup>283</sup> and guaranteeing citizens' right to "take part in the conduct of public affairs directly or through elected representatives."<sup>284</sup> Despite these strong legal requirements, land acquisition for the POSCO-India project has proceeded in the face of outstanding forest rights claims, strong community opposition, and numerous local *gram sabha* resolutions that have repeatedly rejected the transfer of forest land for use in the POSCO-India project.

Many residents of the villages in the area proposed as the site of the steel plant told the Research Team that their families had lived in these villages for many generations, a finding notably echoed in the POSCO-funded study by the Xavier Institute of Management.<sup>285</sup> As noted by one resident: "My grandfather was here... I cannot say about his grandfather, but his father was here... And now my age is 65 years."<sup>286</sup> In March 2008, claiming status under the Act, three villages formed forest rights committees.<sup>287</sup> In April 2008, *gram sabhas* in the affected areas passed resolutions denying permission for any land to be diverted for the POSCO-India project and claiming their rights as long-term non-indigenous residents deserving of protected status under the FRA.<sup>288</sup>

In 2010, a three-member team of national government officials from the Ministry of Environment and Forests and the Ministry for Tribal Affairs (MoEF/MoTA) visited the area and independently confirmed from their own appraisal of information gathered that traditional forest dwellers, as defined by the FRA, do reside in the affected villages.<sup>289</sup> They additionally found that the state-level authorities were seemingly frustrating the process of passing on important information to the national-level about the activities of local forest rights committees in the affected area, including the villages' resolutions and members' forest rights claims.<sup>290</sup>

Despite the outstanding credible forest rights claims, sustained community objections and the lack of any *gram sabha* resolutions approving the use of local forest land for the project, the project was granted final (Stage 2) forest clearance approval in December 2009. Although the Ministry clarified in January 2010 that the approval was conditional on the consent of the people in the area, the clearance itself was not withdrawn, leaving the project in a “legally and administratively ambiguous position.”<sup>291</sup> In 2010, the majority of a special MoEF investigatory committee found:

The grant of forest clearance in this manner was grossly illegal and in direct violation of both the Forest Rights Act and the Forest (Conservation) Act. The subsequent ‘clarification’ has not remedied this illegality, instead producing a situation of ambiguity. The said final clearance, being illegal, should be withdrawn.<sup>292</sup>

Despite these strong findings, the clearance was not formally revoked.<sup>293</sup> Instead, claiming that he had discussed the “POSCO issue” with the Indian Prime Minister Manmohan Singh, the Odisha Chief Minister Naveen Patnaik assured then-South Korean President Lee Myung-Bak during a January 2010 reception that land acquisition for the project would be expedited.<sup>294</sup> In February 2010, *gram sabhas* of all three affected areas passed additional resolutions to prohibit use of land for the POSCO-India project.<sup>295</sup>

Faced with continued attempts at forcible land acquisition, in October 2012, the Dhinkia *gram sabha* again passed a unanimous resolution reaffirming their refusal to allow lands to be diverted for the POSCO-India project.<sup>296</sup> Over 2,000 people reportedly attended the *gram sabha*, where they once again demanded their rights under the FRA.<sup>297</sup>

The *Gram Sabha* endorse decision taken by the Palli Sabhas to not give consent to the diversion of forest lands under its customary use and boundary for the purpose of the POSCO steel plant project, or for any other purpose, and directs the District Level Committee and the State government to ensure strict compliance with the provisions of the Forest Rights Act, the guideline issued by Ministry of Environment & Forests on 30.07.2009 and the guidelines issued by the Ministry of Tribal Affairs on 12th July 2012 in this regard. Diversion of forest land without compliance to the Forest Rights Act and the above mentioned guidelines is a violation of the Forest Rights Act and a criminal offence.<sup>298</sup>

Both POSCO and the Odisha government have disputed the applicability and impact of the Forest Rights Act. The Odisha government has repeatedly stated that there are no traditional forest dwellers in the affected area,<sup>299</sup> despite the fact that several government agencies have acknowledged that there are “other traditional forest dwellers” residing in the affected area, and there has not been a proper adjudication process as required under the FRA.<sup>300</sup> POSCO, on the other hand, has disputed the validity of the 2012 *gram sabha* resolution, alleging various procedural irregularities.<sup>301</sup> However, even if these disputed irregularities did invalidate the 2012 resolution, any evictions prior to the finalization of FRA rights are illegal. And ultimately, if FRA rights are formally recognized, POSCO would still need to secure the consent of the affected villages via *gram sabha* resolutions under the FRA before advancing the project. This consent has never been given.

- b. POSCO has disregarded orders of the National Green Tribunal suspending environmental clearance for the project

On January 31, 2011, MoEF issued a Final Order imposing additional conditions on the two environmental clearances that were initially issued by the MoEF in 2007 for the port and plant project.<sup>302</sup> In March 2012, however, India's National Green Tribunal (NGT) suspended the MoEF's Final Order.<sup>303</sup> The NGT found several shortcomings with the status of the project. In broad terms the Tribunal found that:

A close scrutiny of the entire scheme of the process of issuing final order... reveals that a project of this magnitude particularly in partnership with a foreign country has been dealt with casually, without there being any comprehensive scientific data regarding the possible environmental impacts. No meticulous scientific study was made on each and every aspect of the matter leaving lingering and threatening environmental and ecological doubts un-answered.<sup>304</sup>

Similarly, the NGT noted that the government's 2007 approval of the 12 million-ton-per-year steel plant project was based in part on an environmental impact assessment of the plant that considered only its limited Phase One capacity of 4 million tons per year.<sup>305</sup> The NGT called for "a fresh review of the Project."<sup>306</sup> On May 28, 2013, the NGT was compelled to issue a further order, stating "it is undisputed that as of today the Project Proponent [POSCO] does not have Environmental Clearance" and that "it is contended before us now that [*sic*] large number of trees are being felled/cut by the Project Proponent without permission of any competent authority," and hence has ordered this clearance to cease.<sup>307</sup>

As evidenced above, the government has failed to respect its own domestic laws and procedures, as well as international human rights law, in its ongoing attempts to advance the POSCO-India project and related land confiscation and evictions. The continuation of attempts at forcible evictions—despite a failure to finalize all FRA claims and obtain the consent of affected rights-holders in the land acquisition process—violates established domestic legal procedures. The government has seemingly disregarded the resolutions of the *gram sabhas* under the Forest Rights Act, as well as the rulings of the National Green Tribunal, undermining the human rights of affected community members to participation and to legal safeguards related to eviction. As B.D., an affected farmer with four children and four grandchildren, emphasized:

We have repeatedly told to the government that we don't want POSCO, [but the government] just determines that the project must happen here.... We are not satisfied with the government. [The] government is snatching our food, at the same time, our children's future, at the same time our crops. They are leaving nothing for us.<sup>308</sup>

Continuing with land acquisitions under these circumstances is a clear violation of international human rights law, which requires that all evictions take place in accordance with legal procedures.



#### 4. India has failed to ensure the provision of adequate compensation

The right to an effective remedy for violations of human rights is a fundamental principle of international human rights law.<sup>309</sup> Individuals subject to evictions are entitled to adequate compensation for any property affected, including both personal property and real property.<sup>310</sup> The ESCR Committee stresses that individuals subject to eviction must not be “rendered homeless or vulnerable to the violation of other human rights.”<sup>311</sup> In addition, “[w]here those affected are unable to provide for themselves,” India must “take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”<sup>312</sup> Furthermore, the Forest Rights Act recognizes the “right to *in situ* rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement or rehabilitation prior to the 13th of December 2005,” while making “the free informed consent of the Gram Sabhas in the area concerned” a pre-condition for any resettlement and related package.<sup>313</sup>

Current policies fail to ensure the provision of adequate compensation for those who stand to be evicted should the POSCO-India project move forward. This section reviews two relevant policies, which would presumably inform compensation for affected communities. These are: the Orissa Resettlement and Rehabilitation Policy of 2006<sup>314</sup> and the specific compensation plan for the POSCO-India project.<sup>315</sup> This section concludes that these policies fall short in two key respects: 1) the compensation offered is inadequate in both nature and scope; and 2) the compensation does not reach all who stand to be affected by the project.

##### a. The compensation offered is inadequate in both nature and scope

Under the Orissa Resettlement and Rehabilitation Policy, individuals and families displaced or affected by a development project<sup>316</sup> are eligible for employment in the project.<sup>317</sup> However, families may only nominate one family member to be considered for employment, despite the fact that, in the affected area, virtually every family member participates in livelihood activities such as betel cultivation, farming, and animal husbandry.<sup>318</sup> Residents fear that the provision of one job will be insufficient to sustain multiple generations within their family. As one affected community member, J.H. explained:

We are uneducated or lowly educated.... If POSCO comes, then what type of job will it offer us?... The company is saying that it will give a job to one person from one family. Now we are two brothers in our family. If I get the job and later we are separated then how will my brother survive?<sup>319</sup>

Affected community members also question the long-term viability of any employment prospects. Shishir Mohapatra, General Secretary of the PPSS, noted: “After our generation, after the generation of our sons, there is no further employment with POSCO, but once we lose our livelihood, we cannot sustain our life thereafter.”<sup>320</sup>

It is also clear from the Orissa Resettlement and Rehabilitation Policy that even the one job per family is not guaranteed. There is a hierarchy of preferential hiring based on a number of factors, including whether a family is losing their homestead and what percentage of their land is

affected.<sup>321</sup> Families who are only losing agricultural land are placed last on the priority list.<sup>322</sup> Moreover, as the MoEF Committee on the POSCO-India project noted, it is likely that women and young people will largely be overlooked for employment in the steel plant because they lack the skills and education necessary to get jobs with POSCO-India.<sup>323</sup> Although the project authority must make “special efforts to facilitate skill up-gradation of the nominated member of the displaced family to make him/her ‘employable’,”<sup>324</sup> it is not clear how these efforts would sufficiently eliminate a gender or age gap in employment opportunities.

The fact that the Orissa Resettlement and Rehabilitation Policy does not include adequate provision of equivalent land is also a major failing. Although some land may—subject to availability—be offered to displaced families in a “resettlement habitat” it is limited to the goal of allowing families to rebuild homesteads.<sup>325</sup> There is no requirement to provide land of the same quality or quantity that the family has lost. When considered in light of the unique and sustainable livelihood provided by the land in the project-affected area, the offered packages do not provide adequate compensation for those who stand to be displaced, and may even place displaced persons at risk of impoverishment, and vulnerable to violations of other human rights. In the words of PPSS leader, Abhay Sahoo, if the project were to move forward affected communities would “be reduced to becoming beggars in the streets.”<sup>326</sup>

Finally, the offer of a fixed, one-time cash payment does not fully reflect the present and future value of the lands to be seized.<sup>327</sup> Under the Orissa Resettlement and Rehabilitation Policy, those who are not employed in the project are eligible for a one-time cash payout ranging from Rs. 1 to 5 lakhs, up to 50% of which can be paid out in a convertible preference share.<sup>328</sup> Under the Orissa Policy there is also some cash available to families that opt not to join the “resettlement habitat” to assist them in finding land and building a home.<sup>329</sup> Although the compensation package offered by POSCO, specifically applicable to those affected by the POSCO-India Project, reportedly offers compensation rates that exceed those required under the Orissa Policy,<sup>330</sup> the compensation still only amounts to approximately one year’s worth of a family’s earnings.<sup>331</sup> One-time compensation fails to address the fundamental concern of community members: the loss of a sustainable, profitable, inter-generational livelihood.

Under international law, India must ensure to the maximum of its available resources that “adequate alternative housing, resettlement or access to productive land, as the case may be, is available”<sup>332</sup> to those subject to forced evictions. As stated by a committee convened by the MoEF to study the POSCO-India project, “mere one point land compensation however big it may be will not compensate the loss of sustainable livelihoods and the only just thing would be to genuinely give equivalent land for land compensation so that they continue eking a sustainable livelihood.”<sup>333</sup> The compensation packages available to project-affected communities neglect the realities of affected people and fall short of these standards.

#### b. Compensation does not reach all who are affected

A second key failing of the compensation policies is that the beneficiaries are restricted to a select portion of the affected population. Many people, including fisherfolk and landless laborers who are not involved in betel cultivation, are reportedly excluded from compensation entirely,<sup>334</sup> despite the fact that they stand to lose access to lands that serve as their sole source of income and, in many cases, food.

The Orissa Resettlement and Rehabilitation Policy does not consider a family that has lost agricultural land to a project to be a “displaced family”: only those families whose homesteads have been bought for the project officially form part of the displaced community.<sup>335</sup> Although there is some compensation for those families that have lost all or some of their agricultural land, their entitlements are significantly reduced by comparison.<sup>336</sup> Moreover, those who have no official land title, such as landless agricultural laborers or those who are growing betel vines on ‘public’ land, do not appear to be covered under the Orissa Policy at all.<sup>337</sup>

According to a report published by the MoEF, the POSCO compensation package offers broader coverage than that mandated by the State, including offering compensation for betel vine growers, laborers that cultivate betel vines, and so-called “encroachers” on agricultural land.<sup>338</sup> For those landless agricultural and other laborers who are not working in betel vine cultivation, however, there is reportedly no compensation.<sup>339</sup>

It is likely that the exclusion of many landless laborers will particularly affect Dalits, who tend to be disproportionately landless.<sup>340</sup> The MoEF Committee took care to point out the special needs of landless labourers, stating that, “[i]n the opinion of the Committee, loss of one’s [agricultural] land or source of livelihood is as devastating as physical displacement from one’s homestead land.”<sup>341</sup> As the MoEF Committee concluded, referring to those landless labourers working in areas other than betel vine cultivation, “[s]ince landless workers are people at the bottom of the heap, it is not enough to relocate them. They need to be compensated for their loss of livelihood.”<sup>342</sup>

By failing to offer land for land compensation, offering employment to only a fraction of the affected population, and limiting the class of persons eligible for any form of compensation, Odisha has set in motion a compensation plan that does not adequately address the needs of those who face displacement. It has instead implemented procedures that have been criticized by the MoEF Committee as lacking in either “resettlement” or “rehabilitation.”<sup>343</sup>

\* \* \*

As this section makes clear, Indian authorities have promoted the POSCO-India project in a manner that lacks transparency, flouts domestic laws, denies the right to participation and consultation, and fails to ensure adequate compensation. In addition to its failure to follow procedures as established by the FRA, or heed the suspension of environmental clearance for the project, the government of India has also flouted SEZ rules by extending in-principle approval for POSCO’s SEZ for three years beyond what is in keeping with current rules.<sup>344</sup> Both individually and collectively, these actions render the attempted forced evictions of people living in the affected area illegal under domestic and international law.

As concluded by Miloon Kothari, Executive Director of the Housing and Land Rights Network and former U.N. Special Rapporteur on the right to adequate housing, in response to Indian authorities’ attempts to forcibly acquire land for the project in February 2013:

The lack of transparency, accountability and due process in acquiring land for POSCO and moving ahead with the project is alarming. It is clear that the recent action in Odisha is a result of the [Government’s] obsession to promote FDI

[Foreign Direct Investment], even though it violates the Constitution of India, national and international law, and recommendations of independent committees. I strongly condemn this undemocratic and illegal action that violates multiple human rights of the local villagers.<sup>345</sup>

As described in the next section, the Indian government's attempts to illegally acquire land for the POSCO-India project have been compounded by serious human rights violations against those resisting their forcible eviction.

## **B. Human Rights Abuses against Project-Affected Communities**

### **1. Communities under Siege**

Since the signing of the POSCO-India project MoU in 2005, Indian authorities have engaged in violent and repressive acts against communities and individuals who have mobilized in opposition to the project. Affected community members relate numerous incidents whereby police used excessive force against peaceful protesters. There is also evidence documenting the systematic criminalization of those resisting their forced evictions, who have been subjected to thousands of spurious criminal charges. Police have also failed to protect community members from harassment, intimidation, destruction of property, and violent acts committed by private actors who support the project. Finally, the freedom of movement for people living in the project-affected area has also been drastically curtailed, as police have put in place a maze of physical blockades and police checkpoints. These physical barriers, along with the psychological impact of the continual threat of arrest, have placed entire communities under siege. Testimony gathered by the Research Team reveals a pattern of systematic, sustained repression that affects almost every facet of affected communities' daily lives.

Each of these issues raises significant human rights concerns, and is documented in detail in the sections that follow. The Indian government has international and domestic legal obligations to ensure the human rights of all community members. This includes individuals' right to security of the person, the right to be free from arbitrary arrest or detention, and freedom of movement. There are also strong legal prohibitions on the excessive use of force. By actively and at times violently repressing dissent against the POSCO-India project, and by failing to protect individuals from violence perpetrated by third parties, India has violated its legal obligations to ensure the human rights of its population.

### **2. State Repression through Violations of Civil and Political Rights**

#### **a. Excessive and disproportionate use of force**

Since the signing of the MoU, Indian authorities have engaged in an ongoing and often violent campaign to suppress opposition to the project by affected community members. International law guarantees the right to security of the person, which includes the right to be free from bodily injury.<sup>346</sup> State actions that unjustifiably inflict bodily injury, including as a result of excessive use of force by law enforcement, constitute violations of security of the person.<sup>347</sup> Multiple U.N. bodies have also outlined specific standards with regard to the use of

force by law enforcement officials.<sup>348</sup> Collectively, these standards require that law enforcement officials:

- Employ nonviolent means, as far as possible, before resorting to the use of force;<sup>349</sup>
- Where use of force is unavoidable, use only the amount of force that is in proportion to both the seriousness of the offence and the legitimate objective to be achieved;<sup>350</sup>
- Minimize damage and injury, and respect and preserve human life; and<sup>351</sup>
- When force is used, police have an obligation to secure medical care for anyone who is injured as a result.<sup>352</sup>

Many of the villagers who were interviewed by the Research Team stated that they had been beaten or fired upon by the police during arrests or while stationed at the barricades they had mounted to protect their villages.<sup>353</sup> There have also been larger police actions that have involved high levels of force, including one incident where police fired tear gas and rubber bullets and metal pellets on a peaceful crowd, and then allegedly continued to shoot at individuals as they tried to clear the area. Many people have sustained serious injuries as a result of police brutality.<sup>354</sup> Police officials have also destroyed property belonging to project opponents and have reportedly refused to facilitate access to emergency medical care for people injured in incidents with the police. A few of the most concerning reports are detailed below.

i. May 15, 2010, violent dispersal of protestors at Balitutha

On January 26, 2010, approximately a thousand protestors established a *dharna* or peaceful demonstration at the entrance to the proposed POSCO steel plant area at Balitutha.<sup>355</sup> Contesting POSCO's land acquisition plans, the protestors established tents and other structures around the entryway. In addition to occupying the village and market facilities of Balitutha itself, a large number of protestors positioned themselves at the Balitutha bridge, blocking access to the main protest camp.

On May 15, 2010, police confronted demonstrators, including women and children, at Balitutha Bridge. As recounted by one woman who was present at the bridge:

At Balitutha Bridge, us women were protecting the village. We were keeping watch and guarding the village; there were maybe a thousand of us. Close to the bridge we had set up a tent. We would keep our things there so that we could freshen up. They wanted to tear down our tent and get us out of the way. That morning when they came to the bridge they said move or we will fire. Then they released tear gas. They started firing and a rubber bullet hit me in the knee. Many people were hit that day.<sup>356</sup>

Another eyewitness confirmed that the police used violent force to disperse the protest:

[They fired from] 150 – 200 meters or maybe closer. They shot from the bridge near Balitutha. First they fired from close. Then people moved back. Then they used other kind of bullets. After getting hit, the young got agitated, and got hit

even more by bullets. Dalit women were also beaten with sticks. There was a 50-year-old Dalit woman who was beaten badly with sticks by people.<sup>357</sup>

A third witness spoke of the brutality of the police actions that day:

Once they got the order to attack the police went completely out of control. One man was shot in the mouth and lost his front teeth. They were so cruel they were aiming directly at people's chests and at their heads.<sup>358</sup>

One man present at the time specifically stated that the police continued shooting even as people were trying to clear the area:

We were hungry so we could not run. So many people were hit. We ran into the river and even there the police kept firing. 100 to 150 people were shot. There were men, women and elders, and people fell in the river and still they kept firing.<sup>359</sup>

This account was corroborated by another eyewitness, M.D., an elderly Dalit woman:

This is our only land even though we have no land rights. If you take away our land we will die. You should tell the government: don't take away our land. You are trying to frighten us with bullets and guns. We have already taken a lot of bullets. Like at Balitutha Bridge. I was hit and people had to pick me up and bring me back. When the police started firing we couldn't find any way to escape. We had to jump in the water and even then they kept firing.<sup>360</sup>

Media reports released at the time of the shooting reported that the police were attacked by up to 50 crude bombs, and police statements made shortly after the incident claimed that there were no serious injuries inflicted on the protestors by the police action.<sup>361</sup> These assertions, however, should be viewed with skepticism. Ten days after the attacks, an independent fact-finding team led by Justice H. Suresh—a former judge of the Bombay High Court—visited the affected area and met with victims of the police action and with area residents.<sup>362</sup> The fact-finding team found clear evidence of extensive and serious protester injuries:

Police first opened tear gas shells, then rubber bullet firings and finally resorted to a brutal *lathi*-charge when the determined villagers refused to leave the site. Over 100 persons were injured in the police action, five of them critically. Violating norms of criminal procedure, women protestors were manhandled by the male police. In violation of international norms and standards on the treatment of the injured even during war times, the [Odisha] administration did not provide any medical help to the injured. The team interacted with a number of injured persons who have been languishing in their villages without any medical help as they fear police arrests if they leave the villages and the administration has not arranged for any medical help for them.<sup>363</sup>



The fact-finding team also stated that residents who were not involved in the protest had “their shops and houses [set] on fire by police without any provocation,” and they “witnessed the burnt down structures of about 15 shops and 6 houses,” along with continued police presence in the village. Ultimately, the fact finding report concluded that “the police attack on May 15th on peaceful protestors was totally uncalled for and should have no space in a democratic country like India.”<sup>364</sup>

The accounts related above suggest that the Indian police used excessive force against protestors of the POSCO-India project. Other than issuing one “warning” ultimatum, it does not appear that the police attempted to use nonviolent crowd control techniques to disperse the Balitutha protesters. The witnesses did not observe efforts to move the crowd through dialogue and discussion, multiple warnings, peaceful arrests or by simply advancing police lines. Rather, the police immediately resorted to tear gas to disperse a nonviolent protest, and shortly thereafter opened fire with rubber bullets. Even as protesters tried to leave the area, police allegedly continued firing, an excessive use of force and a violation of individuals’ right to security of the person. And finally, instead of arresting those who were determined to remain protesting at the bridge, the police cleared the area with a *lathi* or baton attack.

ii. February 3-8, 2013, blockades and violence against those resisting destruction of betel vineyards

On February 3, 2013, Odisha government officials again entered the Govindpur area and started dismantling betel vines and cutting down trees.<sup>365</sup> Officials from both the Infrastructure Development Corporation of Odisha (IDCO) and POSCO-India were reportedly on site at the time.<sup>366</sup> One district magistrate told the national media that the government “will acquire 700 acres of land in the Gobindpur village within a week.”<sup>367</sup>

National media reported that about 400 armed police entered Govindpur village at 4 a.m., on Sunday, February 3, and blockaded all entrances to the village.<sup>368</sup> In response, villagers, including women and children, attempted to form a “human wall,” and their resistance increased as government officials began to dismantle betel vines, “whereupon police lathicharged [baton-charged] them,” reportedly leaving at least a dozen people injured.<sup>369</sup>

Within two days, government officials had destroyed 22 betel vines and planned to start cutting trees after the vines were cleared from the area.<sup>370</sup> Although the government claimed to only be clearing land of farmers who had agreed to accept compensation and forfeit their land, at least one villager interviewed by a journalist was adamant that he had not voluntarily given up his land:

“Till recently it was my land. I raised betel vines on it,” says Durlava Swain (52), who till the other day cultivated betel vines on nearly half an acre of land inside what is now called the project land. Did Durlava voluntarily give up his land? “No, never,” he says fiercely, adding, “How could I agree to give away my land. It has been with us for generations. It has fed and clothed me and my family of six.” So, how will he support himself now? Durlava’s face clouds over. “I don’t know. Starve, I suppose,” he says, staring in the distance at an uncertain future.<sup>371</sup>

Over the next several days, protestors engaged in numerous actions, including a hunger strike and the formation of human barricades by hundreds of women and children.<sup>372</sup> On February 8, two platoons of armed police withdrew from their camp at the edge of the village, and the Odisha government announced it would temporarily suspend the land acquisition due to the protests.<sup>373</sup>

The February 2013 land acquisition initiative also raised concerns about the presence of at least one POSCO-India official during the operation. When asked about POSCO's presence, Collector S. K. Mallick told the media, "We have formed a team of officials from the district administration, IDCO and POSCO-India to carry out the operation."<sup>374</sup> This presence appears contrary to POSCO's statements distancing itself from forced land acquisitions and their previous assurances that they would not support human rights abuses in the land acquisition process.<sup>375</sup>

### iii. Denial of medical treatment

Multiple community members also reported that the injuries they suffered at the hands of the police were compounded because of their inability to access medical treatment after the fact. Several of the residents interviewed by the Research Team bore visible scars from the 2010 police action at Balitutha. One interviewee, C.G., was shot with metal pellets during the police action in 2010, and he was unable to leave his village to tend to his wound; the bullet remains lodged in his back. He explained:

We couldn't go to the hospital because the police had surrounded the area. I have still not been able to go to the hospital to get treatment because I have a case against me. Two months ago I posted bail so now I am thinking I should go get treatment. I'm having a lot of pain so I'm thinking I should go get treatment.<sup>376</sup>

The man counts himself among the luckier victims, and he reports that 5 to 6 people have died because they were unable to leave the village to get medical treatment.<sup>377</sup>

Another villager, M.S., who was shot in the knee by the police in 2010, similarly reported that she was unable to exit the village to go to the hospital:

They started firing and a rubber bullet hit me in the knee. Many people were hit that day. I couldn't even go to the hospital. They [the police] broke the gate by the bridge and set up their own gate. Three months later we went and moved the police gate and put up our own. I could not leave the village to go to the hospital so I was treated in the village.<sup>378</sup>

The failure to secure medical treatment for those injured as a result of police actions compound the underlying rights violations.

### b. Failure to protect against acts of violence committed by third parties

In addition to the violence perpetrated by state actors, villagers affected by the project have also experienced harassment and violence at the hands of POSCO supporters. The ICCPR requires governments to both respect and ensure individuals' rights, and take the necessary

measures to give effect to the rights in the Covenant.<sup>379</sup> India, therefore, has an obligation not only to refrain from violating its citizens' security of the person, but also to protect them from attacks by third parties that threaten their right to security of person, right to life, freedom of expression, or any other human rights protected by the ICCPR.<sup>380</sup> Protecting individuals from physical attacks by third parties forms an integral part of a government's human rights obligations. Governments also have an obligation to ensure that victims of rights violations have "accessible and effective remedies,"<sup>381</sup> including when rights violations are committed by private actors.<sup>382</sup> India has an obligation to "effectively, promptly, thoroughly and impartially" investigate allegations of human rights violations.<sup>383</sup> The ICCPR also explicitly states that these obligations apply equally to all people regardless of their "political or other opinion."<sup>384</sup>

Since the signing of the memorandum of understanding and the establishment of a protest movement, those opposing the POSCO development project have been subjected to routine harassment by alleged supporters of POSCO and of the development of the plant. Multiple community members told interviewers that they had been beaten or harassed by POSCO proponents. As one person alleged:

Now the pro-POSCO goons have come into the villages and are attacking us continuously.<sup>385</sup>

The Research Team was unable to verify any direct link between these "goons" and POSCO. Nonetheless, residents repeatedly used the terms "POSCO goons" to describe these individuals. Project-affected communities repeatedly told researchers that they felt unsafe because of the threats and harassment from these actors:

The last time I felt safe was before POSCO came. Now there is a lot of *goonda giri* [hooliganism] and looting. There were also bomb blasts in 2008.<sup>386</sup>

Rather than protecting community members from harm at the hands of others, interviewees alleged that the police delay for many hours before responding to reports of serious crimes and emergency situations in areas resisting the POSCO-India project, and fail to meaningfully investigate such incidents after the fact. This section documents the most serious incidents of third party repression and violence perpetrated against villagers opposing the POSCO-India project, and the Indian government's failure to protect this specific portion of the population. Two incidents in particular stand out due to the high-level of violence and the resulting deaths of community members—the bomb blast of 2008 referred to above, and a second explosion in 2013.

i. Bomb attacks, Govindpur village, June 2008

In late June 2008, the rainy season caused a local waterway to become blocked, and a large group of men from Govindpur left the village to clear the blockage. After the men left, female witnesses stated that POSCO supporters entered the village with bombs, dynamite, and swords:

When all the men were out clearing the sand there were no men left in the village so all the goons came into our homes and harassed and threatened us in our

homes. We called our husbands. Abhay Sahoo was there as well and he told everyone to come back to the village. When they were coming back, Dula Mandal was in front. They came through a small passage in front of the Red Cross building. The goons threw down bombs and Dula Mandal died on the spot.<sup>387</sup>

Thirty-five-year-old Dula Mandal was killed by the first set of explosions. Two other men were injured,<sup>388</sup> one of whom was permanently maimed after losing his hand.<sup>389</sup>

After the initial attack, the intruders barricaded themselves within the Red Cross building, which also served as the village's cyclone and medical center. The villagers decided to surround the building until the police arrived:

At the Red Cross Bhavan, the cyclone center, they were throwing bombs from above. Abhay Sahoo said do not go near the center but let's surround it by a 1 km radius.... Abhay Sahoo also called the police and said there was a murder.<sup>390</sup>

Nearly 60 of the attackers were confined to the village's school until the police arrived 24 hours later. After this extended delay, 26 individuals were ultimately arrested in connection with the attack.<sup>391</sup>

The security situation continued to be unstable after the bombings. By October 2008, community members had erected manned barricades to protect their village:

We set up eight barricades in the village, and we set up 24-hour protection. During the daytime, the men guarded the barricades, and at night the women stood guard. We still have some people standing guard. Dinkia has three gates and we had more than 50 people in each gate. Even then [the] goons threw bombs at us at night.<sup>392</sup>

#### ii. Bomb explosion, Patana village, March 2013

On March 2, 2013, a bomb exploded outside of a home in Patana village, which was being used as a meeting place by community members protesting the project. At the time, parts of the village were under police occupation, with reports of regular harassment by "groups supporting the POSCO project" and the police.<sup>393</sup> The blast killed three men and severely injured a fourth; all of them were anti-POSCO protestors.<sup>394</sup>

Many villagers felt the strong bomb blast and the police, who were stationed about a kilometer away from the site of the bombing, were contacted immediately. Yet over 15 hours passed before the police arrived at the scene of the explosion.<sup>395</sup> As PPSS leader Abhay Sahoo stated in footage posted to Youtube:

We immediately informed police, but they did not bother.... We could have saved three.... We somehow managed to get the fourth one to a hospital and saved him.... Even then they did not come.<sup>396</sup>

One of the men killed in this incident was the brother of Dula Mandal, the man who died in the 2008 bombing described above.<sup>397</sup>

There are conflicting accounts of the cause of the bombing. Laxman Pramanik, the man who was admitted to hospital after being critically injured by the explosion, told a national fact-finding team that one or more bombs had been thrown at the group.<sup>398</sup> Multiple villagers have echoed the sentiment that this was an external attack.<sup>399</sup> The local police superintendent, however, made a nationally televised statement that the bombing was an accident. The statement was made on the evening of March 2, 2013, just hours after the explosion occurred, and a day before the police actually attended the site of the bombing.<sup>400</sup> Questioning the neutrality of the police, the national fact-finding team reported that the police approached the families of two of the deceased in the middle of the night following the bomb attack, and “asked them to sign a written statement stating that the victims died in the process of making bomb which they refused to do.”<sup>401</sup> As described by the daughter of one of the deceased,

In the middle of the night, two policemen came to our home and asked us to sign some papers, which contained a statement that the men died while making bomb. We refused to sign the statement. Yet the false news travelled very fast that the men were making bomb.<sup>402</sup>

The father-in-law of another of the victims also reportedly confirmed to the domestic fact-finding team that the police came in the middle of the night the day after the bombing and again the next morning, insisting that the family members sign a statement that claimed the individuals were killed because they were making bombs. The family refused to sign.<sup>403</sup>

Another family-member told the domestic fact-finding team that she went to the police on the evening of March 3 to register a First Information Report (“FIR”), a document the police use to record a complaint of alleged criminal activity. She said that the police refused to accept her report and instead rebuked her for being sent by an anti-POSCO leader, reportedly stating, “Your people were making bombs, it’s their [*sic*] fault.”<sup>404</sup> The fact-finding team went on to discover, however, that on March 4, the day after the first report was rebuffed, police had accepted a FIR from a known pro-POSCO leader with no apparent direct connection to the case. The accepted FIR targeted the three deceased, the injured man, and five other anti-POSCO protestors.<sup>405</sup> When the domestic fact-finding team went to meet the police at their camp in the village, the police referred all questions about the incident to the same pro-POSCO leader. Their report states, “It seemed as if [the pro-POSCO leader] is the spokesperson for the police and the administration.”<sup>406</sup>

Based on their examination of the March 2 bombing response and other information, the domestic fact-finding team reached the conclusion that the police were not neutral actors in the ongoing community conflict:

In the current phase of conflict in the Dinkia panchayat area, it is quite evident that the role of the police has not been impartial. Since the early morning of February 3, 2013 when 12 platoons of police force descended upon Gobindapur

village to acquire betel vines, people opposing the POSCO project have been subjected to police atrocities and threats from groups supporting the POSCO project. The district administration has been carrying out land acquisition with the support of these 12 platoons of police. There have been several instances of lathicharge [charging with batons] by the police on anti-POSCO protesters, particularly on women. Moreover, the role of one Odisha Industrial Infrastructure Development Corporation (IDCO) official, Sri Sangram Mohapatra, who was caught on camera chasing and beating anti-POSCO protesters in the presence of police and the District Collector, speaks volumes about the role of the police.<sup>407</sup>

Similar patterns have been documented in other independent reports. A February 2013 report by the Alternative Law Forum and the Delhi Forum, for example, reports that in September 2011, a local activist Ranjan Swain was beaten and severely injured. When his mother went to the police to file a complaint about the attack, the police refused to register the incident and instead arrested her. The report states that this has had an impact on other villagers, who are now afraid to go to the police for assistance when they are attacked.<sup>408</sup> In another reported case, a community member left the village to send a fax and was attacked. When he went to the local hospital for treatment, the police arrived and, instead of opening a case, they arrested him. The report states that the victim suspects that his attackers informed the police that he was in the hospital. The police never registered any complaint against the individuals who perpetrated the attack.<sup>409</sup>

These incidents in Odisha are also consistent with earlier reports of wider patterns of rights violations by Indian police. In 2009, Human Rights Watch reported that “[t]hroughout India, crime victims frequently face police delays or refusal to investigate their complaints of crime.”<sup>410</sup> The widespread failure to register complaints has also been noted by the National Human Rights Commission and the Indian Supreme Court.<sup>411</sup> According to Human Rights Watch, refusals to register and investigate crimes disproportionately impact vulnerable communities, as “an individual’s ability to pay a bribe, trade on social status or call on political connections often determines whether they will be assisted or abused.”<sup>412</sup>

The numerous and repeated allegations of failures in police response times and adequate investigations provide strong evidence that India is failing in its duty to protect community members from attacks by third parties. These alleged failures have occurred despite heavy police presence, which has not succeeded in offering protection to those people who are being subjected to attacks. The failure to register complaints and investigate crimes committed against those resisting the POSCO-India project is also a violation of the Indian government’s duty to protect security of the person and ensure that victims have remedies for rights violations. Finally, the specific failure to protect community members who speak out against the POSCO project is discriminatory, and a violation of India’s obligation to protect all individuals equally regardless of their opinions or beliefs.

#### c. Arbitrary arrest and detention of project-affected communities

Many individuals interviewed by the Research Team reported that they had been targeted with false arrests and charges because of their protest activities. These findings were confirmed



in the February 2013 report by the Alternative Law Forum and the Delhi Forum, which concluded:

Over the last 8 years, the Government has made innumerable attempts to break the struggle against POSCO by employing various arm-twisting tactics. However, what is perhaps the greatest betrayal of the State against its own people, is the use of the criminal system to implicate villagers in a large number of false cases to intimidate them, instill fear in them and break them into submission.<sup>413</sup>

The ICCPR guarantees the right to liberty and protects individuals from arbitrary arrest or detention, and any deprivation of liberty must take place in accordance with procedures established by law.<sup>414</sup> Arbitrary arrest and detention, which includes arrests and detentions that are manifestly disproportionate, unjust, discriminatory, or unpredictable, violate international human rights law.<sup>415</sup> Using arrest or detention to punish individuals for exercising their rights to freedom of opinion and expression, peaceful assembly and association can also constitute a rights violation.<sup>416</sup>

The testimony heard by the Research Team raises serious concerns that Indian police are systematically targeting project protestors for multiple spurious charges in order to intimidate and silence project opposition. Concerns that have been identified are grouped into four categories below: arrest and detention based on false or inadequately investigated criminal charges, the use of ‘others’ as a catch-all group on charging documents, the link between protest activities and arrests, and over-reliance on pre-trial detention.

i. Arrest and detention based on false or inadequately-investigated charges

While there are no official statistics on the number of charges currently pending against the impacted communities, one lawyer, who is handling cases of project-affected villagers, told the Research Team that an estimated 3,000 charges had been filed against individuals protesting the POSCO-India project, including charges of attempt to murder, murder, rape, and kidnapping.<sup>417</sup> Other advocates estimate that between 2006 and 2012, about 230 cases had been filed, accusing 1,500-2,000 villagers who oppose the project of criminal activities.<sup>418</sup>

Many community members told the Research Team that they had been subjected to false and fabricated charges. After describing a few distinct instances, one villager asked researchers: “False cases have been charged against us, and a great amount of pressure has been put upon us, so where are our human rights?”<sup>419</sup> A second community member explained: “They had arrested me, alleging that I had blocked them and their vehicle, locked the Revenue Inspector’s office... I was not involved in anything. All are false cases.”<sup>420</sup> Another villager said he knew of two or three cases that had been lodged against him, one of which was a charge of rape for an incident that occurred when he was away from the village: “Once a quarrel took place in between two people of our village and.... I was in another village... but they lodged a rape case against my name though I was not present in our village.”<sup>421</sup>

Similarly, another individual said that the police simply charged him with any alleged criminal conduct that took place in the area:

Minimum 20-25 criminal cases charged against me. Burglary, forcible robbery. Whatever incidents that happened in the area, the police put my name on the charge. I only came to know about the charges after I was arrested and I went to court. No copy of the charges or FIR has been given to me.<sup>422</sup>

A lawyer who has been involved defending community members confirmed that the police regularly lay charges without conducting any investigation. For example, he said, one set of charges was filed and individuals were subsequently arrested because the police had seen a news report that pro-POSCO individuals had been abducted by anti-POSCO individuals. The attorney claimed that the news report was false, but no police investigation took place before the arrests were made. The attorney also related another case, where project protestors were charged with damaging the roads for wear and tear regularly caused by four-wheel vehicles and public transport.<sup>423</sup> Lack of investigation, he says, is common:

Police never investigated cases. How can they get prima-facie evidence if the police cannot go to the places? How can they know evidence from somewhere else?<sup>424</sup>

This pattern of false charges has also been identified and documented by previous reports. In 2009, Human Rights Watch found frequent reports of Indian police “arrest[ing] and detain[ing] individuals on false charges at the behest of powerful local figures or due to other forms of corruption.”<sup>425</sup> The report also cites several other studies that confirm that many Indian police abuse arrest powers, “arresting suspects without sufficient evidence and detaining them without sufficient due process.”<sup>426</sup> The Alternative Law Forum/Delhi Forum report specifically documents the false charges in the POSCO dispute. They detail several specific incidents where multiple charges were filed against unspecified ‘others’, including “a case of attempt to murder [that] has been registered against Sisir Mohapatra, Prakash Jena and 50 others.”<sup>427</sup> The report also reviewed some of the charges laid against PPSS leader Abhay Sahoo:

One of the cases that have been filed against him is a case of dowry death of one of the women in the village, with regard to which he has no relationship whatsoever and only knows the family who are staying in the affected area. In another case filed on 9th November, 2011 it has been alleged that Abhay Sahoo intimidated and insulted villagers as dalits and beat them and wrongfully restrained them. Although Abhay Sahoo and the villagers have stated that he was not there that day in the village, the said case has been registered against him.<sup>428</sup>

The report concludes that “[t]he filing of false cases to curb this fundamental freedom of the people is nothing short of an attack on the democratic process and the values embedded in the Constitution.”<sup>429</sup>

## ii. Arrests based on charging documents listing unnamed ‘others’

Multiple sources have stated that cases filed with the courts will frequently name a number of specified individuals, and then indicate that there are also dozens or even hundreds of unnamed ‘others’ also charged in the case. Afterwards, many individuals who are arrested are

joined to an existing case and charged with a previous crime as one of the unnamed ‘others.’ As explained by one community member:

What is in practice is that when pro-POSCO people file cases, police usually writes the names of 10-12 persons and add ‘and others’ – 50, 100, 150, 200 persons at the end of the name list and later whomever is got arrested, police lodge a number of cases against them.<sup>430</sup>

The lawyer noted above who has defended many of these cases estimated that about 70% of the 3,000 individual charges had initially been laid against unnamed “others.”<sup>431</sup> Because there are so many complaints, and so many anonymous charges, individuals will often not know whether or not they have been charged with a crime. If they are specifically named, a lawyer may be able to find out their charges by going to the police station. For those who are not specifically named, however, there always remains the possibility that they are or will become an unnamed ‘other.’ When asked how a person comes to be included in the group of unnamed ‘others,’ the lawyer replied, “Police does this. Whoever they want, they will add to this list.”<sup>432</sup>

Often, the only way that community members can find out whether they have been explicitly accused of a crime is by getting a lawyer to go to the local police station and find out if there are charges pending. After describing the presence of multiple charges pending against her, one female PPSS leader explained how she came to learn of the charges: “We have a lawyer, Bichitra Sena, is fighting the cases for us. He gives us information. We know when the lawyer goes to the police station, we do not know otherwise. Otherwise there is no way of knowing, even the lawyer does not know.”<sup>433</sup>

The testimony of numerous villagers indicates that arrests are taking place on little or no evidence and without thorough investigations to ascertain the veracity of the accusations. The police appear to regularly fail to take the most basic investigative steps before charging, arresting, and detaining project protestors. The extensive use of charge sheets against unnamed large groups of individuals indicates an alarming lack of evidence underlying the charges. It also provides significant opportunities for police abuse through *ex post* justifications of unfounded, arbitrary arrests. As established in the preceding sections, arrests and detentions that take place based on insufficient evidence are arbitrary, and therefore illegal under international law.

### iii. Targeting project protestors for arrest and detention

Testimony gathered by the Research Team suggests a strong link between protest activity and the false charges. Community members stated that the practice of laying fabricated charges started about eight years ago, when the anti-POSCO movement started to gain momentum.<sup>434</sup> Community members also thought that movement leaders were specifically targeted for a very high number of cases. As PPSS leader Manorama Khatua alleged:

There are five wards here. Five *sahis*. In all five there are women who are leading the struggle. All of us have multiple cases filed against us. One leader has 30 cases. I have 42. Because I have been at the front of the movement the police have lodged many cases against me. We learn about these cases through

our lawyer [who] has to go to the Kujang Police Station to find out what cases are pending against us.<sup>435</sup>

The lawyer mentioned above told the Research Team that “[t]hose who are stronger in movement have more bogus cases against them.”<sup>436</sup>

There were also multiple allegations that individuals were targeted with charges to try to break the anti-POSCO protest, and were then offered money in order to entice them to change their position on the issue:

First [they] put cases, break protest, and then offer money to make people pro-POSCO.... They are scared that they will be jailed. So they are paid some money, and then they switch sides.<sup>437</sup>

This allegation was echoed by another interviewee, who said “the police file cases against you but say that if you support POSCO, the cases will go away.”<sup>438</sup>

This testimony of targeted criminalization echoes the findings of other reports. According to the Alternative Law Forum/Delhi Forum report, which examined over 230 cases implicating between 1,500-2,000 individuals, including some where police charged and arrested villagers who had been victims of attacks:

The biased nature of the police and their actions becomes evident from the targeting of villagers resisting the POSCO project on one hand, and their refusal, on the other hand, to initiate any criminal action against goons and other persons perpetrating violence on these villagers.<sup>439</sup>

The report concluded that individuals were being “criminalized and victimized for expressing their dissent against the Government.”<sup>440</sup>

The increased targeting for arbitrary arrest, combined with the above-documented refusal to investigate attacks on anti-POSCO protesters, has had a devastating impact on the personal security of affected community members. As noted by PPSS General Secretary Shishir Mohaptara:

We never feel safe. When 1,400 people are in [non-bailable warrant] cases, how can we feel safe?<sup>441</sup>

The targeting of project protestors for arrest and detention on the basis of their political opinion or belief violates international human rights law. Freedom of expression, freedom of opinion and peaceful assembly are all protected human rights under the ICCPR. The targeted charging and arrest of those who speak out against the POSCO-India project is discriminatory and a violation of India’s obligation to provide equal protection of all individuals regardless of their beliefs or political opinions, as well as its obligation to ensure freedom from arbitrary arrest or detention.

#### iv. Excessive reliance on pre-trial detention

From the interviews conducted by the Research Team, it appears that while many people are repeatedly arrested and required to pay money in order to get released on bail, few if any are actually brought to trial. Many community members have spent short periods of time in jail after being arrested. The senior leadership of the PPSS in particular has faced extensive detention without trial or any finding of guilt. PPSS President Abhay Sahoo, for example, has been detained three times, each time spending months in prison before he could secure bail. The first arrest occurred in 2008, after Sahoo had left his village to address severe health problems. The police arrested him as he returned home, and he then spent almost 11 months in detention awaiting bail.<sup>442</sup>

Police appeared to justify his extensive pre-trial detention with reference to the number of charges filed against him, stating that he was arrested for “kidnapping, causing damage to properties of pro-Posco people, assault and manhandling of pro-Posco villagers, assault on government servants, *gherao* of policemen on duty, destruction of betel vines of pro-Posco villagers etc.”<sup>443</sup> Although Sahoo was eventually released on bail, none of the charges have gone to trial in the years since his initial arrest and detention. Sahoo was arrested again in 2011 on a number of charges. He was released on bail after four months. To date, no trial has ever followed.<sup>444</sup>

On May 11, 2013, PPSS leader Abhay Sahoo was arrested again by Indian police.<sup>445</sup> At the time of writing, he remains in detention.

The testimony gathered from affected community members suggests a pattern wherein Indian police are charging, arresting, and detaining individuals without trial. Pre-trial detention is, by definition, the detention of a legally innocent person. The amount of time that some individuals – and particularly movement leaders – spend in jail prior to being released on bail is excessive. These detentions are based on charges that are inadequately investigated or false, and arrests that are frequently arbitrary and illegal under international law. As a result, the subsequent detentions are also arbitrary and a violation of human rights.

#### d. Restrictions on freedom of movement

Many of the community members interviewed by the Research Team said that they did not feel safe outside of their villages. In fact, many individuals interviewed indicated that they had not left their home communities for six or seven [years]. The fear of arrest, combined with the intermittent physical barriers, which the Indian police put in place to cordon off the villages and lock down the movement of project protestors, has had the effect of placing the affected villages under virtual siege.

The right to freedom of movement is protected under the ICCPR, which provides that “everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement.”<sup>446</sup> The U.N. Human Rights Committee has stated that “[l]iberty of movement is an indispensable condition for the free development of a person” and that it often “interacts with several other rights enshrined in the Covenant.”<sup>447</sup> The State must ensure that liberty of movement is “protected not only from public but also from private interference.”<sup>448</sup>



Although the government can impose restrictions on an individual's or population's freedom of movement, such limitations will only be lawful if they meet very specific requirements. Restrictions must be provided by law, necessary "to protect national security, public order (ordre public), public health or morals [or] the rights and freedoms of others," and consistent with the other fundamental human rights.<sup>449</sup> Limits on freedom of movement must also be proportionate and appropriate in light of the valid protective goal, and must be the "least intrusive instrument amongst those which might achieve the desired result."<sup>450</sup> Finally, any restrictions must be fully consistent with the principles of equality and non-discrimination. The Human Rights Committee has stated that "it would be a clear violation of the Covenant if the rights enshrined in article 12, paragraphs 1 and 2, were restricted by making distinctions of any kind, such as on the basis of... political or other opinion."<sup>451</sup>

The combined impact of physical barriers erected by police and the legal and physical threats to project protestors when they step outside their villages has placed a very strong restraint on individuals' freedom of movement. These restraints on movement imposed by legal, psychological, and physical barriers will be explored below.

i. Legal and psychological barriers: threats of arbitrary arrest and violence

The use of false charges and lack of protection against third party attacks has significantly restricted the freedom of movement for individuals in villages protesting the POSCO-India project. Most of the people interviewed by the Research Team feared that they would be arrested if they went outside their villages. Shishir Mohapatra, General Secretary of the PPSS, explained that initially the police were "entering into the villages and lodg[ing] false cases against innocent people." The community members reacted with protests and "check gates" that were watched "day and night" to ensure that the police could not enter the village. After erecting the barricades, however, the threat of arbitrary arrest persisted outside the village perimeter.<sup>452</sup> Noting the prevalence of "fabricated cases" and arbitrary arrests, Abhay Sahoo, President of the PPSS, emphasized:

[Even] those who have not been jailed, [] are living in a jail-like situation, in a prison-like situation. They cannot go out for treatment, for market, for attending health centers – whatever you will say. If they come out, they will be arrested.<sup>453</sup>

Many villagers echoed the observations of these PPSS leaders. One male villager, H.N., explained:

[T]hey are using several false and fabricated cases against me. This restricts me from leaving because I am always frightened to leave thinking they might arrest me again. I must always keep in mind [] whether the police is around to decide whether to travel outside to the hospital, or anywhere outside the village.<sup>454</sup>

The Research Team spoke to multiple people who had not left their village in several years because they feared the police would arrest them. C.G., who had not left his village for seven years, described the impact of the arbitrary arrests:

Pro-POSCO people have registered five cases against me. I got an order from the High Court saying that there was a case registered against me. I got the order two months ago. I was worried because so many people have cases against them, and I worried that if I left the village that I would get thrown in jail. And then I worried that I wouldn't be able to get out. I still don't know what the charges are. My younger brother, who is a leader in the movement, went to jail for eight or nine days. I couldn't visit him in jail because the police had surrounded our village. They use warrants that say 100 and others. Since 2005 and until two months ago I did not leave my village. Five to six people have died because they were unable to leave the village to get medical treatment. I have a little money so I was able to get the doctor to come in and treat me.<sup>455</sup>

PPSS leader Manorama Khatua recounted her experience, adding also that she feared being attacked by “goons” outside the village:

I have not left the village [for more than seven years] because I worry that if I do the police will arrest me and anti-social elements will attack me, meaning the goons that POSCO has mobilized.<sup>456</sup>

These sentiments were echoed by another villager, D.R.:

Before the project came, we were living our lives like free birds, but there has not been a single day that I have felt safe since the project was announced. I am not allowed to travel outside because of the arrest warrant, even for medical situations.<sup>457</sup>

These are just a few of the many community members that expressed a fear of leaving their villages. According to the Alternative Law Forum/Delhi Forum report, “Almost all villagers opposing the POSCO plant in the villages of Dhinkia and Gobindpur are under constant threat of arrest and have not left the villages in the last 6-7 years.”<sup>458</sup> The fear of arrest and third party attacks undermine villagers’ human right to freedom of movement. As outlined above, restrictions on freedom of movement “must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality,” and must be non-discriminatory and consistent with other fundamental rights.<sup>459</sup> The restrictions outlined above, which are confining project protestors to their villages for years at a time, fail to meet these requirements.

#### ii. Physical barriers: police blockades and check points

Police forces have also instituted periodic curfews and erected physical blockades and checkpoints, which at times stop movement both out of and into the targeted villages. Various villagers, with whom the Research Team spoke, referred to police blockades that would last for weeks or months. Manorama Khatua, for example, described the police curfew and blockade that was erected after the villagers started protesting Abhay Sahoo’s first arrest in 2008:

We kept our demand. Abhay Sahoo must be released. Otherwise the situation will deteriorate. Otherwise there will be many Abhay Sahoos. After that, police

came to Dhinkia Panchayat. There are three roads that come in, from Kujango, Balitutha, and Paradip. The police created barricades and closed all three roads. Now the people in this *panchayat* could not go anywhere. This was for four months, when people could not go anywhere.<sup>460</sup>

She went on to describe how the blockade affected not only villagers inside the cordon, but also those who attempted to come into the area:

The relatives from outside could not come in from outside. Even the children were not able to go out to study. Some relatives tried to come; the police kept the belongings of those people.... April through August there was complete blockade.<sup>461</sup>

This blockade only ended when groups across Odisha united and physically dismantled the barricade. Kathua concluded, “100-150 police pointed their guns when the protesters came to tear down the barricade. But they did not shoot. All the men and women got together and broke the barricade.”<sup>462</sup>

However, intermittent blockades have continued. In February 2013, for instance, media reports about renewed attempts at land confiscation stated that the police had cordoned off the area, sealing all entry points to Govindpur and blocking the Govindpur/Dhinkia road.<sup>463</sup>

Even when movement is not completely blocked, police checkpoints and searches create an atmosphere of intimidation, enhancing villagers’ fears that they will be arrested. For example, when a fact-finding mission from the People’s Union for Civil Liberties attempted to enter Dhinkia as early as December 2007, they encountered a heavy police presence. They reported:

We found the road barricaded by the police. They stopped us and searched our bags etc. Thereafter we again started to move onwards. We found another police picket... where we are again stopped and our all belongings were searched again by police. The road was fully barricaded at the moment.<sup>464</sup>

The U.N. Human Rights Committee has stated that “the restrictions must not impair the essence of the right [to freedom of movement]; the relation between right and restriction, between norm and exception, must not be reversed.”<sup>465</sup> In the villages, this relationship has been reversed; restriction on movement has become the norm. Although police checkpoints and roadblocks can sometimes constitute justifiable restrictions of freedom of movement, the onus is on the Indian government to fully justify their necessity. They must also be minimally impairing. The anti-POSCO resistance is a non-violent movement characterized by peaceful sit-ins and protests. Under such circumstances, it is difficult to justify how physical barricades could be necessary measures for the maintenance of public order or another valid governmental objective. Questions regarding the utility of the police blockades are heightened as they have failed to prevent many physical attacks on the villagers. Even if some restrictions could be justified as necessary for a short period of time, the impact of the physical blockades and threats of arbitrary arrest has been not been minimal: these measures have unnecessarily and

disproportionately undermined villagers' enjoyment of numerous other rights, as documented below.

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As evidenced above, project-affected communities have over the past eight years been subject to serious violations of their civil and political rights. Police officials have used excessive force to respond to a sustained, non-violent grassroots community effort to resist forced evictions. Project protestors have been criminalized for their beliefs through inadequately investigated and false charges that lead to arbitrary arrests and detention. The police have also failed to protect community members from violent attacks and harassment by project supporters, creating a pervasive atmosphere of fear and in violation of India's duty to protect the right to security of person. And this atmosphere of fear has led to a drastic curtailing of villagers' right to freedom of movement. Many have not left their village for six to seven years.

Although these civil and political rights violations are grave in and of themselves, placing entire communities under a virtual state of siege has affected life much more broadly. The subsequent section will detail the consequences of this ongoing state repression, specifically, violations of economic and social rights that threaten the well-being and undermine the dignity of those resisting displacement by the POSCO-India project.

### 3. The Impact of State Repression on Economic and Social Rights

*"Since the day when the POSCO project was proposed, we have faced many challenges. Our children's education has been restricted. Our businesses have been hampered and our livelihoods have been impeded. We are suffering from many charges against us. We do not feel safe leaving the village to sell our goods. We do not have access to health facilities. In sum – our livelihoods, health, agriculture and business are all being affected."*

– R.B., a father in one of the affected villages<sup>466</sup>

The civil and political rights violations detailed above have had detrimental and prolonged consequences for the realization of interdependent economic and social rights, including the human rights to work, an adequate standard of living, health, and education. As outlined in Part II.A all branches and levels of government and public authorities of India have an obligation to respect or refrain from violating human rights, to protect people against violations by private actors, and to fulfill human rights, including taking progressive steps to fully realize economic, social, and cultural rights. This section will examine how ongoing violations of project opponents' civil and political rights have created hardship throughout affected villages and have become the catalyst for repeated violations of villagers' economic and social. As one villager, N.Y., articulated:

[W]e are at great loss.... The agriculture we were doing, the business we were running, all have been disturbed. Our children cannot study.... We are not able to go outside. We also cannot go to doctors. So they have put us in difficulty. Our agriculture has collapsed. We have become jobless.<sup>467</sup>

a. Right to work and an adequate standard of living

The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>468</sup> The ESCR Committee has emphasized that “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”<sup>469</sup> While there is a recognition that this right will be progressively realized, India must refrain from taking measures that would prevent people’s existing access to adequate food and must “ensure that enterprises or individuals do not deprive individuals of their access to adequate food.”<sup>470</sup> Furthermore, the ESCR Committee has affirmed that “any discrimination in access to food, as well as to means and entitlements for its procurement, on the grounds of... political or other opinion... with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the [ICESCR].”<sup>471</sup>

The ICESCR also guarantees the right to work,<sup>472</sup> which encompasses both independent work and dependent wage-paid work and includes the right “not to be unfairly deprived of employment.”<sup>473</sup> Further, the ICESCR “prohibits discrimination in access to and maintenance of employment on the grounds of... political or other opinion,” among other categories.<sup>474</sup>

As described in this section affected community members’ ability to enjoy an adequate standard of living has been undermined in numerous ways. For instance, individuals’ freedom of movement has been severely curtailed, reducing their ability to access crops and markets, forcing them to pay inflated prices for everyday necessities that are brought in. Property and crops essential to the income generation of local people have been destroyed by police personnel, and at least two community members employed by the government have been fired, reportedly as a result of their opposition to the POSCO-India project. Finally, affected people have been forced to spend much of their time defending their lands and raising concerns about the project, leaving them with less time to earn a living.

i. Restricted access to crops and markets

The restrictions on freedom of movement outlined in the previous section have had a direct impact on the livelihoods of residents whose farms are located outside the village borders. Many community members have not been able to leave the village, sometimes for extended periods of time, due to fear of arrest under false charges, or fear of harassment by project supporters. As a result, many farmers who grow crops outside the village for either personal use or for sale have been unable to consistently access their fields or markets and have suffered loss of income and/or access to food as a result.<sup>475</sup> As Shishir Mohapatra, General Secretary of the PPSS explained, “For bamboo and fertilizers needed for betel cultivation, we are dependent on Balitutha market.... As we are cordoned off by government, we are at great loss in our fishing, betel and paddy cultivation.”<sup>476</sup> Similarly, the Alternative Law Forum/Delhi Forum explained:

Since most of the villagers are in *paan* [betel leaf] cultivation, there is a need to maintain ties with traders in Bombay, Calcutta and other cities to which the same



is supplied. However, the inability to leave the village and maintain business ties has adversely impacted this trade, which is the major source of livelihood for them.<sup>477</sup>

Several villagers also told the Research Team that police had destroyed valuable betel vineyards. These families, who depended on those betel vineyards for their livelihood, described significant reduction in their incomes.<sup>478</sup> As one villager, H.N., described, “I am depressed, nervous, and the police have destroyed some of my betel vine, so my income has been reduced. My entire family protested against destroying the betel vines. But the police arrested the entire family and thereafter, they destroyed our most valuable betel vine.”<sup>479</sup>

## ii. Restricted access to food and basic supplies

The impacts on economic and social rights have been particularly severe following major violent incidents, when police presence and repression increased, restricting movement into and out of the villages and consequently curtailing access to food and basic supplies.

For instance, following the murder of villager Dula Mandal in 2008, the police barricaded the three entrances to Dhinkia. Relatives and friends from other villages had to sneak basic supplies to residents of Dhinkia to avoid confiscation at government blockades. As explained by one female leader:

When our relatives tried to come see us, the police did not allow them in and took away the gifts that they had brought for us. They also did not let any food come into the village. They closed the way. Members of another village sent us rice, candles, and matches and other much-needed supplies. They would come by boat. When we got some relief, we distributed it, but there was not enough for everyone.<sup>480</sup>

The difficulties of coping with a reduced income are compounded by a significantly increased cost of living when police barricades are put in place. Many residents have little choice but to give up a larger than normal portion of their already reduced incomes for scarce basic goods. As one male villager, C.G., explained:

I used to be able to get vegetables outside. Now people come in and charge really high rates because we have no choice but to buy from them.... This has affected my life. I am in difficulty, and the small businessmen who [previously] supplied food and other small elements are also affected.<sup>481</sup>

## iii. Impacts of dissenting against the project on work

In at least two documented cases, public employees have been suspended from their jobs for alleged anti-state activities related to the POSCO project. According to the Alternative Law Forum/Delhi Forum report, the Dhinkia postmaster, who had been in his position for 28 years, was suspended in December 2007, reportedly because he was “involved in anti-state activities.”<sup>482</sup> He continued to deliver mail on a voluntary basis until July 2008, when he reported

that the mail simply stopped arriving. Although the postmaster argued against his suspension in court and won, the lower court's decision has been challenged by the government.<sup>483</sup> The Alternative Law Forum/Delhi Forum report also included the case of a 20-year employee at the government high school who, in 2007, was issued a suspension notice citing "anti-government activities."<sup>484</sup> Without a source of income, he states that he has been left with no financial resources to challenge his suspension.<sup>485</sup>

Furthermore, interviews with community members also made it clear that prolonged resistance to forcible displacement by the POSCO-India project has drastically reduced the time that residents have to farm or work, undermining their ability to access adequate food.<sup>486</sup> As one villager, N.J., discussed:

The thing is that we are at difficulties, as we are forced to become unemployed because we need to carry on the protest. If somebody unknown comes, we have to be alert. We have to watch the village, check the gates. So our work is being disturbed.<sup>487</sup>

Project-affected communities reportedly confront an untenable choice: either go about the business of earning a living and risk allowing their forcible displacement to move forward, or ignore many daily necessities in order to protect one's village—voicing opposition to displacement—and suffer loss of income and livelihood as a result.

As evidenced above, state repression has undermined villagers' human rights to work and an adequate standard of living in a variety of ways. In discussing the obligation to take steps "with a view to achieving progressively the full realization of the rights in the [ICESCR]," the ESCR Committee is clear that "any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."<sup>488</sup> Similarly, discrimination or any exclusion or "restriction" that impairs the enjoyment of human rights based on "political or other opinion" is a violation of India's human rights obligations.<sup>489</sup> Current State actions that target project protestors and restrict access—for extended periods without careful consideration or justification—to fields, markets, food and other basic necessities, as well as health care and education, all constitute violations of human rights.

#### b. Right to health

*"I have severe pain down my arms and on my shoulders. I am alive today because of the money I earn from cultivating betel leaf. Without that I would have died. I will die but I will not leave this land. My motherland. ... People can't see their relatives or go out to earn money. We have to spend a lot of money to bring doctors in. Those who don't have money, some have died. Others are suffering from disease."*

– C.G., a victim of the May 2010 police firing at Balitutha<sup>490</sup>

As a State Party to the ICESCR, India is required to progressively ensure the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>491</sup> India must also refrain from denying or interfering with access to health services.<sup>492</sup> And it must protect people from interference with this right by third parties,<sup>493</sup> and ensure that health facilities, goods, and services are within safe physical reach for all sections of the population, especially vulnerable or marginalized groups.<sup>494</sup> As a State Party to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), India must also ensure access to reproductive health care services for women,<sup>495</sup> paying specific attention to the needs of rural women.<sup>496</sup> Further, the Convention on the Rights of the Child (CRC) obligates India to “strive to ensure that no child is deprived of his or her right of access to... health care services.”<sup>497</sup>

As described in the previous section, Indian authorities have denied emergency medical treatment to project protestors following incidents of violence surrounding attempts at forcible land acquisition. Many residents are also experiencing significantly reduced access to adequate health care due to fear that if they leave the village they will be arrested on false charges. Finally, after 8 years of living with fear and uncertainty, a number of residents report that they are also experiencing serious social and psychological impacts, significantly undermining their mental health. This section covers the negative impacts on the right to health that are being experienced by individuals resisting the POSCO-India project.

#### i. Curtailed access to essential health care services

Opponents of the POSCO-India project have seen their access to health care services diminish, or in some cases disappear entirely. Even though there is a local health clinic nearby to address basic issues, many residents stated that arrest is a likely consequence of “going outside” and therefore they do not leave their villages, even if they have serious health concerns.<sup>498</sup> One villager, F.C., explained to the Research Team, “[We] can’t go to hospitals and get medical attention. [We] have to sneak to get their medical care.... If the doctor can come, you can get treatment. Otherwise the person suffers and some people have died due to sickness.”<sup>499</sup> As a result, only those who can afford to call in expensive private doctors receive care while other residents simply continue to suffer from injury or disease.<sup>500</sup>

A female leader of the movement challenging displacement emphasized, “Anyone goes outside, even for medical reasons, the police arrest [them]. [G.D.] went outside once, and she was in jail for a week. She found out that there were two cases against her.”<sup>501</sup> Turning to her own situation, this leader explained: “I am afraid to leave the village because I worry that if I do the police will arrest me and anti-social elements will attack me, meaning the goons that POSCO has mobilized. A few days ago I left in the middle of the night because I desperately needed medical treatment.”<sup>502</sup> This leader’s experience is symptomatic of the restricted access to healthcare that many women in the affected villages have suffered.<sup>503</sup> The 2013 Alternative Law Forum/Delhi Forum report revealed that many women in the affected areas were in desperate need of medical attention, based on findings that “at least 30 women needed urgent medical intervention, or else their condition would deteriorate.”<sup>504</sup>

Diminished access to health services affects both the adults who actively advocate against the POSCO-India project, as well as their dependents. If a resident facing false charges has a sick child who needs medical attention, he or she must either risk arrest or arrange for other relatives to take the child to the doctor. One resident reported the consequences of seeking medical help for his son:

My son, who was a minor... his hand was fractured. I had taken him to the doctor. On the way police had arrested me and put inside the jail for two days, but my son was left there unattended. They had not even care to send my son to my house.<sup>505</sup>

Another resident reported that he was unable to accompany his sick child to the hospital:

I have many problems going to the hospital or seeking medical assistance. I need my relatives to take my family to the doctor or bring the doctor into the home. Once my son fell ill, but I was unable to accompany him to the hospital. I ask my father-in-law to take him to the hospital.<sup>506</sup>

ii. Impact on mental health from an environment of insecurity, anxiety and fear

Nearly eight years of continuous state repression and attacks by third parties have taken a serious psychological toll on project-affected communities. One villager, who had been injured during one of the protests, explained: "I don't know what will happen. They can always register new cases and arrest me. I am always afraid.... The last time I felt safe was before POSCO came."<sup>507</sup> Many in these communities live in a constant state of fear of attack and arrest, and must continually act to defend their homes, livelihoods and personal security. As communicated by another affected resident:

The whole family is depressed and nervous. I am not in a position to think about what I am going to do with my future, not even formulate a plan for what to do to generate our income for the family. It has disturbed the entire thinking process.<sup>508</sup>

Residents interviewed by the Research Team professed feelings of trauma, stress, chronic anxiety, depression, an inability to sleep at night and a pervasive feeling of fear.<sup>509</sup> One resident commented:

We do not feel safe. Both POSCO and the government administration keep oppressing us forcibly.... We cannot sleep well at night, watching our village throughout the night. In every village, check gates are there.... Even in the night they are arresting us, fabricating false charges.<sup>510</sup>

Recent investigations by domestic fact-finding teams have reported even more serious mental health issues. The 2013 Alternative Law Forum/Delhi Forum report described the situation of how one member of the anti-POSCO movement, "who was arrested on 12/09/2008, lost his mother after she committed suicide in despair. His sister became mentally depressed and continues to suffer from severe depression."<sup>511</sup>

Residents interviewed by the Research Team expressed distress at their inability to leave their villages for important family and religious events. In January 2011, S.N. was arrested by police when attempting to attend a ritual function for his son; he spoke of his life being disrupted by ongoing fear.<sup>512</sup> Another resident, C.G., explained:

It's been very hard, and I have been so saddened. I haven't been able to get my children married. I wasn't able to attend my own sister's wedding and for all these years I wasn't even able to see my sister. When I finally saw her, we both cried so much, but we were so happy to see each other again.<sup>513</sup>

Finally, several residents also lamented the growing conflicts and divisions between neighbors who had historically enjoyed mutually supportive relations.<sup>514</sup>

All residents of project-affected areas have a human right to “the highest attainable standard of physical and mental health.”<sup>515</sup> This right “is not confined to the right to health care,” but also “embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life,” including safety and a healthy environment.<sup>516</sup> India has an obligation to cease actions, particularly those that are discriminatory, which have the “intent or effect” of undermining the right to health.<sup>517</sup> Through the disproportionate use of force, arbitrary arrests, and restrictions on freedom of movement, over the course of eight years, India has failed to promote the conditions necessary for a healthy life and to respect the right to health of affected villagers.

#### c. Right to education

*“My children have trouble going to school. We get worried because of the police and the goons. So when things get bad we have to close the school. My 12-year-old and eight-year-old go to school 10 km away. We have to keep them home from school. For the last 7 to 8 years, the children have had to stop school a lot.”*

– M.S., a mother of three children and community leader<sup>518</sup>

As a State Party to the Convention on the Rights of the Child (CRC), India is obliged to ensure that in all actions concerning children, the best interests of the child shall be a primary consideration.<sup>519</sup> Under the CRC, India also recognizes that all children have an inherent right to life and must ensure their survival and development, to the maximum extent possible.<sup>520</sup> Importantly, where children are capable of forming their own views, they have the right to be heard.<sup>521</sup>

Furthermore, as a State Party to both the ICESCR and the CRC, India must provide free and compulsory primary education to all, and must also encourage access to higher forms of education.<sup>522</sup> Recognizing that “[e]ducation is both a human right in itself and an indispensable means of realizing other human rights,” India must ensure that children are able to physically access education services, without discrimination.<sup>523</sup> Instead of upholding these obligations, the Research Team found that Indian authorities had interfered with the ability of project-affected communities to access local schools, resulting in significant interruptions or complete cessation of the education of the children of families resisting the POSCO-India project.



i. Police occupation of schools and interference with access to education

In July 2011, India's National Commission for Protection of Child Rights ("NCPCR") investigated conditions in project-affected areas, responding to media reports of the participation of students in protests, and to two memorandums from different student organizations, "alleging the violation of child rights by the government and the agitators resulting in their absence from the schools."<sup>524</sup> In Balitutha, the NCPCR found that prolonged military occupation of the school had blocked the availability of necessary classrooms, with the school appearing as "a fortress," and in Govindpur, the team found that children were voluntarily participating in blockades to protect their family interests, "contrary to the allegations that children are being coerced to participating the agitation."<sup>525</sup>

Residents told the Research Team that children's access to education has been severely interfered with by police occupation of school buildings in communities that opposed the POSCO-India project.<sup>526</sup> One mother reported, "In 2011, the police set up camp in the school for two months so it remained completely closed."<sup>527</sup> A teacher at one of the affected schools, the Balia nodal Upper Primary School, told the media:

Four of our six rooms are occupied by the police who are here to deal with the agitation. . . . Every morning, all the children assemble, we take attendance—and then dismiss Classes 1-5. How to teach them?<sup>528</sup>

According to the NCPCR, at the primary school at Balitutha, three of the school's five classrooms were being used as barracks by police who, despite having official permission to stay only during the summer months, continued to occupy the rooms after classes recommenced.<sup>529</sup> As stated in the NCPCR report:

The school building consists of two blocks in "L" shape. In one block, there are three rooms which are now under occupation by 150 armed police person as their temporary camp/barrack. . . . The open bathing space for police persons is also inside the premises and towards the front of the class-rooms. . . . Some of the police persons were found moving inside the campus, wearing only under-wears.<sup>530</sup>

In some cases, school occupations by State police forces also interfered with India's obligation to ensure access to adequate food and health care for the students, as the occupations have interrupted delivery of other services, such as the operation of *Anganwadi* (basic child health/nutritional services) centers.<sup>531</sup>

ii. Impacts of intimidation and threats to security of the person on the right to education

The NCPCR found that "[t]he presence of so many armed police personnel inside the premises of the School & the Anganwadi centre has been creating a sense of fear in the minds of tender children," and that this fear, combined with a prolonged police presence and lack of

school services, had drastically reduced attendance.<sup>532</sup> Of 100 students registered at Balitutha, only ten were present when the NCPCR team visited.<sup>533</sup>

Furthermore, the Indian government's failure to protect project-affected communities from third party violence has resulted in parents keeping their children home from school because they fear for the children's security. The insecurity also appeared to be affecting the children's ability to learn. Parents told the Research Team that those children who did attend school had trouble studying and concentrating on schoolwork because of their insecure environment. As explained by one villager:

It feels unsafe to go out of the village. It makes it difficult for children to study, hampering [their] education. [I am] not continuing children's study because of security concerns.<sup>534</sup>

Restrictions on movement due to threats of arbitrary arrests or blockades have had an ongoing impact on access to education. Shishir Mohapatra, General Secretary of the PPSS, explained, "Our children are not able to carry out their education properly, we cannot go outside... Wherever police locate us, they are arresting us."<sup>535</sup> Some parents told the Research Team of having to temporarily close schools due to conflict or to keep children home.<sup>536</sup> In times of conflict, one villager reported, "The students would have to stay in the relatives houses, away from the village," straining remaining resources to support the students' upkeep.<sup>537</sup>

The strong sentiment in the community that time had to be dedicated to protecting against forced evictions—referenced in the above section—appears to have affected the children as well. Many children have joined their parents to protest their forced eviction.<sup>538</sup> To do this, they too must face difficult choices: either they attend school or they engage in what they believe to be necessary protest activities in order to fight for their lands and their families' survival.<sup>539</sup>

High-school aged students that participate in the protest movement have also been harassed and had charges filed against them, which in turn have interfered with their ability to attend school and will likely constitute a disadvantage in future efforts to advance their education.<sup>540</sup>

The NCPCR investigators interviewed several children who "expressed their unanimous apprehension that if their lands are taken away, they would lose their betel vines, and would be reduced to homeless labourers either employed by the Company or elsewhere."<sup>541</sup> When the NCPCR arrived at the scene of a protest that involved children:

The children too submitted a joint memorandum written in Oriya [the local language] to the Team-Members at that place. The most remarkable sentence in the memorandum is that a few lakhs of Rupees cannot compensate the loss to their future and that for a plant of 30 years' life span, they should not be reduced to a penny-less state.<sup>542</sup>

The NCPCR concluded that the children voluntarily supported their parents in the effort to defend their homes and lands.<sup>543</sup> Exercising their freedom of expression and resisting the loss

of their lands and future livelihoods with their parents, children and teenagers have faced harassment and false charges, the occupation of or inability to travel to their schools, and a loss of related access to basic health and nutritional programs. Each of these has undermined the right to education and wider human rights of children in villages affected by the POSCO-India project, constituting failures by the government of India to respect, protect, and fulfill the right to education.<sup>544</sup>

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As detailed above, the punitive and repressive action by Indian authorities against project protestors—including harassment and arbitrary arrests, blocked access to and destruction of crops, and occupation of schools—has had devastating impacts on the social and economic rights of project opponents, restricting access to health care, education, food and other basic necessities. As the next section will detail, those who have already left their lands and have been resettled in the POSCO-India Transit Camp have also experienced marked declines in their well-being and in the enjoyment of their economic and social rights. This, in turn, adds gravity to the concerns and fears of those still actively resisting the project.

### **C. The POSCO-India Transit Camp**

Since 2008, a so-called “Transit Camp” constructed by POSCO-India in Badagabapur village, Jagatsinghpur district, has housed approximately 52 families. Many of the camp’s residents hail from Govindpur village, which is approximately 15 km away.<sup>545</sup> Prior to settling in the Transit Camp, residents spent approximately 8 months in what they called a “college building,”<sup>546</sup> and what the POSCO-India website terms the “Bhutmudai temporary shed.”<sup>547</sup> In explaining how the families came to arrive at the Transit Camp, one camp resident told the Research Team:

After the clash that happened between the POSCO company and our villagers, we agreed to the government’s plan to move us out of the village. We were in fear. After this the brotherhood that existed within the village also ended. The villagers who did not bend to the pressure from the company and government turned against us. We left our house and our fields and were put by the government in a college building.<sup>548</sup>

In a letter from POSCO to ESCR-Net the company stated that:

[T]he people are living in the transit camp because the anti-project people, who call themselves the champions of the human rights and well wishers of the local people, have ousted them from their villages. POSCO adopted them [sic] have been providing basic amenities to the people living [sic] the transit camp.<sup>549</sup>

Transit Camp residents live in deplorable conditions. Following a July 2011 visit, India’s National Commission for Protection of Child Rights (NCPCR) described the living conditions in the camp as follows:

The camp consists of rows of single roomed accommodations having asbestos roof, which are of poor quality. There are 12 common toilet-cum-bath rooms for all the families, out of which 8 are in filthy and unhygienic condition, with open pits and leakages in the cesspool tank. The houses and toilets in the transit camp are never repaired or maintained. There is no open space to be used as playground by children.<sup>550</sup>

Indian authorities have also failed to ensure Transit Camp residents' access to essential health, education, and child welfare services.<sup>551</sup> Responding to these conditions, the NCPCR called on Indian authorities to "[e]nsure at the earliest that the families in transit camp of Badagabapur are not deprived of their right to survival and their needs for sanitation, healthcare & nutrition are addressed."<sup>552</sup>

In November 2012, sixteen months after the NCPCR's visit, members of the Research Team visited the Transit Camp and found that this recommendation had not been heeded. Camp residents continued to live in appalling conditions. Moreover, relocation to the Transit Camp—which is located far from work opportunities or land on which to farm—has impoverished residents and pushed previously self-sufficient families into economic dependence.

This section details the human rights issues at stake in the Transit Camp. Since leaving their villages in 2007 and resettling in the Transit Camp in 2008, camp residents have suffered clear and dramatic declines in their enjoyment of a number of rights, including but not limited to their rights to housing, food, water, health, education, and work. The government of India is obligated to respect, protect, and fulfill these rights. The duty to protect includes protecting camp residents from the actions of private actors that may undermine these rights. POSCO-India in turn has a responsibility to respect human rights, including in the context of accommodations and amenities it provides to residents of the Camp.<sup>553</sup> As detailed below, these obligations and responsibilities have not been fulfilled.

## 1. Inadequate Housing

The POSCO-India Transit Camp consists of 60 one-room homes, which house approximately 52 families. These accommodations fall far short of standards for adequate housing under international law,<sup>554</sup> which require that housing "contain certain facilities essential for health, security, comfort and nutrition," including "safe drinking water, energy for cooking, heating and lighting, means of food storage, refuse disposal, site drainage and emergency services."<sup>555</sup> Housing must also be culturally appropriate, as well as habitable, meaning it must have "adequate space" and must protect its residents "from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors."<sup>556</sup> Finally the location of housing is critical to ensuring its adequacy. Housing must be within reasonable "access to employment options, health-care services, schools, child-care centres and other social facilities," including in rural areas.<sup>557</sup>

Far from enjoying their right to adequate housing, Transit Camp residents interviewed by the Research Team deplored their living conditions. As stated by one camp resident:

The living conditions here are very bad. We are living here with great difficulty. The size of our families is very big; there are around 8 members in my family, for example. It is very difficult to stay in one small room like this. The shelter here is constructed using tin sheets. It gets unbearably hot since there are no trees around the house and this area is completely isolated from where we lived before. It gets very hot during summers. The shelter has not been constructed after consulting us. It has not been built using our traditional way of construction. The house we have back in our village is much bigger and always remains cool. During the rainy season, we face a lot of problems. There is a lot of water logging here.<sup>558</sup>

As described above, the lack of space and general uninhabitability of the housing provided in the POSCO-India Transit Camp stand in stark contrast to the environmentally appropriate homes that are common in the villages in the project-affected area, from where the camp's residents have been resettled.<sup>559</sup> Summer temperatures in Orissa can reach above 100 degrees Fahrenheit.<sup>560</sup> As noted by another resident:

The tin sheets are bad for this weather and we face a lot of problems because of this. It gets very hot here. The size of the room is very small. We had comfortable houses back in our village.<sup>561</sup>

The habitability of Transit Camp houses is further compromised due to unsafe building materials. According to the NCPCR, the buildings' roofing materials contain asbestos,<sup>562</sup> which is known to pose serious health risks.<sup>563</sup>

## 2. Inadequate Water and Sanitation

The POSCO-India Transit Camp lacks adequate and safe sources of water and sanitation, which poses many health risks and interferes with residents' ability to run their households, cook, and maintain hygiene. The right to water "entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water."<sup>564</sup> Water must be available, meaning it must be "sufficient and continuous for personal and domestic uses."<sup>565</sup> Water must also be of adequate quality, meaning that it must not "constitute a threat to a person's health,"<sup>566</sup> and must be free from contaminants,<sup>567</sup> and have "an acceptable ...taste."<sup>568</sup>

Transit Camp residents share one tubewell and the water supply is inadequate to satisfy the basic domestic needs of all of the households.<sup>569</sup> As explained by one resident:

There is just one tubewell for the 52 plus families.... The same water source is used for all purposes. People have to wait to fill water, take bath there, and so on. There is no privacy for women to take bath here.<sup>570</sup>

Another resident echoed these sentiments saying, "We don't have enough water. There is only one borewell."<sup>571</sup>



The poor quality of the water was also raised as a central concern. The water supply in the Transit Camp is reported to have very high iron content. Residents complained that the water quality has led to a number of health-related problems. As stated by one resident:

The water here is not sweet like it was in our village. Sea water levels are quite high here and the iron content in the water causes sore throat.<sup>572</sup>

Another resident expressed similar concerns:

The water here is high in iron content. After all the iron gets deposited at the bottom of the vessel we drink this water. It is not sweet like in our village. This water causes skin problems. There is skin irritation in hands and feet because of the water.<sup>573</sup>

The water supply in the Transit Camp stands in stark contrast to the supply of water in residents' former villages where an exceptionally high water table enabled households to pump their own water with ease, and provided abundant safe potable water for domestic needs, agriculture, and animal husbandry.<sup>574</sup>

### 3. Decreased Access to Work and Decline in Standard of Living

As described in Part III.B.3.a, as a State Party to the ICESCR, India must “take appropriate steps to safeguard” the right to work,<sup>575</sup> which entails “the right of everyone to the opportunity to gain his[/her] living by work which he[/she] freely chooses or accepts,”<sup>576</sup> and which ensures “a decent living for themselves and their families.”<sup>577</sup> In 2011, the NCPDR reported that adult camp residents were getting employment under the National Rural Employment Generation Scheme,<sup>578</sup> but this Scheme only guarantees wage-employment for 100 days out of the year to rural households whose adult members are willing to do unskilled manual work.<sup>579</sup> Camp residents told the Research Team that since relocating from their villages they had been unable to find sufficient or reliable employment resulting in a decline in their standard of living. Moreover, the location of the Transit Camp does not facilitate residents' access to land suitable for betel farming or the gathering of forest produce—activities that residents successfully pursued in their villages prior to relocating to the camp, and which afforded them a decent standard of living. As one resident noted:

I used to cultivate betel leaves of the best quality that used to be sent to Mumbai. Our village is known for the best betel leaves, paddy, and fish. We had everything we needed back in our village. Now we have nothing. Now we have to go ask people for paddy, even if we want it during festivals. We depend on favors from others.<sup>580</sup>

Reflecting on the marked difference in the economic situation, another resident commented:

Before, I used to own land back in my village, and I used to employ people to work in my fields. Now, I go for any wage labor that is available. I don't get work all the time, and go whenever it's available. I used to earn around Rs 20,000 to

Rs. 30,000 per month. Now, I am dependent on the cash dole given by the company. With great difficulty I manage to get Rs 3,000 to Rs. 4,000 per month, sometimes I don't even get that. I just sit idle here waiting for work.<sup>581</sup>

Transit Camp residents were reportedly promised cash compensation for their lands, but the compensation has not materialized due to the fact that the project has been stalled.<sup>582</sup> Residents told the Research Team that without sufficient employment opportunities they are forced to rely on a daily allowance provided by POSCO: Rs. 20 (US\$0.33) per person per day, an amount that is grossly insufficient to meet their needs and the needs of their families. As one resident stated:

We used to grow betel leaves and earn a minimum of Rs. 20,000 per month. Now we get Rs. 20 per day from POSCO. It is not enough even to meet our basic needs. We used to get all we wanted back in the village; cashew, betel leaves, paddy, fruits, fish were all abundantly available. We grew the best betel leaves there and now we have to go buy betel leaves from outside at a higher rate.<sup>583</sup>

Residents claim that they have “constantly appealed to POSCO company for more” than the Rs. 20 per day they receive, but that their appeals have not been met with any response. “There is no one to listen to our woes,” they said.<sup>584</sup>

#### 4. Decline in Availability of Adequate Food

The loss of access to farming opportunities has had significant impacts on residents' right to adequate food. As described in Part III.B.3.a, the right to adequate food is realized when individuals have “physical and economic access at all times to adequate food or means for its procurement.”<sup>585</sup> The NCPCR reported in 2011 that camp residents that “are BPL [Below Poverty Line] cardholders of their native village [] get rice and wheat through PDS [Public Distribution System] in the camp.”<sup>586</sup> Even with these provisions, residents' loss of access to agricultural and forested lands,<sup>587</sup> and to alternative employment opportunities, has dramatically reduced their physical and economic access to sufficient, nutritious food.<sup>588</sup> As explained by one resident:

We used to grow all we needed back home. Now we have to buy everything and we don't have enough money. We used to access firewood from the forests back in our village. This is not available here. We use the dried cow dung as cooking fuel. We find it difficult to get cooking fuel during the monsoons because the cow dung can't be dried. We have to cook outside the rooms, which is difficult during the rainy season.<sup>589</sup>

#### 5. Decreased Access to Healthcare and Decline in Standard of Health

As noted in Part III.B.3.b, India is required to progressively ensure the right to physical and mental health, paying specific attention to the needs of vulnerable or marginalized groups, to women, and to children. A key component of the right to health is the accessibility of health care services, which must be within safe physical reach and be affordable for all.<sup>590</sup> There are no

medical facilities within the Transit Camp, and relocated families, who have suffered serious declines in their standard of living, can ill-afford private care. As one resident explained:

There is no PHC [Primary Health Center] here. There is no medical facility offered by the POSCO company. We cannot go back to our village PHCs because of the tension that the POSCO company has created between us and the villagers. We cannot afford to go to private hospitals.<sup>591</sup>

The right to health also “extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”<sup>592</sup> As detailed above, these underlying determinants have seriously deteriorated since Transit Camp residents left their villages, which in turn have made residents far more vulnerable to illness and disease. Relocation to the Transit Camp has also had significant effects on residents’ mental health, as residents live in a state of chronic anxiety and uncertainty. Unable to return to their villages, or resettle in POSCO’s yet to be constructed rehabilitation colony,<sup>593</sup> Transit Camp residents face a very uncertain future. As one resident told the Research Team: “We don’t know how long we will be here. Nobody has told us anything about where we will go.... We are all waiting to go back to the village.”<sup>594</sup> These sentiments were echoed by another resident who stated:

We have no idea how much longer we have to stay here. We have nothing in our names here. We have no information from anyone about where we will go. We all want to go back to our village but we can’t. We are scared because of the clash that happened between the POSCO company and the villagers. When we were sent here by the government, we did not know that we will be in this situation. Now we are scared of the POSCO company, the government and also our own villagers back home. We don’t know what to do. We don’t know what is going to happen to us. We are waiting to go back home.<sup>595</sup>

Villagers from project-affected areas told the Research Team that Transit Camp residents were welcome to return to their villages. As one resident stated, “The people in the Transit Camp want to come back. They even came to a *palli sabha* and said we want to come back. This was three months ago. We said you are welcome, we did not kick you out.”<sup>596</sup>

## 6. Impact on Children’s Rights and Restricted Availability of Education Facilities

Relocation to the Transit Camp has also affected children’s rights, including their right to education.<sup>597</sup> In 2011, the NCPCR noted that there were 35 children in the camp,<sup>598</sup> yet the camp does not have any schools.<sup>599</sup> According to the NCPCR, the nearest middle school is about 1.5 km away, and the closest high school is three kilometers away.<sup>600</sup> Some Transit Camp residents told the Research Team that they send their children to a school that is 9 km away, and commented that they “find it difficult to reach the school. Girls find it especially difficult to travel so far.”<sup>601</sup>

NCPCR investigations revealed that Transit Camp children’s right to education had been deeply affected, with acute impacts felt by girls residing in the Transit Camp:

In the whole process, education of the children more particularly of the girl children has been greatly affected. Some of the girl children even have left study. Some of the children have been admitted in the middle schools at Badagabapur and at Manapur. But their study has been disrupted for one or two years in the process of shifting to the transit camp and acclimatization at that place. The parents are highly concerned about the study of their children and sometime they entrusted an adolescent girl to teach the small children on voluntary basis.<sup>602</sup>

The NCPCR additionally found significant disruptions in children's access to health and nutritional services. It stated that the "[b]enefits of ICDS [Integrated Child Development Services] programmes are not at all extended to the girl children in the transit camp," and that the camp lacked an *Anganwadi* center for small children.<sup>603</sup> India's ICDS Scheme is designed to, *inter alia*, improve the health and nutritional status of children 0 to 6 years of age, and "reduce the incidence of mortality, morbidity, malnutrition and school dropout."<sup>604</sup> The *Anganwadi* or childcare center serves as a "focal point for the delivery of services at the community level, to children below six years of age, pregnant and nursing mothers, and adolescent girls."<sup>605</sup> The absence or improper functioning of these programs presents serious obstacles to the development, health, and nutrition needs of children in the Transit Camp, especially girls and young children.<sup>606</sup> The NCPCR added that the District Social Welfare Officer, who is charged with overseeing implementation of these programs,<sup>607</sup> had never visited the Transit Camp.<sup>608</sup>

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As evidenced above, Transit Camp residents—who have been surviving in extremely difficult conditions for the past six years—have experienced a significant and marked reduction in their standard of living as well as severe impacts on their rights to adequate housing, water, food, health, education, and work. When asked what message Transit Camp residents would like to give the government, one resident responded:

The POSCO company should not come here. When the company and the government can't compensate even 52 families, how will they meet the needs of the people from the rest of the villages if they are evicted from there?<sup>609</sup>

At this writing, Transit Camp residents continue to live in precarious conditions and demand their return to their villages.<sup>610</sup> As one resident told *The Telegraph*, "We are leading a caged life and denied basic human needs and rights. The chief minister and the South Korean steel-maker have badly let us down."<sup>611</sup>

#### **D. Findings Related to POSCO and the Republic of Korea**

As detailed in Part II.A.1, India holds the primary obligation to respect, protect and fulfill the human rights of people affected by the POSCO-India project. However, human rights responsibilities also attach to other actors involved in the project, including POSCO and the Republic of Korea, POSCO's home state. This section examines these responsibilities in more detail and provides the responses of relevant actors, including POSCO's investors, to the concerns raised in this Report.

## 1. POSCO

In the lead up to POSCO's Annual General Meeting in March 2013, sixteen members and partners of the International Network on Economic, Social and Cultural Rights (ESCR-Net), which is an author of this Report, jointly sent letters to five of POSCO's corporate investors: Berkshire Hathaway,<sup>612</sup> JPMorgan Chase,<sup>613</sup> Bank of NY Mellon,<sup>614</sup> Deutsche Bank<sup>615</sup> and Blackrock.<sup>616</sup> The letters and an accompanying briefing note<sup>617</sup> highlighted many of the concerns raised in this Report.

POSCO issued a response to the briefing note, which is reproduced in full in an Appendix to this Report.<sup>618</sup> Of particular relevance to this section are POSCO's assertions with respect to human rights. The company noted that:

POSCO does not believe in violation of human rights. It knows its responsibility as corporate global citizen. Human rights are intrinsic feature of its business planning.<sup>619</sup>

Under a heading titled "UN Guiding Principles on Business and Human Rights, OECD Guidelines for Multi-national Enterprises, UN Global Compact," POSCO went on to state:

POSCO being a signatory to the various principles and guidelines, including the *OECD Guidelines* and *UN Global Compact*, POSCO is mindful of its obligations under these principles and Guidelines towards the local community and is working within the framework of those principles and guidelines. POSCO is open to new suggestion in the area of community consultation in Odisha. POSCO has already been carrying out various CSR [Corporate Social Responsibility] activities for the local communities. POSCO's commitment to respecting the rights of the local community is uncompromising and unfaltering.<sup>620</sup>

This section analyzes POSCO's activities with regard to the POSCO-India project to examine whether they accord with the UN Guiding Principles on Business and Human Rights ("Guiding Principles" or "the Principles"), in particular.<sup>621</sup> U.N. Guiding Principle 13 identifies the two main contours of the overall responsibility of corporations to respect human rights. It states that:

The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and]
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.<sup>622</sup>

This dual-requirement is further elaborated in Guiding Principle 15 which calls on corporations to develop:



- (a) A *policy commitment*;
- (b) A *human rights due-diligence* process to identify, prevent, mitigate and account for how they address their impacts on human rights; [and]
- (c) Processes to enable the *remediation* of any adverse human rights impacts they cause or to which they contribute.<sup>623</sup>

#### a. Policy Commitment

Under the Guiding Principles, the first of these requirements, a policy commitment, should be approved by the company's senior management, be informed by human rights expertise (internal and/or external), and should stipulate the human rights expectations of personnel, business partners, and other parties directly linked to the company's operations, products, or services. The statement of policy should also be publicly available and communicated internally and externally, as well as be reflected in operational policies and procedures necessary to embed the responsibility to respect human rights throughout the business enterprise.<sup>624</sup>

POSCO has a publicly available Code of Conduct, which all employees have signed and which states the following:

- We will abide by all national laws and regulations as a socially responsible corporate citizen....
- We will comply with international conventions on human rights, the environment, culture, and trade as well as local laws and accounting standards in every country we operate in.<sup>625</sup>

Pursuant to its Code of Conduct, and as required under Guiding Principle 23, POSCO must “comply with all applicable laws.”<sup>626</sup> As a result, POSCO must respect the Forest Rights Act, which blocks evictions until rights claims of forest-dwelling communities are formally adjudicated and then requires the consent of recognized communities in the project area before any land clearance or related activity can proceed. This requirement is discussed in more detail in Part II.A and Part III.A. As noted in Part III.A.3.a, POSCO-India claims that the October 2012 *gram sabha* resolution—denying the consent of affected villagers—was invalid for several procedural reasons. However, even if the October 2012 resolution were found invalid, no evictions can take place until forest rights are fully adjudicated and the consent of recognized communities is secured; this consent has not been given to date. Similarly, POSCO must respect the decisions of the National Green Tribunal (NGT), which has suspended environmental clearance for the project. As described in Part III.A.3.b., despite the March 2012 ruling of the NGT, calling for “a fresh review of the project,” a “large number of trees” were still being cut for the project, forcing the NGT to issue another ruling on May 28, 2013, ordering the clearance to cease.

#### b. Human Rights Due Diligence

Conducting human rights due diligence is the second major feature of the corporate responsibility to respect human rights. Human rights due diligence enables companies to “identify and assess any actual or potential adverse human rights impacts with which they may

be involved either through their own activities or as a result of their business relationships.”<sup>627</sup> Under Guiding Principle 18, human rights due diligence should include “meaningful consultation with potentially affected groups and other relevant stakeholders,” as well as independent expertise to ensure the integrity of this process.<sup>628</sup> To date, there is no public evidence to suggest that POSCO has undertaken a human rights impact assessment with respect to the POSCO-India project. The human rights impacts of the POSCO-India project have, however, been widely reported and are thoroughly documented in Parts III.A – III.C of this Report. Having been made aware of these impacts, these findings should inform appropriate action by POSCO to prevent and mitigate these human rights impacts.<sup>629</sup>

The type of action taken will vary according to: a) whether POSCO “causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship”; and b) POSCO’s degree of leverage in addressing the adverse impacts.<sup>630</sup> Where POSCO has contributed, or may contribute, to adverse human rights impacts, POSCO “should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.”<sup>631</sup>

These standards apply in particular to human rights issues in the POSCO-India Transit Camp, as detailed in Part III.C. While India cannot relinquish its obligations to ensure the rights of people residing in the Transit Camp, from the time POSCO-India agreed to construct the Transit Camp, “adopt” camp residents and provide “basic amenities,”<sup>632</sup> it had a responsibility to, at the very least, respect the right to adequate housing, as well as related rights to water and sanitation, and help ensure that the Camp’s location or operation does not interfere with residents’ rights to work, health, education, and an adequate standard of living.

Even in the case where POSCO “has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship”<sup>633</sup> it is still required to take appropriate action. According to Principle 19, where POSCO “has leverage to prevent or mitigate the adverse impact, it should exercise it.”<sup>634</sup> As documented in Parts III.A – III.B, the Indian government’s attempts to forcibly acquire land for the POSCO-India project and to target and intimidate project opposition, have already resulted in significant human rights impacts, seemingly presenting a situation in which POSCO can use its leverage to prevent further harm. However, at present, there is no publicly available evidence that POSCO-India has attempted to use its leverage to challenge either the illegal land acquisition process or the related human rights abuses taking place.

Instead, in May 2013, Y. W. Yoon, the Chairman and Managing Director of POSCO-India, said in a statement that the company was “happy” that there “[had] been significant progress on the land clearance work for the project.”<sup>635</sup> In its reply to ESCR-Net’s April 2013 briefing note, POSCO also stated that it believes the “authorities are not using any force to evict any people.”<sup>636</sup> This, despite extensive media and civil society documentation of the use of force against project-affected communities, and despite the fact that, on at least one occasion, a POSCO-India official was reportedly on site as armed police dismantled betel vines after forcibly entering Govindpur village.<sup>637</sup>

### c. Remediation

As acknowledged under the Guiding Principles, “even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent.”<sup>638</sup> In this regard, Principle 22 states: “Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.”<sup>639</sup> The Guiding Principles call on companies to cooperate with judicial and non-judicial mechanisms, and add that: “To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.”<sup>640</sup> The design and functioning of such mechanisms should be “based on engagement and dialogue” with affected communities and other stakeholders.<sup>641</sup> Given the POSCO-India project’s clear and adverse human rights impacts—even if “not foreseen”—under the Guiding Principles POSCO has a responsibility to provide for and cooperate in remediation processes moving forward.

## 2. POSCO’s Investors

According to the U.N. Office of the High Commissioner for Human Rights (OHCHR), the Guiding Principles assign responsibilities to respect human rights to both corporations and corporate investors. In an April 2013 letter, the Office stated that “it is the view of OHCHR that the Guiding Principles apply to institutional investors holding minority shareholdings.”<sup>642</sup> The letter added that “minority shareholders of institutional investors constitute a ‘business relationship’ for the purposes of Principle 13(b),” which, as noted above, calls on business enterprises to “[s]eek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”<sup>643</sup>

In line with Principle 13, ESCR-Net and other partners sent letters to institutional investors connected to POSCO, requesting, among other things, that they use their leverage to urge POSCO management to: refrain from any involvement in the interference of the human rights of local people affected by the POSCO-India project; uphold the provisions of India’s Forest Rights Act and refrain from further land clearance until the rights claims of forest-dwelling communities are formally adjudicated and recognized communities have passed *gram sabha* resolutions giving consent for their lands to be used for the project; honor the National Green Tribunal’s suspension of environmental clearance for the project and refrain from any land acquisition and construction activities; and publicly recommend that Indian authorities permanently halt all attempts to forcibly enter into the project-affected area, and refrain from using illegal force against project affected communities.<sup>644</sup>

Of the five letters sent, responses were received from JPMorgan Chase,<sup>645</sup> Bank of NY Mellon<sup>646</sup> and Deutsche Bank.<sup>647</sup> JPMorgan Chase stated that they “are closely monitoring the situation” and added that “POSCO’s plan to build a power facility in Odisha has been filed before the National Contact Points of Korea, the Netherlands and Norway.”<sup>648</sup> JP Morgan Chase added that “there is currently an ongoing engagement between the company and investors which we are monitoring.”<sup>649</sup>

The letter from the Bank of NY Mellon clarified that:

BNY Mellon acts as depositary for Posco American Depositary Receipts (ADRs). As a depositary bank, BNY Mellon only acts as an agent and intermediary in the ADR proxy voting and tabulation process and exercises no independent discretion with respect to the proxy distribution process, nor with respect to the lodging of voting instructions received and provided in accordance with the deposit agreement.<sup>650</sup>

An ADR is a financial product of a non-U.S. company being traded on the financial markets of the U.S. Bank of NY Mellon added:

[T]he respective obligations of the parties are set forth in the deposit agreement for the Posco ADR program. As depositary, the Posco shares underlying the DRs are registered in our name and held in custody for the DR investors. Only the DR investors have voting and any dividend rights passed through to them, and BNY Mellon – as depositary – does not itself retain or exercise discretionary authority over those shares.<sup>651</sup>

In its response, Deutsche Bank stated that it has “no holdings on [its] account” and that it “has no corporate finance related exposure to the project in Odisha, India.”<sup>652</sup> The letter went on to state the following:

We are aware of the controversies related to the POSCO steel plant and port project in India. We closely monitor the progress of the company on a regular basis.... We have engaged the company regarding the issues highlighted by the ESCR-Net letter and Briefing Note. POSCO provided us with information on:

- Process for land acquisition and land clearance;
- Community consultation process;
- Review of the environmental clearance by India’s National Green Tribunal (NGT).

Furthermore, POSCO has assured us, that they will comply with any additional conditions which might result from the review by an Expert Committee as instructed by the NGT.... We will keep an open dialogue with the company on their efforts towards resolving the controversies around the project in India.<sup>653</sup>

At this writing, Blackrock and Berkshire Hathaway had not issued a response to ESCR-Net’s letter.

In accordance with the Guiding Principles, institutional investors should undertake reasonable and prudent measures to avoid human rights violations, including exercising leverage vis-à-vis their business relationships to contribute to an adequate resolution to the concerns raised by this Report. In the case that POSCO refuses to fully comply with human rights standards, investors should consider withdrawing their investment.<sup>654</sup>

### 3. Republic of Korea

As detailed in Part II.C., the Republic of Korea's has human rights obligations that extend beyond its borders. Treaty monitoring bodies have specifically noted that as part of these extraterritorial obligations (ETOs), States should ensure that their corporations do not adversely affect human rights abroad, including through developing legislation and others measures to regulate corporate activity abroad and provide access to effective remedy for those adversely affected. In 2011, and as noted above, the U.N. Committee on the Rights of the Child specifically recommended that Korea "further promote the adoption of effective corporate responsibility models by providing a legislative framework that requires companies domiciled in Korea to adopt measures to prevent and mitigate adverse human rights impacts in their operations in the country and abroad, whether by their supply chains or associates."<sup>655</sup> Echoing concerns similar to those raised in this Report, the Committee noted that businesses from the Republic of Korea "are reported to be signing, or planning to sign, land leases in various countries with negative implications for, inter alia, the right to water and housing."<sup>656</sup>

Despite this recommendation and the concerns raised in this Report, the Republic of Korea has so far failed to develop a legislative framework to regulate corporate activity abroad. It has also failed to engage with procedures as established under the OECD Guidelines for Multinational Enterprises, and which have been invoked to register concerns about the POSCO-India project. As mentioned above, in October 2012 a complaint was simultaneously filed with the National Contact Points of Norway, the Netherlands, and the Republic of Korea. The complaint states that POSCO failed to conduct due diligence and engage in "meaningful stakeholder consultation with all affected communities to identify the full scope and severity of human rights, social and environmental impacts" of its project in India.<sup>657</sup> Although both the Dutch and Norwegian NCPs have accepted the case, at this writing, the Republic of Korea NCP had yet to respond, despite its obligation to ensure that its NCP can effectively fulfill its responsibilities and "deal with the issues raised in an efficient and timely manner."<sup>658</sup>



## IV. RECOMMENDATIONS

India, the Republic of Korea, and POSCO all bear specific responsibilities to uphold human rights in the context of the POSCO-India project. ESCR-Net and IHRC call on each of these actors to take immediate steps to fulfill their respective obligations and responsibilities. ESCR-Net and IHRC also call on POSCO's investors to take reasonable and prudent measures to urge POSCO to respect human rights.

### A. For the Government of India:

- Suspend the POSCO-India project until and unless international human rights standards are fully complied with.
- Ensure full implementation of the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act) 2006, and cease all land clearance and acquisition until and unless the rights claims of forest-dwelling communities are adjudicated, and recognized rights-holders give their consent through *gram sabha* resolutions for the diversion of forested land for the POSCO-India project.
- Take decisive steps to ensure that police officials act in accordance with international standards on the use of force and do not engage in arbitrary arrests and detentions.
- Provide effective protection for project-affected communities against acts of violence committed by private actors and ensure prompt investigation and prosecution of those responsible.
- Appoint an independent judicial body to investigate and punish those responsible for the abuses documented in this Report, including any officials or members of the police who used excessive and illegal force against project-affected communities, or failed to respond to their repeated calls for protection from attacks by private actors.
- Withdraw all unsubstantiated charges against project-affected communities and immediately release all those who have been arbitrarily detained.
- Immediately dismantle any police cordons, barriers or checkpoints in the project-affected area that are not temporary in nature or otherwise justified according to international human rights standards.
- Ensure project-affected persons' freedom of expression, assembly, and movement, including their unencumbered access to healthcare services, education facilities, markets, forest resources, and sources of livelihood.
- Reinstate all government welfare services and schemes in project-affected villages.
- Provide fair and just compensation to those who have suffered destruction of property as a result of illegal police actions.
- Ensure that all project-affected persons enjoy equal protection of the law, and uphold their right to be free from discrimination, including on the basis of political opinion or belief.

- Make special efforts to ensure rights protection for children, women, Dalits, and other marginalized community members in project-affected areas who may suffer disproportionately from the abuses described in this Report.
- Ensure, at minimum, that the living conditions in the POSCO-India Transit Camp abide by international human rights standards, and that residents enjoy an adequate standard of living, including the right to adequate housing, access to adequate food, water, and sanitation, as well as access to essential healthcare, education, and child welfare services, with particular consideration for the needs of women and children.
- Devise a permanent resolution to the temporary housing situation of Transit Camp residents, in a manner that realizes their right to an adequate standard of living and involves their informed consent.
- Undertake a comprehensive environmental impact assessment for the entirety of the POSCO-India project, addressing shortcomings outlined by the National Green Tribunal in March 2012, and ensuring the meaningful participation of affected communities.

#### **B. For the Republic of Korea:**

- Take all necessary steps to ensure that POSCO respects human rights throughout the course of its operations, including its projects in India.
- Establish a legislative framework that requires companies domiciled in Korea, such as POSCO, to adopt measures to prevent and mitigate adverse human rights impacts in their operations overseas.
- Ensure access to effective judicial and non-judicial remedies for those affected by the POSCO-India project.
- Avoid facilitating or investing in projects that fail to meet human rights standards.

#### **C. For POSCO:**

- Prevent and mitigate adverse human rights impacts that are directly linked to POSCO's operations in India, even if POSCO has not caused or contributed to those impacts.
- Ensure full compliance with Indian laws and regulations, including respecting rights claims and related procedures under the Forest Rights Act, and implementing the March 2012 ruling of the National Green Tribunal calling for a "fresh review of the Project," addressing shortcomings of the initial clearance process.
- Ensure that the corporation's commitment to upholding international human rights standards is clearly communicated to all those with whom it has a business relationship and ensure that company officials receive detailed instructions concerning full implementation of this commitment.
- Provide for or cooperate in the remediation of any adverse impacts to date.

#### **D. For Investors in POSCO:**

ESCR-Net and IHRC call on investors in POSCO, including ABP, Berkshire Hathaway, Blackrock, Deutsche Bank, JPMorgan Chase, NBIM, and Bank of NY Mellon, to:

- Take reasonable and prudent measures to ensure that POSCO:
  - Respects human rights throughout its operations in India;
  - Complies fully with domestic law; and
  - Seeks to prevent or mitigate adverse human rights impacts that are linked to its operations.
- In the case that POSCO does not fully comply with human rights standards, investors should consider withdrawing their investment.

## APPENDIX

9 April 2013

### **POSCO' Reply to Brief Note on 'Impacts of POSCO-India's Project on the Lives of Local People in Jagatsinghpur, Odisha, India'**

#### **1. Background**

POSCO needs 4,004 Ac of land to set up a 12-MTPA integrated steel plant in Jagatsinghpur district of Odisha. First of all, technically speaking, 4,004 Ac of land is very compact for a 12-MTPA steel plant given the fact that more than 25% will be used for mandatory development of green belt. Secondly, the 4,004 Ac consists of 3,566 Ac (89%) of Odisha Govt's land and only 438 Ac (11%) of private land. The govt land has very sparse and encroached habitation and the private land has certain villages. Most of the inhabitants on the govt land are landless labourers who work in the betel vineyards. POSCO has requested Odisha govt to transfer only the govt land in the first phase because Odisha High Court has imposed status quo order. According to POSCO's socio-economic study, if the entire 4,004 Ac of land is taken, about 450 families will be displaced for whom there is the best R&R package from POSCO. It is totally fictitious to say that the project will evict 22,000 people and disrupt the livelihood of another 33,000 people. It is time the people of vested interest stop spreading lies about POSCO and join in the enhancement of living standard of the people in the project site.

#### **2. Crackdown on People Resisting Forcible Eviction**

First of all, it should be noted that the crude bomb which took three lives on 02<sup>nd</sup> March 2013 exploded when it was being made by the deceased with the murderous intention to attack district officials. The Police did investigation and confirmed it. It was widely reported in the local and national media. Further, it was the same group which had hurled a bomb and claimed one contractor worker life in 2011 also. POSCO strongly condemns such violence by the people of vested interest. Odisha Govt's administration is carrying out the land clearance in the govt land. As per POSCO's understanding, authorities are not using any force to evict any people. The police force is only to provide safety to the govt officials and to contain any anti-social elements. The Dinkia village school headmaster wrote letter to the parents to restrain their children from being used in the anti-project violence (Annexure-1). The Gobindpur villagers have written letter to the district officer to provide police protection and to resume land

clearance activities (Annexure-2). It proves that the Odisha Govt is not doing any forcible eviction of people from their land.

### 3. Domestic Legal Issues with the POSCO-India Project

First of all, we answer the issue of *Forest Rights Act, 2006*. Saying that the three *gram sabhas* (local assemblies) have rejected the project in the wake of Forest Rights Act, 2006 is totally incorrect and misleading. It should be noted that the *gram sabhas* are held under the notification issued by the Govt of Odisha under the *Odisha Gram Panchayat Act, 1964*. On 17<sup>th</sup> Sept. 2012, the *Panchayati Raj Department* of the GoO issued *Notification No. 17-PADM-19-1033-16190* to hold *gram sabha* in all revenue villages across Odisha under the *Gram Sabha Sashaktikaran Karjyakrama (GSSK)* between 02<sup>nd</sup> Oct and 12<sup>th</sup> Oct. 2012 and the *Block Development Officer (BDO)* to be the nodal officer. As per the *Notification*, only the following were the set agendas of the *gram sabha* across Odisha:

- Indira Awas Yojna & Mu-Kudia (Indira Housing Plan & My House)
- Preparation of five-year plan for National Rural Employment Guarantee Scheme
- Gopabandhu Gram Yojna (Gopabandhu Village Plan)
- Cement concrete road
- Selection of village panel to execute work

In the light of the *Notification*, any *gram sabha* resolutions not covered under the said *Notification* are invalid because of these reasons. Firstly, neither the diversion of the forest land nor the determination of the Scheduled Tribes or Other Traditional Forest Dwellers was the official agenda of the *gram sabha*. Secondly, anti-project activists particularly, *Mr. Sisir Mohapatra* and *Mr. Abhay Sahoo* did not allow Dinkia village's authorized executive officer, *Mr. Sridhar Swain* to conduct the *gram sabha*. Thirdly, only around 200 people, mostly belonging to anti-project outfit, attended it whereas as per the record of the Govt of Odisha the total voting population of Dinkia Panchayat, including Gobindpur, is more than 5,300. Fourthly, the villagers of Trilochanpur and Gobindpur, who also belonged to the same Dinkia Panchayat and opposed to inclusion of rejection of POSCO's forest diversion in the agenda of *gram sabha*, did not attend it to register their opposition.



The final Forest Clearance was granted by the MoEF on 04<sup>th</sup> May 2011 after considering and reconsidering anything and everything that was deemed necessary under the provisions of the applicable laws. Subsequent resolutions hold no relevance and value at all because the final Forest Clearance cannot remain endlessly open for challenge. If so happens, the Forest Clearances of all the projects in India could be challenged by such subsequent resolutions on one ground or another, leading to total industrial mess in India.

As far as the issue of MOU is concerned, the MOU was signed between POSCO and Odisha Govt in 2005 and the MOU was valid for a period of five years. The MOU expired in 2010 and since then both the parties have discussed it many times and the final draft of the MOU is almost ready in the light of new policies of the Odisha Govt. Anyway, expiration of MOU does not affect the project movement.

As far as the issue of National Green Tribunal's (NGT) order to review the Environment Clearance (ECs) is concerned, the NGT has asked to review only the additional conditions attached to the ECs in 2011. It has kept the original EC granted in 2007 intact. The renewal of ECs of steel plant and port is in the advanced stage in the Central Govt. Since the ECs are under renewal process now, POSCO is not doing any kind of activity in the site area except the Odisha Govt is securing the land, which is explicitly under the Environment Impact Assessment Notification, 2006. POSCO is not violating any provisions of the environment laws.

#### **4. Degradation of the Standard of Living for Local People and impact on the Environment**

National Institute of Applied Economic Research (NCAER) is govt-funded impartial research institute of high repute in India. The NCAER carried out socio-economic cost benefit analysis for POSCO's Odisha project in 2006. The research report is available on the homepage of the NCAER. The study highlighted how POSCO would contribute to the economy of India and Odisha. It also highlighted the huge number of employments POSCO project will generate for the local people. Casting aspersions on the NCAER study is grossly unfair.

As far as the issue of transit camp is concerned, it should be first noted why people are living in the transit camp. The fact is that the people are living in the transit camp because the anti-project people, who call themselves the champions of the human rights and well wishers of the local people, have

ousted them from their villages. POSCO adopted them have been providing basic amenities to the people living the transit camp.

As far as the myth that the construction of port will disturb the ecological life is totally incorrect. As per our Marine EIA Report, the construction and the operation of port will not disturb ecological life. If detailed information on this subject is required, POSCO will submit it.

#### **5. Corporate Responsibility to Respect Human Rights**

POSCO does not believe in violation of human rights. It knows its responsibility as corporate global citizen. Human rights are intrinsic feature of its business planning.

#### **6. UN Guiding Principles on Business and Human Rights, OECD Guidelines for Multi-national Enterprises, UN Global Compact**

POSCO being a signatory to the various principles and guidelines, including the *OECD Guidelines* and *UN Global Compact*, POSCO is mindful of its obligations under these principles and guidelines towards the local community and is working within the framework of those principles and guidelines. POSCO is open to new suggestion in the area of community consultation in Odisha. POSCO has already been carrying out various CSR activities for the local communities. POSCO's commitment to respecting the rights of the local community is uncompromising and unfaltering.

- <sup>1</sup> Interview with D.R. in undisclosed location, Odisha (Nov. 28, 2012).
- <sup>2</sup> Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012).
- <sup>3</sup> Interview with M.D. in Jagatsinghpur district, Odisha (Nov. 29, 2012).
- <sup>4</sup> Interview with PPSS leader Manorama Khatua in Jagatsinghpur district, Odisha (Nov. 29, 2012).
- <sup>5</sup> Interview with N.Y. in undisclosed location, Odisha (Nov. 28, 2012).
- <sup>6</sup> Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012).
- <sup>7</sup> See *infra* note 138.
- <sup>8</sup> Interview with V.T. in undisclosed Location, Odisha (Nov. 28, 2012).
- <sup>9</sup> Interview with H.N. in undisclosed location, Odisha (Nov. 28, 2012).
- <sup>10</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS 6 (2011), *available at* <http://www.ncpcr.gov.in/Reports/Dr%20Yogesh%20Dube%20-%20Visit%20to%20POSCO%20Area%20of%20Odisha.pdf>.
- <sup>11</sup> Interview with B.D. in undisclosed location, Odisha (Nov. 28, 2012).
- <sup>12</sup> Interview with P.K. in Jagatsinghpur district, Odisha (Nov. 29, 2012).
- <sup>13</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012); see also LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 1 (noting, following a July 2011 visit, that “the POSCO project Authority provides Rs.20/- per day per person towards their subsistence and it would continue till they are shifted to the resettlement colony.”).
- <sup>14</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).
- <sup>15</sup> See *infra* Appendix.
- <sup>16</sup> INTERNATIONAL NETWORK FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ESCR-NET), <http://www.escr-net.org/> (last visited Jun. 18, 2013).
- <sup>17</sup> *International Human Rights Clinic*, NYU SCHOOL OF LAW, <http://chrgj.org/clinics/international-human-rights-clinic> (last visited Jun. 14, 2013).
- <sup>18</sup> VIDEO VOLUNTEERS, <http://www.videovolunteers.org/> (last visited Jun. 18, 2013).
- <sup>19</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).
- <sup>20</sup> See *Corporate Accountability*, ESCR-NET, <http://www.escr-net.org/docs/i/428672> (last visited Jun. 14, 2013); see also THE BUSINESS AND HUMAN RIGHTS DOCUMENTATION PROJECT (B-HRD), [www.bhrd.org](http://www.bhrd.org) (last visited Jun. 18, 2013) (B-HRD is a joint initiative of ESCR-Net and of the International Human Rights Clinic at NYU School of Law).
- <sup>21</sup> See, e.g., CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, FOREIGN LAND DEALS AND HUMAN RIGHTS: CASE STUDIES ON AGRICULTURAL AND BIOFUEL INVESTMENT (New York: NYU School of Law, 2010), *available at* <http://chrgj.org/wp-content/uploads/2012/07/landreport.pdf> (report produced by the International Human Rights Clinic); *Building International Recognition of A Human Right to Land, Territory and Natural Resources*, ESCR-Net, <http://www.escr-net.org/docs/i/1614990> (last visited Jun. 18, 2013).
- <sup>22</sup> *Corporate Overview*, POSCO-INDIA, <http://posco-india.com/website/company/corporate-overview.htm> (last visited May 8, 2013).
- <sup>23</sup> *Investment*, POSCO-INDIA, <http://posco-india.com/website/project/investment.htm> (last visited May 8, 2013).
- <sup>24</sup> Memorandum of Understanding between the Government of Orissa and M/s POSCO for Establishment of an Integrated Steel Plant at Paradeep, § 3, Jun. 22, 2005 [hereinafter Orissa-POSCO MoU], *available at* <http://www.orissa.gov.in/posco/POSCO-MoU.htm> (“POSCO will establish an Indian company (hereinafter referred to as the “Company”) through their relevant subsidiaries, related companies or third parties nominated by POSCO to invest in the State of Orissa in : (A) steel manufacturing; (B) infrastructure necessary for the Integrated Steel Plant and related Projects; and (C) related mining of iron ore and other ores.”); *Corporate Overview*, POSCO-INDIA, *supra* note 22.
- <sup>25</sup> Orissa-POSCO MoU, *supra* note 24, § 4(I) (“The Company is desirous of developing and operating the following facilities on the basis described in this MoU in the State of Orissa with proposed investment of around US\$ 12 billion.”); MINING ZONE PEOPLES’ SOLIDARITY GROUP, IRON AND STEAL: THE POSCO-INDIA STORY 1 (2010) [hereinafter IRON AND STEAL], *available at* <http://miningzone.org/wp-content/uploads/2010/10/Iron-and-Steal.pdf> (noting that the POSCO-India project is “widely celebrated as the single largest infusion of Foreign Direct Investment (FDI) since the Indian economy liberalized in 1991”).
- <sup>26</sup> Orissa-POSCO MoU, *supra* note 24, §§ 1, 6 (ii), 6 (xii) (“[POSCO] is proposing to set up an Integrated Steel Plant of a total capacity of 12 million tonnes per annum in the State of Orissa at Paradeep, in Jagatsinghpur district.”)

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“The Company will need the equivalent of 600 million tonnes of iron ore of an average Fe content of 62%, to meet the requirements of the proposed Steel Project of 12 million tonnes per annum.” “The iron ore mining leases shall be granted to the Company initially for a period of 30 years and will be considered for renewal on an application by the Company before expiry, for another 20 years.”)

<sup>27</sup> Orissa-POSCO MoU, *supra* note 24.

<sup>28</sup> *Id.* § 12(II) (“The Government of Orissa shall recommend to the Central Govt. and facilitate granting of “Special Economic Zone” (SEZ) status as required by the Company”); *Incentives and Facilities Offered to the SEZ*, GOVERNMENT OF INDIA, <http://www.sezindia.nic.in/about-fi.asp> (listing the benefits of SEZs to companies).

<sup>29</sup> Here, “forest clearances” refers to the granting of permission to use forested land for industrial or other purposes. Such permission must originate from local governmental councils, but the State plays a role in the final clearance itself. Orissa-POSCO MoU, *supra* note 24, § 11(iii) (“The Government of Orissa agrees to use its best efforts to procure the grant of all environmental approvals and forest clearances from the Central Government within the minimum possible time for the Project.”).

<sup>30</sup> Calculated using June 2013 conversion rates. *Indian Rupees Rates Table*, X-RATES (June 23, 2013 2:48 PM), <http://www.x-rates.com/table/?from=INR&amount=1> (last visited Jun. 23, 2013).

<sup>31</sup> MANSI ASHER, NATIONAL CENTRE FOR ADVOCACY STUDIES, STRIKING WHILE THE IRON IS HOT: A CASE STUDY OF THE POHANG STEEL COMPANY’S (POSCO) PROPOSED PROJECT IN ORISSA 17 (2009) [hereinafter STRIKING WHILE THE IRON IS HOT], *available at*

[http://www.indiaenvironmentportal.org.in/files/Striking%20While%20the%20Iron%20is%20Hot\\_POSCO%20CASE%20STUDY%282%29.pdf](http://www.indiaenvironmentportal.org.in/files/Striking%20While%20the%20Iron%20is%20Hot_POSCO%20CASE%20STUDY%282%29.pdf) (quoting economists Sanat Mohanty and Sandip Daverma’s analysis of POSCO’s contract with Odisha); Tusha Mittal, *Whose steel? Who’s stealing?*, TEHELKA (Dec. 11, 2010),

<http://tehelka.com/whose-steel-whos-stealing/> (“World over, companies pay fair-market rates for the iron ore reserves they mine. India is one of the rare exceptions that has offered mining leases on a royalty basis. Until last year, it was 27 per tonne. This year, a revised policy has increased the royalty to 10 percent of the pre-shipping price.”); *FAQ*, POSCO-INDIA, <http://posco-india.com/website/press-room/faq.htm> (last visited Jun. 22, 2013) (“The objective of the state government of Orissa is to provide Mining Lease in order to attract industries and develop the area. POSCO-India will follow the policy of the Orissa State Gov’t and obtain the Mining Lease under the same conditions as that of other companies, and pay royalties.”).

<sup>32</sup> INDEX MUNDI, <http://www.indexmundi.com/commodities/?commodity=iron-ore> (last visited Jun. 22, 2013).

<sup>33</sup> Orissa-POSCO MoU, *supra* note 24, § 19(v) (“The MoU shall remain valid for a period of five years from the date of signing. Further extension, if necessary, shall be made as per mutual agreement. However, no such extension shall be considered unless the Company has made substantial progress on implementation of the project in terms of construction, erection of plant and machinery and investment at site to the satisfaction of the State Government in these five years in implementing the first phase as envisaged in this MoU.”).

<sup>34</sup> Orissa-POSCO MoU, *supra* note 24, §§ 5(ii)-(iii) (“The Company will require approximately 4,000 acres of land (hereinafter referred to as the “Land”) for the purpose of setting up the Steel Project and associated facilities, including the port facilities and a storage yard for coking coal... In addition, the Company will require approximately 2,000 acres of land for township development, recreational activities and all related social infrastructure development (collectively, the “Integrated Township Development”).” *See also* IRON AND STEAL, *supra* note 25, at 6 (detailing that “Township” land area will cover 2,000 acres).

<sup>35</sup> Geomin Minerals & Marketing Pvt. Ltd. v. State of Orissa, No. 4561, at 4 (India Supreme Court, 2013), *available at* <http://judis.nic.in/supremecourt/imgs1.aspx?filename=40411> (The land covered by the prospecting license is 2,500 hectares which converts to 6,177 acres.).

<sup>36</sup> Orissa-POSCO MoU, *supra* note 24, § (5)(iv) (“In addition to the land required for the core activities of the Overall Project, the Company may require additional land pockets for development of the ‘transportation project’ the ‘water project’ and any other project-related infrastructure facilities.”).

<sup>37</sup> The *gram panchayat* is the most localized level of Indian government, typically covering either one village or several small villages and hamlets.

<sup>38</sup> 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, at 2, 18 (2010) [hereinafter MoEF MAJORITY REPORT], *available at* <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=9&ved=0CHgQFjAI&url=http%3A%2F%2Fwww.forestrightsact.com%2Fcorporate-projects%2Fitem%2Fdownload%2F53&ei=gallUZkL1uXgA7XJgKgE&usg=AFQjCNH7A38H-CzYY0TI79863wOrd5V1cw&sig2=gHnUtPCt6lwBKVMqThak7A&bv> (noting that the eight villages are Dinkia

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and Govindpur villages in Dhinkia *gram panchayat*; Noliasahi, Bhuyanpal, Polanga, and Bayanalakanda villages in Gadkujang *gram panchayat*, and Nuagaon and Jatadhar villages (Jatadhar village is uninhabited) in Nuagaon *gram panchayat*).

<sup>39</sup> *Id.* at 45 (citing 2001 census figures). *See also* STRIKING WHILE THE IRON IS HOT, *supra* note 31, at 11 (basing off 2001 census data from the affected plant region); IRON AND STEAL, *supra* note 25, at 6, 31 (estimating number of affected to be within 20,000 to 25,000 individuals).

<sup>40</sup> MOEF MAJORITY REPORT, *supra* note 38, at 51 (adding that in the category of government land being acquired 2958.79 acres (83 %) is forest land and 607.53 acres (17 %) is non-forest land).

<sup>41</sup> *Id.* (noting that “[t]hese three villages together are cultivating forest land which is 58% of the total land to be acquired by POSCO”).

<sup>42</sup> *Id.* For more on the opposition to the project, *see infra* Part I.F.

<sup>43</sup> MOEF MAJORITY REPORT, *supra* note 38, at 49-51.

<sup>44</sup> *Id.* at 52.

<sup>45</sup> *Id.*

<sup>46</sup> IRON AND STEAL, *supra* note 25, at i.

<sup>47</sup> MOEF MAJORITY REPORT, *supra* note 38, at 89 (noting the lack of recognition of landless agricultural laborers and fishermen in the official category of project affected persons.).

<sup>48</sup> IRON AND STEAL, *supra* note 25, at 36-37 (noting that “about 20,000 - 25,000 fishermen operate in the Jatadhar and the Bay area immediately adjoining the Jatadhar. This is the area that would be lost to POSCO’s captive port.”).

<sup>49</sup> *See* MOEF MAJORITY REPORT, *supra* note 38, at 90 (noting that “Approximately 32 villages, mostly STs [Scheduled Tribes], dependent on surrounding forests where the mining for iron ore will be done to supply POSCO steel plant will also be either displaced or projected affected,” and adding that “The fate of these people has still to be decided.”).

<sup>50</sup> STRIKING WHILE THE IRON IS HOT, *supra* note 31, at 15-16 (describing how Odisha tourists visit the Khandadhar hills for their two waterfalls).

<sup>51</sup> *Id.* (stating that the Paudi Bhuiyans, a “primitive tribal community,” live in the forests in the region); *Particularly Vulnerable Tribal Groups (PTGs)*, FOREST RIGHTS ACT, <http://www.fra.org.in/newspaper.htm> (last visited Jun. 20, 2013).

<sup>52</sup> STRIKING WHILE THE IRON IS HOT, *supra* note 31, at 12 (describing Paudi Bhuiyan forms of self-sustenance as cultivating lentils and other local grains either on fixed land plots or using traditional shifting agriculture practices referred to as “*Podu*”).

<sup>53</sup> *Id.* at 16 (stating that the Khandadhar forests and hills possess iron ore deposits that are being “eyed by many iron and steel producers” including POSCO).

<sup>54</sup> Interview with PPSS leader Manorama Khatua in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>55</sup> *Jagatsinghapur District: Census 2011*, INDIA CENSUS 2011, <http://www.census2011.co.in/census/district/404-jagatsinghapur.html> (last visited Jun. 20, 2013) (recording rural population in the district to be 89.80%).

<sup>56</sup> MOEF MAJORITY REPORT, *supra* note 38, at 52 (noting that since much of the land being acquired is classified as government land, many affected families lack official title to the land even though they have been farming the land for generations); STRIKING WHILE THE IRON IS HOT, *supra* note 31, at 13 (noting that government records indicate that the land is “under forest” but do not recognize that the land has been farmed for generations).

<sup>57</sup> The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Gazette of India, Extraordinary, Law No. 2 of 2007, art. 5(d) (India) [hereinafter Forest Rights Act]. For more information, *see infra* Part III.A.3.

<sup>58</sup> MINISTRY OF ENVIRONMENT AND FORESTS / MINISTRY OF TRIBAL AFFAIRS COMMITTEE ON FOREST RIGHTS ACT, REPORT OF VISIT TO JAGATSINGHPUR (SITE OF PROPOSED POSCO PROJECT), ORISSA, 23-24 JULY 2010, at 2-4 (2010) [hereinafter MoEF/MTA Committee Report], available at <http://fracommittee.icfre.org/TripReports/Orissa/POSCO%20visit%20report,%20final,%204.8.2010%5b1%5d.pdf> (This report found: “The district administration has made no pro-active moves to identify potential claimants and provide them documents that could help determine their eligibility,” yet based on their findings, “it is clear that the residents of these villages are [traditional forest dwellers],” who have in turn passed “resolutions refusing to consent to the diversion of forest land on which they are dependent.”); STRIKING WHILE THE IRON IS HOT, *supra* note 31, at 13 (describing how the government has not acted on land title claims).

<sup>59</sup> MOEF MAJORITY REPORT, *supra* note 38, at 47. *But see* Jongsoo Park, *Korean FDI in India: Perspectives on the POSCO Project* 27, 3 TRANSNAT’L CORP. REV., no. 2, 2011, at 27, available at [http://gshp.gsnu.ac.kr/~india93/way-board/db/free/file/TNCR\\_Park.pdf](http://gshp.gsnu.ac.kr/~india93/way-board/db/free/file/TNCR_Park.pdf) (noting that more than “15,000 *Pan Baraj* [betel vineyards] are in the



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Government land” and adding that “[g]overnment records do not show that most of this land has been under betel, cashew and other cultivation for generations.”).

<sup>60</sup> IRON AND STEAL, *supra* note 25, at 32-33 (noting that a single betel leaf sells for between Rs. 0.57 - 0.60).

Interviews with area residents indicated that a single leaf can sell for as much as Rs. 1.

<sup>61</sup> *Id.* (calculating net annual income between Rs. 189,420 to Rs. 204,120 based on price of single betel leaf, respectively Rs. 0.57/leaf and Rs. 60/leaf).

<sup>62</sup> Interview with C.G. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>63</sup> IRON AND STEAL, *supra* note 25, at 31 (noting that the largest betel vine cultivator had a plot size of 17 decimals and the smallest had a plot size of 3 decimals where 100 decimals is 1 acre).

<sup>64</sup> STRIKING WHILE THE IRON IS HOT, *supra* note 31, at 12 (quoting residents and concluding based on area agriculture practices).

<sup>65</sup> LEO F. SALDANHA & BHARGAVI S. RAO, TEARING THROUGH THE WATER LANDSCAPE 14 (Environment Support Group, 2011) [hereinafter TEARING THROUGH THE WATER LANDSCAPE], available at [http://sanhati.com/wp-content/uploads/2011/05/water\\_landscape\\_esg\\_posco\\_final\\_27may2011.pdf](http://sanhati.com/wp-content/uploads/2011/05/water_landscape_esg_posco_final_27may2011.pdf).

<sup>66</sup> STRIKING WHILE THE IRON IS HOT, *supra* note 31, at 12.

<sup>67</sup> IRON AND STEAL, *supra* note 25, at 33, 34, 37.

<sup>68</sup> TEARING THROUGH THE WATER LANDSCAPE, *supra* note 65, at 14.

<sup>69</sup> STRIKING WHILE THE IRON IS HOT, *supra* note 31, at 12.

<sup>70</sup> Interview with Manorama Khatua in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>71</sup> STRIKING WHILE THE IRON IS HOT, *supra* note 31, at 12.

<sup>72</sup> IRON AND STEAL, *supra* note 25, at 33.

<sup>73</sup> *Id.* at 35 (noting that shrimp farms are throughout the region except in Nuagaon village).

<sup>74</sup> STRIKING WHILE THE IRON IS HOT, *supra* note 31, at 12 (stating that “about 50 percent” practice “pisciculture”, a form of aquaculture).

<sup>75</sup> IRON AND STEAL, *supra* note 25, at 36 (reporting statements made by two current shrimp farmers).

<sup>76</sup> STRIKING WHILE THE IRON IS HOT, *supra* note 31, at 12.

<sup>77</sup> IRON AND STEAL, *supra* note 25, at 36 (shrimp farmers reported there were roughly 2,500 – 3,000 farms in the region).

<sup>78</sup> *Id.* at 37 (noting that out of seven sampled meals, three meals’ protein component was fish).

<sup>79</sup> STRIKING WHILE THE IRON IS HOT, *supra* note 31, at 12-13 (noting this phenomenon in the Nolia Sahi hamlet of Gadkujang village).

<sup>80</sup> IRON AND STEAL, *supra* note 25, at 37 (concluding that it is likely that “80% or more” of food consumption was locally produced).

<sup>81</sup> On-site observations of the Research Team, November 2012.

<sup>82</sup> IRON AND STEAL, *supra* note 25, at 37 (describing how various fruits and vegetables from the forest comprised a large portion of two of the seven sampled meals).

<sup>83</sup> TEARING THROUGH THE WATER LANDSCAPE, *supra* note 65, at 16 (“With large commons to forage along the beach, each family has anywhere between 5 and 10 cows and goats.”).

<sup>84</sup> *Id.* (“The milk supplied is an important nutrition supplement and the excess is readily exported out for income. The sale of goats also bring in much added value to the sustenance of livelihoods of this region.”).

<sup>85</sup> On-site observations of the Research Team, November 2012.

<sup>86</sup> Open Letter from India Wildlife Society to Jairam Ramesh, Minister of State, Ministry of Environment and Forests, 1 (Jul. 11, 2013) [hereinafter Open Letter to Ramesh], available at <http://www.wpsi-india.org/images/jramesh.pdf> (“The Jatadhar river mouth marks the northern boundary of the restricted fishing zone, set up by the Odisha Government and recommended by the Supreme Court’s Central Empowered Committee, for the protection of the offshore congregations of olive ridley sea turtles [a protected species under Schedule – I of the Indian Wild Life (Protection) Act, 1991]. Therefore the nearshore waters region between Jatadhar river mouth and the Devi river mouth are protected waters under the Odisha Marine Fisheries Regulation Act, 1983. The turtles use these waters as breeding areas, prior to their arrival onshore for nesting. Offshore congregations have been recorded here by scientists as well as fisherfolk.”).

<sup>87</sup> *Id.* at 2 (“At these beaches, olive ridley turtles arrive in large numbers laying more than 100,000 nests per year.... The only known mass nesting sites globally for olive ridleys are in Pacific Costa Rica, Mexico and Odisha, with recent studies indicating sites in Nicaragua and Panama.”).

<sup>88</sup> TEARING THROUGH THE WATER LANDSCAPE, *supra* note 65, at 32 (“This is not a trivial issue particularly considering that the breeding success of the highly endangered Horse Shoe Crabs is directly dependent on the grain



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size of the sediment closer to the shore.”).

<sup>89</sup> *Id.* (noting that the port’s rapid environmental impact assessment acknowledges “the serious impact that dredging will have on the coastal and estuarine ecosystems. It admits that the ‘immediate consequences of dredging are the destruction of benthic communities and obliteration of spawning and nursery grounds for fish and shrimps.’”).

<sup>90</sup> *See infra* note 97 and accompanying text.

<sup>91</sup> MoEF MAJORITY REPORT, *supra* note 38, at 10. *See also* Orissa-POSCO MoU, *supra* note 24, § 7 (“The Government of Orissa will permit drawal [sic] and use of water from the Mahanadi barrage at Jobra in Cuttack or any other suitable source for construction and operation of the Overall Project as per the prevailing rates and appropriate terms and approval of the Water Allocation Committee, subject to availability.”). *See also* Abhishek Shanker, *India’s Bitter choice: Water for Steel or Food*, BLOOMBERG BUSINESSWEEK, Oct. 7, 2010, available at [http://www.businessweek.com/magazine/content/10\\_42/b4199020700235.htm](http://www.businessweek.com/magazine/content/10_42/b4199020700235.htm) (estimating that “[t]he 160 million tons of planned steel capacity would consume 640 billion gallons of water a year, based on the average consumption by U.S. steel mills,” and adding that “[t]hat’s enough to provide adequate water for drinking and cooking for 133 million people in India over the same period, according to government figures.”).

<sup>92</sup> TEARING THROUGH THE WATER LANDSCAPE, *supra* note 65, at 6, 14 (“Along the margins of this land, mangroves hang on resolutely and work with the sand dunes to shelter inland regions from the rage of the frequent cyclones.”)

<sup>93</sup> *Id.* at 14, 25 (“The super-cyclone of 1999 tore through inland areas at a devastating speed of 259 kms. But houses in Govindpur, Dinkia/Patna, etc., were hardly affected as the sand dunes stood up as a mighty wall against the rage of the cyclone”; “Mangroves significantly reduced the number of deaths during the 1999 cyclone that struck the eastern coast of India. Statistical evidence of this lifesaving effect is robust, with the coefficient on 1999 mangrove width in our village-level regression analysis remaining highly significant after we controlled for a wide range of potentially confounding environmental and socioeconomic variables. By controlling for historical mangrove width, we revealed that the beneficial effect was mainly due to mangrove vegetation, not physical characteristics of mangrove habitat.”).

<sup>94</sup> CENTRE FOR SCIENCE AND ENVIRONMENT, ANALYSIS OF THE COMPREHENSIVE EIA OF THE MINOR PORT OF POSCO IN ORISSA (2010), available at <http://server63.spikecloud.net.in/reports-documents/analysis-comprehensive-eia-minor-port-posco-orissa>; MoEF MAJORITY REPORT, *supra* note 38, at 175.

<sup>95</sup> *Who we are*, ENVIRONMENT SUPPORT GROUP, <http://www.esgindia.org/about-us/index.html> (last visited May 11, 2013).

<sup>96</sup> TEARING THROUGH THE WATER LANDSCAPE, *supra* note 65, at 28-29 (breaking down and explaining the delinking process thoroughly).

<sup>97</sup> IRON AND STEEL, *supra* note 25, at 60 (summarizing conclusions of rapid EIA analyses of groups and specifically referring to the lack of information on the impact of wastes on air pollution).

<sup>98</sup> *Id.* at 63-64.

<sup>99</sup> *See id.* (noting that the first violation listed in the letter was that a Comprehensive EIA is required by the law).

<sup>100</sup> *Id.* (noting that the letter asserted that POSCO field researchers had “entirely concocted” their survey and other data because no surveys or focus group discussions were conducted “in any of the 63 villages”) (emphasis original).

<sup>101</sup> *Samantray v. Union of India & Others*, Appeal No. 8/2011 (Nat’l Green Trib. March 30, 2012) (India), at 2 available at [http://www.greentribunal.in/judgment/8-2011\(Ap\)\\_30Mar2012\\_final\\_order.pdf](http://www.greentribunal.in/judgment/8-2011(Ap)_30Mar2012_final_order.pdf).

<sup>102</sup> *Id.* (stating that the appeal occurred after the final MoEF order in March 2011).

<sup>103</sup> NATIONAL GREEN TRIBUNAL, <http://www.greentribunal.in> (last visited Jun. 15, 2013) (noting that the NGT is “a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues... The Tribunal’s dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts.”).

<sup>104</sup> *Samantray v. Union of India*, *supra* note 101, para. 2.

<sup>105</sup> *Id.* para. 8.5 (“The MOEF shall consider optimizing the total land requirement for 4 MTPA Steel plant proportionately instead of allotting entire land required for 12 MTPA steel plant which is an uncertain contingency.”).

<sup>106</sup> *Id.* para. 7.4 (“According to project proponent, the project is a zero discharge proposal, however, a closer look into the proposal, reveals that something like 47 cubic meter per hour of wastewater is to be discharged into the sea.”).

<sup>107</sup> *Id.* (“It appears, the alternative water source for the present project, like creating/ constructing a small barrage or augmenting any other existing source at the cost of project proponent to avoid the utilizing the water meant for Cuttack city, particularly in the nature and magnitude of the proposed project conceived could be examined.”).

<sup>108</sup> *Id.* para. 7.

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<sup>109</sup> *Id.* para. 8.1.

<sup>110</sup> *Samantara v. Union of India*, Original Application No. 123 of 2013 (Nat'l Green Trib. May 28, 2013) (India), available at [http://www.greentribunal.in/orderinpdf/123-2013\(OA\)\\_28May2013.pdf](http://www.greentribunal.in/orderinpdf/123-2013(OA)_28May2013.pdf).

<sup>111</sup> IRON AND STEAL, *supra* note 25, at i (“Estimated at USD \$12 billion (Rs.52,000 crores), the project was claimed by Orissa government to ‘bring prosperity and well-being to its people’ by embarking on major industrialization based upon exploitation of its natural resources.”).

<sup>112</sup> *Sponsors and Partners*, NATIONAL COUNCIL OF APPLIED ECONOMIC RESEARCH (NCAER), <http://www.ncaer.org/sponsors.html> (last visited Jun. 15, 2013).

<sup>113</sup> NAT'L COUNCIL OF APPLIED ECONOMIC RESEARCH, SOCIAL COST BENEFIT ANALYSIS OF THE POSCO STEEL PLANT IN ORISSA (2007) [hereinafter NCAER, POSCO STEEL PLANT IN ORISSA], available at <http://www.ncaer.org/Downloads/Reports/Posco.pdf>.

<sup>114</sup> *Id.* at 15.

<sup>115</sup> IRON AND STEAL, *supra* note 25, at ii.

<sup>116</sup> NCAER, POSCO STEEL PLANT IN ORISSA, *supra* note 113, at i (“POSCO has two alternatives. It could either stop the project at the iron ore mining stage, or, it may go on to use the mined ore for making steel. Therefore, we study the impact of both options, by calculating the Output and Employment Multipliers, taking into account backward linkages of the iron ore and steel sectors.”).

<sup>117</sup> IRON AND STEAL, *supra* note 25, at 30 (noting that no party, not even NCAER, has baseline data on the local economy in the region).

<sup>118</sup> *Id.* at 30 (arguing that there is “no basis” to compare whether an announced compensation package is “adequate and/or fair”).

<sup>119</sup> *Id.*, at 26. One crore equals 10 million rupees.

<sup>120</sup> SEZ Board of Approvals, Ministry of Commerce and Industry, Minutes of the 56th meeting of the SEZ Board of Approval held on January 18, 2013 to consider proposals for setting up Special Economic Zones and other miscellaneous proposals (Jan. 18, 2013) at 5, available at <http://www.sezindia.nic.in/writereaddata/BOA/Minutes%20of%2056th%20BoA%20on%20SEZ%2018th%20January%202013.pdf> (“The Board noted that the State Government has recommended the proposal for grant of extension of in-principle approval for 7th year for the project.”).

<sup>121</sup> SEZ Board of Approvals, Ministry of Commerce and Industry, Minutes of the 36th meeting of the SEZ Board of Approval held on November 5, 2009 to consider proposals for setting up of Special Economic Zones (Nov. 5, 2009) at 12, available at <http://sezindia.nic.in/writereaddata/BOA/Minutesof36th%20BoAon5thNov09.pdf>.

<sup>122</sup> Ministry of Commerce and Industry, SEZ Rules, 2010 – Fifth Amendment G.S.R. 903.E. (Nov. 10, 2010) at 2, available at <http://sezindia.nic.in/writereaddata/rules/Rule5.pdf>.

<sup>123</sup> See *supra* Part I.A.

<sup>124</sup> Interview with C.G. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>125</sup> IRON AND STEAL, *supra* note 25, at 2 (noting that the blockade continued until May 2010).

<sup>126</sup> Interview with A.S. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>127</sup> Interview with M.S. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>128</sup> Interview with B.A. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>129</sup> Interview with J.H. in Jagatsinghpur district, Odisha (Nov. 29, 2012). For more on compensation related to the POSCO-India project, see *infra* Part III.A.4.

<sup>130</sup> IRON AND STEAL, *supra* note 25, at 7 (noting one of the first *dharnas* in November 29, 2007).

<sup>131</sup> See *infra* Part III.A.3.

<sup>132</sup> TEARING THROUGH THE WATER LANDSCAPE, *supra* note 65, at 48 (describing how an MoEF Committee recommended revoking the environmental clearance for the POSCO-India project “on the basis of exhaustive and systematic review” of submissions, including from the PPSS).

<sup>133</sup> See, e.g., Press Release, POSCO Pratirodh Sangram Samiti (PPSS), Socialist Alternative, <http://socialism.in/index.php/posco-pratirodh-sangram-samiti-ppss-press-release/> (last visited Jun. 19, 2013).

<sup>134</sup> See *id.* IIA (10) (“Enterprises should... carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts...”); *Guiding Principles on Business and Human Rights*, *infra* note 216, princ. 15 (“In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: ... A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.”).

- <sup>135</sup> See generally LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10.
- <sup>136</sup> *Cops in School at POSCO Site, NHRC sends notice*, INDIAN EXPRESS, July 28, 2011, available at <http://www.indianexpress.com/news/cops-in-school-at-posco-site-nhrc-sends-notice/823426>; *Odisha: NHRC visit to Posco area to investigate human right violation*, ODISHADIARY.TV (Apr. 11, 2012), <http://www.orissadiary.com/CurrentNews.asp?id=33159>.
- <sup>137</sup> *NHRC team takes stock of human rights violations at Posco site*, BUSINESS STANDARD, April 11, 2012, available at [http://www.business-standard.com/article/economy-policy/nhrc-team-takes-stock-of-human-rights-violations-at-posco-site-112041102028\\_1.html](http://www.business-standard.com/article/economy-policy/nhrc-team-takes-stock-of-human-rights-violations-at-posco-site-112041102028_1.html).
- <sup>138</sup> ALTERNATIVE LAW FORUM, DELHI FORUM, CAPTIVE DEMOCRACY: ABUSE OF THE CRIMINAL SYSTEM AND FILING FALSE CASES TO CURB DISSENT AGAINST THE POSCO STEEL PLANT IN ODISHA (2013) [hereinafter CAPTIVE DEMOCRACY], available at [http://www.altlawforum.org/sites/default/files/Captive\\_Democracy\\_POSCO\\_Fact\\_Finding%20\\_Report.pdf](http://www.altlawforum.org/sites/default/files/Captive_Democracy_POSCO_Fact_Finding%20_Report.pdf).
- <sup>139</sup> *Collective open letter to the Government of Odisha, India, Feb. 15, 2013*, WITNESS.ORG, <http://www.witness.org/about-us/media-center/pressroom/collective-open-letter-government-odisha-india-15-february-2013>.
- <sup>140</sup> Portions of this analysis were derived from CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, EVERY THIRTY MINUTES: FARMER SUICIDES, HUMAN RIGHTS, AND THE AGRARIAN CRISIS IN INDIA 14-16 (New York: NYU School of Law, 2011), available at <http://www.chrgj.org/publications/docs/every30min.pdf>.
- <sup>141</sup> World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, ¶ 5, U.N. Doc. A/CONF.157/23 (July 12, 1993).
- <sup>142</sup> India acceded to the ICESCR on April 10, 1979. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; see also International Covenant on Economic, Social and Cultural Rights, UN Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) (last visited Jun. 12, 2013).
- <sup>143</sup> India acceded to the ICCPR on April 10, 1979. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; see also International Covenant on Civil and Political Rights, UN Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (last visited Jun. 12, 2013).
- <sup>144</sup> India signed CEDAW on July 30, 1980, and ratified it on July 9, 1993. Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; see also Convention on the Elimination of All Forms of Discrimination Against Women, UN Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) (last visited Jun. 12, 2013).
- <sup>145</sup> India acceded to the CRC on December 11, 1992. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]; see also Convention on the Rights of the Child, UN Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (last visited Jun. 12, 2013).
- <sup>146</sup> India signed ICERD on March 2, 1967, and ratified it on December 3, 1968. International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter ICERD]; see also International Convention on the Elimination of All Forms of Racial Discrimination, UN Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en) (last visited Jun. 12, 2013).
- <sup>147</sup> ICESCR, *supra* note 142, art. 11(1).
- <sup>148</sup> *Id.* art. 12(1) (guaranteeing the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” This includes environmental hygiene and access to medical services). See Committee on Economic Social and Cultural Rights, *General Comment No. 7: The Right to Adequate Housing: Forced Evictions (Art. 11(1) of the Covenant)*, ¶ 3, U.N. Doc. E/1998/22. Annex IV (1997) [hereinafter ESCR Committee, *General Comment No. 7*], available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=47a70799d&page=search>.
- <sup>149</sup> ICESCR, *supra* note 142, art. 6(1) (The right to work includes “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.”). See also Committee on Economic, Social and Cultural Rights, *General Comment No.18: The Right to Work (Art. 6 of the Covenant)*, U.N. Doc. E/C.12/GC/18 (2006)

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[hereinafter ESCR Committee, *General Comment No. 18*], available at <http://www.refworld.org/docid/4415453b4.html>.

<sup>150</sup> ICESCR, *supra* note 142, art. 13 (Education “shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.” The right to education includes free and compulsory primary education; secondary and higher education should be accessible to all.). See also Committee on Economic, Social and Cultural Rights, *General Comment No.13: The Right to Education (Art. 13 of the Covenant)*, U.N. Doc. E/C.12/1999/10 (1999) [hereinafter ESCR Committee, *General Comment No. 13*], available at <http://www.refworld.org/docid/4538838c22.html>.

<sup>151</sup> ICESCR, *supra* note 142, art. 2(1) (“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”). For an interpretation of the legal obligations of Article 2(1), see generally Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The nature of States parties obligations (Art. 2, para. 1 of the Covenant)*, U.N. Doc. E/1991/23 (1990) [hereinafter ESCR Committee, *General Comment No. 3*], available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument).

<sup>152</sup> *Id.*, ¶¶ 1-2

<sup>153</sup> ESCR Committee, *General Comment No. 3*, *supra* note 151, ¶ 10.

<sup>154</sup> See *id.* ¶ 9 (“any deliberately retrogressive measures in that regard [in contrast to progressive realization] would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”).

<sup>155</sup> ICCPR, *supra* note 143, art. 6(1).

<sup>156</sup> *Id.* art. 9.

<sup>157</sup> *Id.* art. 9(1).

<sup>158</sup> *Id.* art. 19.

<sup>159</sup> *Id.* art. 21.

<sup>160</sup> *Id.* art. 22.

<sup>161</sup> *Id.* art. 12.

<sup>162</sup> *Id.* art. 25(a).

<sup>163</sup> ICESCR, *supra* note 142, art. 2(2) (States parties to the ICESCR “undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); ICCPR, *supra* note 143, art. 2(1) (States parties to the ICCPR “undertake[] to respect and to ensure to all individuals within [their] territory and subject to [their] jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”).

<sup>164</sup> CEDAW, *supra* note 144, art. 2(e).

<sup>165</sup> *Id.* art. 4.

<sup>166</sup> *Id.* art. 14.

<sup>167</sup> CRC, *supra* note 145, art. 3.

<sup>168</sup> *Id.* art. 6.

<sup>169</sup> *Id.* art. 12.

<sup>170</sup> ICERD, *supra* note 146, art. 2. See also Committee on the Elimination of Racial Discrimination, *General Recommendation No. 29: Article 1, paragraph 1 of the Convention (Descent): Regarding Descent*, ¶ 1 (2002), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/f0902ff29d93de59c1256c6a00378d1f](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/f0902ff29d93de59c1256c6a00378d1f) (affirming that discrimination based on ‘descent’ includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status).

<sup>171</sup> Committee on Economic, Social & Cultural Rights, *Consideration of Reports Submitted Under Articles 16 & 17 of the Covenant: Concluding Observations of the Committee on Economic, Social, and Cultural Rights: India*, paras. 29, 69, U.N. Doc. E/C.12/IND/CO/5 (2008), available at

<http://www2.ohchr.org/english/bodies/cescr/docs/co/E.C.12.IND.CO.5.doc>. The obligation to respect is a duty of non-interference with the existing enjoyment of rights. The obligation to protect entails an obligation to ensure that non-state actors are not interfering with the enjoyment of human rights (including corporations), while the obligation to fulfil requires States to take positive measures that enable and assist individuals and communities to enjoy human rights. See, e.g., Committee on Economic, Social and Cultural Rights, *General Comment No.15: The Right to Water*



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(Arts. 11 & 12 of the Covenant), paras. 21-29, U.N. Doc. E/C.12/2002/11 (2002) [hereinafter ESCR Committee, *General Comment No. 15*], available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf); Committee on Economic, Social & Cultural Rights, *General Comment No. 12: The right to adequate food*, para. 15, U.N. Doc. E/C.12/1999/5 (1999) [hereinafter ESCR Committee, *General Comment No. 12*]; ESCR Committee, *General Comment No. 13*, *supra* note 150, para. 47

<sup>172</sup> ESCR Committee, *General Comment No. 15*, *supra* note 171, para. 23. See also, *Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights*, 20 HUM. RIGHTS Q. 691, 694, ¶ 6 (1998) [hereinafter *Maastricht Guidelines*], available at <http://www.jstor.org/stable/pdfplus/762783.pdf> (“The obligation to protect requires States to prevent violations of such rights by third parties.”); *id.* at 698, ¶ 18 (“The obligation to protect includes the State’s responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-state actors.”); *Vélásquez Rodríguez v. Honduras*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, paras. 172, 176 (Jul. 29, 1989) [hereinafter *Vélásquez Rodríguez*], available at [http://www1.umn.edu/humanrts/iachr/b\\_11\\_12d.htm](http://www1.umn.edu/humanrts/iachr/b_11_12d.htm).

<sup>173</sup> See, e.g., *Vélásquez Rodríguez*, *supra* note 172, para. 176 (“The State is obligated to investigate every situation involving a violation of the rights protected by the Convention.”).

<sup>174</sup> *Id.* para. 172.

<sup>175</sup> Universal Declaration of Human Rights, art. 8, G.A. Res. 217 (III) A, U.N. GAOR, U.N. Doc. A/ RES/217(III) (Dec. 12, 1948) [hereinafter UDHR]; ICCPR, *supra* note 143, art. 2(3); See, e.g., ESCR Committee, *General Comment No. 12*, *supra* note 171. (“Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition.”).

<sup>176</sup> See, e.g., CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE, RIGHTS WITHIN REACH 9 (2010), available at <http://chrgj.org/wp-content/uploads/2012/07/rightswithinreach.pdf> (citing Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation on State Parties to the Covenant*, para. 4, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) [hereinafter Human Rights Committee, *General Comment No. 31*], available at <http://www.unhcr.org/refworld/pdfid/478b26ae2.pdf>) (“Much attention has focused on proposals regarding Nepal’s federal structure and on the creation of individual states to protect the rights of marginalized groups. Regardless of what form of State structure is ultimately adopted, Nepal’s obligation to respect, protect, and fulfill human rights extends to all levels of government—national, regional, and local.”).

<sup>177</sup> INDIA CONST. art. 21.

<sup>178</sup> *Id.* art. 19.

<sup>179</sup> *Id.* art. 22.

<sup>180</sup> For important judgments that have clearly established the interdependence between the right to housing and the right to residence as guaranteed by article 19(1)(e) and the right to life as guaranteed by article 21 see *U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd.*, 1996 A.I.R. 114, 1995(3)Suppl.SCC 456; *Chameli Singh v. State of U.P.*, 1996 A.I.R. 1051, 1996(2) SCC 549; *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, 1981 A.I.R. 746, 1981(2) SCR 516 at 529; *Shantistar Builders v. Narayan Khimalal Totame*, 1996 A.I.R. 786, 1995(5) Suppl.SCR 478; *Olga Tellis v. Bombay Municipal Corp.*, 1986 A.I.R. 180, 1985(2) SCR 51.

<sup>181</sup> ESCR Committee, *General Comment No. 7*, *supra* note 148, para. 3 (stating that “[t]he term “forced evictions” as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.”). See also Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, *Basic principles and guidelines on development based evictions and displacement: Annex 1 of the report of the Special Rapporteur on the adequate housing as a component of the right to an adequate standard of living*, ¶ 4, U.N. Doc. A/HRC/4/18 (Jun. 11, 2007), [hereinafter Kothari, *Basic principles and guidelines on development based evictions and displacement: Annex 1*] (referring to “acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an

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individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.”).

<sup>182</sup> UN Commission on Human Rights, *Forced Evictions*, ¶ 1, U.N. Doc. E/CN.4/RES/1993/77. The international human right to adequate housing and protection against forced eviction is drawn primarily from article 11(1) of the ICESCR, *supra* note 142, which recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”). See also Committee on Economic, Social & Cultural Rights, *General Comment No. 4: The right to adequate housing (Art. 11)*, para. 18, U.N. Doc. E/1992/23, (1991) [hereinafter ESCR Committee, *General Comment No. 4*] (stating that “instances of forced eviction are prima facie incompatible with the requirements of the Covenant”) and para. 8(a) (“all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats”); ICCPR, *supra* note 143, art. 17 (stating that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence....”); Kothari, *Basic principles and guidelines on development based evictions and displacement: Annex 1*, *supra* note 181, ¶ 6 (stating that “[f]orced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement. Evictions must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law.”).

<sup>183</sup> ESCR Committee, *General Comment No. 4*, *supra* note 182, para. 18.

<sup>184</sup> ESCR Committee, *General Comment No. 7*, *supra* note 148, para. 13 (“State parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons....”). See also Kothari, *Basic principles and guidelines on development based evictions and displacement: Annex 1*, *supra* note 181, ¶ 38 (“States should explore fully all possible alternatives to evictions.”).

<sup>185</sup> ESCR Committee, *General Comment No. 7*, *supra* note 148, para. 15 (“The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;...”). See also Kothari, *Basic principles and guidelines on development based evictions and displacement: Annex 1*, *supra* note 181, ¶¶ 37-41 (outlining the obligations to adequately notify, inform and consult with all individuals concerned).

<sup>186</sup> ESCR Committee, *General Comment No. 7*, *supra* note 148, para. 15 (outlining that one of the procedural protections in relation to forced eviction includes the “provision of legal remedies”). See also Kothari, *Basic principles and guidelines on development based evictions and displacement: Annex 1*, *supra* note 181, ¶ 17 (“States must ensure that adequate and effective legal or other appropriate remedies are available to any person claiming that his/her right to protection against forced evictions has been violated or is under threat of violation.”).

<sup>187</sup> ESCR Committee, *General Comment No. 7*, *supra* note 148, para. 13 (“Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.”). See also Kothari, *Basic principles and guidelines on development based evictions and displacement: Annex 1*, *supra* note 181, ¶¶ 59-68 (outlining appropriate remedies for those subject to forced evictions, including compensation, restitution and return, and resettlement and rehabilitation).

<sup>188</sup> ESCR Committee, *General Comment No. 7*, *supra* note 148, para. 11 (“Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.”).

<sup>189</sup> Forest Rights Act, *supra* note 57, s. 3.

<sup>190</sup> *Id.* s. 2(o) (“[O]ther traditional forest dweller” means any member or community who has for at least three generations prior to the 13<sup>th</sup> day of December, 2005 primarily resided in and who depends on the forest or forests land for *bona fide* livelihood needs. *Explanation:* For the purpose of this clause, “generation” means a period comprising of twenty five years.”).

<sup>191</sup> See *id.* s.3(1).

<sup>192</sup> *Id.* s.3 (a).

<sup>193</sup> *Id.* s.3 (c).



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<sup>194</sup> *Id.* s.3 (i).

<sup>195</sup> *Id.* s.6 (1); Forest Rights Rules, 2007, Gazette of India, pt. II, section III(i) (June 19, 2007); Forest Rights Amendment Rules, 2012, Gazette of India, pt. II, section 3(i) (June 19, 2012).

<sup>196</sup> Forest Rights Act, *supra* note 57, s.4 (5) (“Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed.”).

<sup>197</sup> Article 243(b) of the Indian Constitution defines gram sabha as “a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level.” INDIA CONST. art. 243(b).

<sup>198</sup> Forest Rights Act, *supra* note 57, s.5 (“The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to (a) protect the wild life, forest and biodiversity;(b) ensure that adjoining catchments area, water sources and other ecological sensitive areas adequately protected; (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage; (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.”).

<sup>199</sup> Under the Forest Rights Act, the government may divert some forest land for (a) schools; (b) dispensary or hospital; (c) anganwadis; (d) fair price shops; (e) electric and telecommunication lines; (f) tanks and other minor water bodies; (g) drinking water supply and water pipelines; (h) water or rain harvesting structures; (i) minor irrigation canals; (j) non-conventional source of energy; (k) skill upgradation or vocational training centers; (l) roads; and (m) community centers. Even for these enumerated public use diversions, however, the project cannot fell more than seventy-five trees per hectare, the forest land to be diverted must be less than one hectare, and the Gram Sabha must recommend the project. *Id.* s.3 (2).

<sup>200</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 10, G.A. Res. 61/295, U.N. Doc. A/RES/61/297 (Sept. 13, 2007).

<sup>201</sup> *Id.*

<sup>202</sup> Forest Rights Act, *supra* note 57.

<sup>203</sup> See MOEF MAJORITY REPORT, *supra* note 38, at 90.

<sup>204</sup> ICCPR, *supra* note 143, art. 25 (Stating that everyone “shall have the right and the opportunity... to take part in the conduct of public affairs.”).

<sup>205</sup> Human Rights Committee, *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service*, ¶ 5, U.N. Doc. CCPR/C/21/Rev.1/Add.7.

<sup>206</sup> *Id.* ¶ 8.

<sup>207</sup> *Id.* ¶ 6.

<sup>208</sup> *Id.* ¶ 8.

<sup>209</sup> UDHR, *supra* note 175, Preamble.

<sup>210</sup> Int’l Labour Org., *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*, Nov. 16, 1977, 17 ILM 422, ¶ 8 (1978), available at [http://www.ilo.org/public/libdoc/ilo/1977/77B09\\_1238\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/1977/77B09_1238_engl.pdf).

<sup>211</sup> See U.N. General Assembly, *The Impact of Property on the Enjoyment of Human Rights and Fundamental Freedoms*, G.A. Res. 42/115, U.N. Doc. A/RES/42/115 (Dec. 7, 1987), available at <http://www.un.org/documents/ga/res/42/a42r115.htm> (“The General Assembly . . . vigorously condemns the transnational corporations that maintain or are increasing their collaboration with the racist regime of South Africa, thus encouraging that regime to persist in its inhuman and criminal policy of brutal oppression of the peoples of southern Africa and denial of their human rights and becoming accomplices in the inhuman practices of racial discrimination, colonialism and apartheid.”).

<sup>212</sup> E.S.C. Res. 1987/18, U.N. Doc. E/RES/1987/18 (Jan. 1, 1987) (urging “transnational corporations to ensure that their activities do not adversely affect the process of implementing human rights in developing countries”).

<sup>213</sup> See *infra* note 216 and accompanying text.

<sup>214</sup> See, e.g., Committee on the Rights of the Child, *General Comment No. 16: On State obligations regarding the impact of the business Sector on children’s Rights*, ¶ 1, U.N. Doc. CRC/C/GC/16 (2013) [hereinafter CRC Committee, *General Comment No. 16*], available at <http://www.un.org/Docs/journal/asp/ws.asp?m=CRC/C/GC/16> (“the realization of children’s rights is not an automatic consequence of economic growth and business enterprises can also negatively impact children’s rights.”) See also Committee on Economic Social & Cultural Rights,

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*Statement of the obligations of States Parties regarding the corporate sector and economic, social and cultural rights*, ¶ 1, U.N. Doc. E/C.12/2011/1 (2011).

<sup>215</sup> CRC Committee, *General Comment No. 16*, *supra* note 214, ¶ 8.

<sup>216</sup> John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, princ.1 U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) (endorsed by the U.N. Human Rights Council, Res. 17/4, June 16, 2011) (report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises) [hereinafter *Guiding Principles on Business and Human Rights*], available at [www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.31\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.31_en.pdf) (last visited June 22, 2013).

<sup>217</sup> *Id.* princ. 23.

<sup>218</sup> *See generally id.* at princ.14.

<sup>219</sup> *Id.* princ. 12.

<sup>220</sup> *Id.* princ. 11.

<sup>221</sup> *Id.* princ. 13.

<sup>222</sup> The Orissa-POSCO MoU creates a detailed cooperative framework between the Indian government and POSCO. Orissa-POSCO MoU, *supra* note 24. *See infra* Part III for information on these abuses.

<sup>223</sup> *Guiding Principles on Business and Human Rights*, *supra* note 216, princ. 11. *See also id.* princs. 13, 17. John Ruggie, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, ¶ 56, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008), available at [www2.ohchr.org/english/bodies/hrcouncil/docs/.../A-HRC-8-5.doc](http://www2.ohchr.org/english/bodies/hrcouncil/docs/.../A-HRC-8-5.doc) (report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises). In order to perform adequate due diligence, companies should: adopt human rights policies, which must be integrated throughout the company; conduct human rights impact assessments of their proposed plans “to address and avoid potential negative human rights impacts on an ongoing basis;” track human rights compliance performance; and facilitate “initiatives [that] can promote [the] sharing of information, improvement of tools, and standardization of metrics” on a global scale. *Id.* ¶¶ 60-64. Furthermore, “[f]or the substantive content of the due diligence process, companies should look, at a minimum, to the international bill of human rights [i.e. the Universal Declaration of Human Rights, as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights] and the core conventions of the ILO, because the principles they embody comprise the benchmarks against which other social actors judge the human rights impacts of companies.” *Id.* ¶ 58.

<sup>224</sup> *Guiding Principles on Business and Human Rights*, *supra* note 216, princ. 18.

<sup>225</sup> *Id.* princ. 29.

<sup>226</sup> *Id.*

<sup>227</sup> *List of OECD Member countries – Ratification of the Convention of OECD*, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, <http://www.oecd.org/general/listofoeedmembercountries-ratificationoftheconventionontheoecd.htm> (last visited Jun. 14, 2013).

<sup>228</sup> ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, GUIDELINES FOR MULTINATIONAL ENTERPRISES 31 (2011) [hereinafter, OECD, GUIDELINES FOR MULTINATIONAL ENTERPRISES], available at <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>229</sup> *See id.* IIA (10) (“Enterprises should... carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts...”); *Guiding Principles on Business and Human Rights*, *supra* note 216, princ. 15 (“In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: ... A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.”).

<sup>230</sup> *The Ten Principles*, UNITED NATIONS GLOBAL COMPACT, princs. 1, 2, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> (last visited Jun. 14, 2013).

<sup>231</sup> *POSCO Commitment Letter*, UNITED NATIONS GLOBAL COMPACT, [http://www.unglobalcompact.org/system/commitment\\_letters/17156/original/UNGC\\_Entry\\_POSCO.pdf?1338361836](http://www.unglobalcompact.org/system/commitment_letters/17156/original/UNGC_Entry_POSCO.pdf?1338361836) (last visited June 14, 2013).

<sup>232</sup> *Code of Conduct*, POSCO-INDIA, <http://www.posco.co.kr/homepage/docs/eng2/html/company/ethics/s91a3010050c.jsp> (last visited June 14, 2103).

<sup>233</sup> *Sustainability Commitment*, POSCO-INDIA, <http://posco-india.com/website/sustainability/commitment.htm> (last visited Jun. 14, 2103). *See also* Appendix.

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<sup>234</sup> *Ratification of International Human Rights Treaties – Republic of Korea*, UNIVERSITY OF MINNESOTA HUMAN RIGHTS LIBRARY, <http://www1.umn.edu/humanrts/research/ratification-korea-rep.html> (last visited Jun. 23, 2013).

<sup>235</sup> ICESCR, *supra* note 142, art. 2(1).

<sup>236</sup> See, e.g., ESCR Committee, *General Comment No. 12*, *supra* note 171, para. 36 (stating that “State parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food. In implementing this commitment, States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required.”).

<sup>237</sup> The ESCR Committee, for example, has stated that “the obligation to *protect* requires State parties [to the ICESCR] to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority.” ESCR Committee, *General Comment No. 15*, *supra* note 171, para. 23. This obligation requires that “steps [] be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries.” The Committee adds that “where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.” *Id.* para. 33.

<sup>238</sup> See, e.g., Committee on the Elimination of Racial Discrimination, *Concluding Observations: Canada, 70th Sess., Feb. 19-Mar. 9, 2007*, ¶ 17, U.N. Doc. CERD/C/CAN/CO/18 (May 25, 2007) (“The Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in Canada accountable.”).

<sup>239</sup> For example, as part of its review of Germany’s compliance with the ICCPR, the Human Rights Committee noted that Germany is required to “set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations,” and called on Germany to “take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad.” Human Rights Committee, *Concluding Observations: Germany, 106<sup>th</sup> Sess., Oct.15-Nov. 2, 2012*, ¶ 16, U.N. Doc. CCPR/C/DEU/CO/6 (Nov. 12, 2012). In this particular instance, the Human Rights Committee was responding to a case involving “allegations that families forcibly evicted at gunpoint in August 2001 from their homes and lands in Naluwondwa-Madudu, Mubedne District, Uganda to make way for a large coffee plantation owned by Kaweri Coffee Plantation Ltd., a wholly-owned subsidiary of Neumann Kaffee Gruppe Hamburg, continue to live in extreme poverty.” Human Rights Committee, *List of issues to be taken up in connection with the consideration of the sixth periodic report of Germany (CCPR/C/DEU/6) adopted by the Human Rights Committee at its 105th session, July 9-27 2012*, ¶ 17, U.N. Doc. CCPR/C/DEU/Q/6 (Aug. 21, 2012). The Committee asked Germany to explain what it had done “to investigate the role and responsibility of Neumann Kaffee Gruppe.” Human Rights Committee, *Concluding Observations: Germany, 106<sup>th</sup> Sess., Oct.15-Nov. 2, 2012*, ¶ 16, U.N. Doc. CCPR/C/DEU/CO/6 (Nov. 12, 2012).

<sup>240</sup> Committee on the Rights of the Child, *Concluding Observations: Republic of Korea, 58th Sess., Sept. 19-Oct. 7, 2011*, ¶¶ 26-27, U.N. Doc. CRC/C/KOR/CO/3-4 (Feb. 2, 2012).

<sup>241</sup> Maastricht Conference, Sept. 26-28, 2011, *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights*, Preamble (Sept. 28, 2011), available at [http://www.rtfn-watch.org/uploads/media/Maastricht\\_ETO\\_Principles\\_EN.pdf](http://www.rtfn-watch.org/uploads/media/Maastricht_ETO_Principles_EN.pdf).

<sup>242</sup> *Id.* princ. 24.

<sup>243</sup> *Guiding Principles on Business and Human Rights*, *supra* note 216, princ. 2.

<sup>244</sup> *Id.* princ. 3(a).

<sup>245</sup> Korea’s National Contact Point is located in the Ministry of Knowledge Economy. *National Contact Points (June 2013)*, ORGANISATION FOR COOPERATION AND DEVELOPMENT, <http://www.oecd.org/daf/inv/mne/2013NCPCContactDetails.pdf>.

<sup>246</sup> *National Contact Points for the OECD Guidelines for Multinational Enterprises*, ORGANISATION FOR COOPERATION AND DEVELOPMENT, <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/ncps.htm> (last visited Jun. 14, 2013).

<sup>247</sup> *Id.* at 72, § IIC(1).

<sup>248</sup> Interview with Prafulla Samantara in Bhubaneswar, Odisha (Nov. 27, 2012).

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<sup>249</sup> See *supra* Part II.A.2.

<sup>250</sup> See *infra* Part III.A.3.

<sup>251</sup> ESCR Committee, *General Comment No. 7*, *supra* note 148, para.13 (noting that States have the obligation to demonstrate that they have explored all feasible alternatives to forced evictions, in consultation with affected communities, “with a view to avoiding, or at least minimizing, the need to use force.”).

<sup>252</sup> SUMIT CHAKRAVARTTY ET AL., REPORT BY THE INDEPENDENT FACT FINDING TEAM ON ISSUES RELATED TO THE PROPOSED POSCO PROJECT IN JAGATSINGHPUR (ORISSA) 19TH TO 22ND APRIL 2007 (2007) [hereinafter CHAKRAVARTTY REPORT], available at <http://www.mainstreamweekly.net/article110.html>.

<sup>253</sup> *Id.* (“We were informed by the Superintendent of Police that an alternative site was explored 10 kilometers down the coast but it was a Coastal Regulation Zone-I area with a lot of creeks and water bodies where statutory provisions do not permit industrial activity on environmental grounds. Further we were told that the company finds the present site to be most appropriate and is not willing to shift because of access to Port base.”).

<sup>254</sup> *Id.* (“Our impression is that the government’s efforts for “options assessment” have been highly inadequate.”).

<sup>255</sup> MEENA GUPTA, REPORT SUBMITTED BY MS. MEENA GUPTA TO THE MINISTRY OF ENVIRONMENT AND FORESTS (2010) 6 [hereinafter MoEF GUPTA MINORITY REPORT] (“Politics has also become part of the scene, with the CPI strongly opposed to the project, the CPM not opposed to the project if it is shifted a little (no precise location was mentioned though), and Paradeep port is used instead of a separate captive port. The Congress party in Orissa opposes the siting of POSCO for several reasons. Several other parties, across the spectrum, stated that they were not opposed to industrialization, or to POSCO, in fact they said they welcomed it, but the present location of POSCO (again possible alternative sites were only vaguely mentioned as ‘further south’ or ‘less fertile areas’, etc.), the lack of consultation with other political parties, the issues of water to the plant from Jobra barrage which supplied water to Cuttack city, the unnecessary setting up of a captive port were cited as reasons for their objection.”).

<sup>256</sup> K. ROY PAUL ET. AL., REPORT OF THE EXPERT COMMITTEE CONSTITUTED BY MINISTRY OF ENVIRONMENT AND FORESTS IN ACCORDANCE WITH THE DIRECTIONS OF HONOURABLE NATIONAL GREEN TRIBUNAL ON THE PROPOSED POSCO PROJECT IN ODISHA 21 (Oct. 22, 2012) (on file with authors) [hereinafter Roy Paul Report].

<sup>257</sup> *Id.* (stating that “During the Paul Committee’s visit to the threatened area, IDCO reported that it had decided to reduce the project area 2700 acres by leaving out most of the private land in Govindpur and Dhinkia villages as well as the portion of forest land where betel vines were being grown by people of these villages.”).

<sup>258</sup> *Id.*

<sup>259</sup> Roy Paul Report, *supra* note 256, at 22.

<sup>260</sup> Kanchi Kohli & Shankar Gopalakrishnan, Note on Report of the K. Roy Paul Committee Report on POSCO submitted to the Ministry of Environment and Forests on 22nd October 2012, at 2 (Oct. 22 2012) (on file with authors).

<sup>261</sup> Interview with N.Y. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>262</sup> Interview with Shishir Mohapatra, PPSS General Secretary, in undisclosed location, Odisha (Nov. 28, 2012). (“We came to know in January 2005 when they started the survey and we saw their papers and map where there is mention about POSCO and they did the soil test, and when the officials from South Korea and Odisha government arrived at Balitutha near the sand ridge and did the survey through flying balloons and planned to acquire 5000 acres, then we learned that POSCO company is coming...”).

<sup>263</sup> Interview with D.R. in undisclosed location, Odisha (Nov. 28, 2012). (“No official from either the company or government has come to the village to discuss the details of the project. There are no initiatives from their side to do so. The villagers have asked the Chief Minister to come to the area and decide if it is the best place for the project, but so far nobody has come.”).

<sup>264</sup> See, e.g., Interview with F.C. in undisclosed location, Odisha (Nov. 28, 2012) (“I came to know about POSCO project from the media on June 22, 2005. We made a huge rally against POSCO from that day.”).

<sup>265</sup> Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>266</sup> ESCR Committee, *General Comment No. 7*, *supra* note 148, para. 15 (noting that “The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; ... (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;...”).

<sup>267</sup> Orissa-POSCO MoU, *supra* note 24, §§ 11(i), 11(iii), 13(3)(vii). See also *id.* §§ 5(iii), 7(iv), 8(ii), 9(ii), 10(ii), 10(iii), 12(ii), 13(1)(v), 13(2)(i), 13(3)(vi).

<sup>268</sup> See *supra* Part I.D.



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<sup>269</sup> MoEF MAJORITY REPORT, *supra* note 38, at 9.

<sup>270</sup> *Id.*

<sup>271</sup> IRON AND STEAL, *supra* note 25, at 63 citing *Green cry over Posco 'pollution'*, THE TELEGRAPH (Apr. 13, 2007), [http://www.telegraphindia.com/1070414/asp/frontpage/story\\_7645381.asp](http://www.telegraphindia.com/1070414/asp/frontpage/story_7645381.asp) (“With 12 platoons of police encircling the three gram panchayats of Dhinkia, Gadakujanga and Nuagaon, leading NGO Action Aid today raised fears that foulplay can’t be ruled out.”).

<sup>272</sup> CHAKRAVARTTY REPORT, *supra* note 252 (“On April 9, a week before the hearing, paramilitary forces were deployed in the area, creating an environment which was not conducive for people to attend and freely participate in the hearing. Suhaas Mahapatra of Dhinkia village informed us that several false cases have been filed against them and therefore the mobility of the people has been restricted due to fear of arrest.”); *Green cry over Posco 'pollution'*, The Telegraph (Apr. 13, 2007) (“A public hearing should be conducted in a systematic and transparent manner, ensuring widest public participation. Such disregard of due process at best points to ignorance of official procedure and at worst, connivance between the state and Posco to manufacture consensus without the consent of those affected,” said Madhumita Ray of Action Aid India.)

<sup>273</sup> According to its website, “ActionAid India is an anti-poverty agency, working in India since 1972 with the poor people to end poverty and injustice together.” *Who we are*, ACTIONAID INDIA, [www.actionaid.org/india/who-we-are-1](http://www.actionaid.org/india/who-we-are-1) (last visited Jun. 16, 2012).

<sup>274</sup> CHAKRAVARTTY REPORT, *supra* note 252.

<sup>275</sup> Interview with Abhay Sahoo, PPSS President, in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>276</sup> Forest Rights Act, *supra* note 57 (The Preamble to the Forest Rights Act states that it is also noticed that “the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to them, who are integral to the very survival and sustainability of the forest ecosystem.”).

<sup>277</sup> *Id.* (The Preamble to the Forest Rights Act states that it is “An Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.”) *See also id.* § 2(d) (stating that “‘forest land’ means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks.”).

<sup>278</sup> Orissa Mining Corporation Ltd. v. Ministry of Environment & Forest, Writ Petition (Civil) No. 180 of 2011, S.C., 18 April 2013, ¶ 42.

<sup>279</sup> Forest Rights Act, *supra* note 57, s. 6.

<sup>280</sup> *Id.* s. 5.

<sup>281</sup> *Id.* s. 4(5).

<sup>282</sup> *Id.* s. 5.

<sup>283</sup> *See supra* note 188 and accompanying text.

<sup>284</sup> ICCPR, *supra* note 143, art. 25(a) (guaranteeing the right “To take part in the conduct of public affairs, directly or through freely chosen representatives”).

<sup>285</sup> *See* MoEF MAJORITY REPORT, *supra* note 38, at 51. (“1980 PAFs [of 3,578 project-affected families] (53 %) have mentioned that they are cultivating crops on encroached lands since their forefather’s time.”).

<sup>286</sup> Interview with V.T. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>287</sup> MoEF MAJORITY REPORT, *supra* note 38, at 55.

<sup>288</sup> MoEF/MTA COMMITTEE REPORT, *supra* note 58, at 3 (“Dhinkia and Nuagaon palli sabhas have passed resolutions stating their long-standing residence in the area, their traditional dependence on the forest land, their eligibility of rights under the FRA, and their refusal to grant consent to the proposed diversion of land for POSCO. Copies of these are available with the team.”); IRON AND STEAL, *supra* note 25, at 3.

<sup>289</sup> MoEF/MTA COMMITTEE REPORT, *supra* note 58, at 3 (“taking the usage in its strict sense, and using the clarification of the term “reside in” and “depend on” by the Ministry of Tribal Affairs in its circular no. 17014/02/2007-PC&V (Vol.III), dated 9 June 2008), it is clear that the residents of these villages are OTFDs. However, even if one takes the requirement to be 75 years for *both* residence and dependence, available documents and oral evidence suggests that these residents are OTFDs.”). *See also* MoEF MAJORITY REPORT, *supra* note 38, at 90-101.

<sup>290</sup> MoEF/MTA COMMITTEE REPORT, *supra* note 58, at 3 (“Some palli sabhas have given resolutions refusing to consent to diversion of forest land on which they are dependent. These palli sabhas were convened by the district

administration itself, after receiving instructions relating to the MoEF circular of July 2009, which indicates that the administration was aware of the possible presence of forest rights claimants in the area. (It is interesting that this was done after the District Collector had given the opinion that there are no STs and OTFDs in the project area). To the best of our knowledge these palli sabha resolutions have not been sent by the state government to the MoEF, which is tantamount to deliberate withholding of relevant information/documents.”) *Gram sabhas* are also referred to *palli sabhas* in Odisha.

<sup>291</sup> *Id.* at 117. In April 2013 yet another central government agency - the Comptroller Auditor General, an agency which is in charge of auditing government authorities - charged the Odisha government with giving “undue benefit” to POSCO by violating zoning laws and under pricing land that was given to the company.”) *See CAG says Odisha extended ‘undue’ benefits to Posco*, THE ECONOMIC TIMES (Apr. 7, 2013), [http://articles.economictimes.indiatimes.com/2013-04-07/news/38346307\\_1\\_cag-report-undue-benefit-land-allotments](http://articles.economictimes.indiatimes.com/2013-04-07/news/38346307_1_cag-report-undue-benefit-land-allotments).

<sup>292</sup> MoEF MAJORITY REPORT, *supra* note 38, at 118.

<sup>293</sup> *Id.* at 64.

<sup>294</sup> *Orissa CM assures of speeding up Posco work*, THE HINDU (Jan. 26, 2010), <http://www.thehindu.com/news/national/orissa-cm-assures-of-speeding-up-posco-work/article95108.ece> (last visited Jun. 20, 2013).

<sup>295</sup> MoEF MAJORITY REPORT, *supra* note 38, at 64.

<sup>296</sup> Press Release, POSCO PRATIRODH SANGRAM SAMITI, Dhinkia Gram Sabha Unanimously Resolves NOT to Divert Forest Land for POSCO (Oct. 21, 2012), *available at* <http://www.indiaresists.com/dhinkia-gram-sabha-unanimously-resolves-not-to-divert-forest-land-for-posco/>.

<sup>297</sup> *Id.*

<sup>298</sup> Quoted in *id.* (As indicated in this reference, in this region, *Gram Sabha* is often used to refer to panchayat-level meetings and resolutions, in this case “the Gram Sabha of Dhinkia panchayat” that contains several villages—including Gobinpur and Dhinkia—and is under the Jagatsinghpur district. *Palli Sabha* is used to refer to village-level governance structures and resolutions. “The Gram Sabha in particular endorses the resolution passed by Palli Sabha of village Dhinkia on 3rd October, 2012.” The steel plant and port affect three panchayats, namely Dhinkia, Gadakujang and Nuagaon.).

<sup>299</sup> MoEF MAJORITY REPORT, *supra* note 38, at 90 (stating that “[t]he Orissa Government has at various points sought to contend that the Forest Rights Act has no relevance to this area as no persons in the area are eligible under either category.”). *See also* Letter from H.C. Chaudhary, Assistant Inspector General of Forests, Ministry of Environment and Forests, Government of India, to the Principal Secretary (Forests), Government of Orissa, Sub: Diversion of 1253,225 ha of forest land for establishment of an Integrated Steel Plant and Captive Port by M/s. POSCO-India Pvt. Ltd. In Jagatsinghpur district of Orissa (May 4, 2011), *reproduced in* Roy Paul Report, *supra* note 256, at Annex 1 (stating that in 2011 the State Government of Orissa furnished a “categorical assurance” to the Ministry of the Environment and Forests that “at least one of the three conditions to be fulfilled by a person before his claims as other Traditional Forest Dweller (OTFD) under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 are recognized, are not fulfilled in the case of those claiming to be depending on or cultivating land in the POSCO project area.”).

<sup>300</sup> *See, e.g., supra* note 289.

<sup>301</sup> POSCO’s Reply to Brief Note *infra* note 618. *See also infra* Appendix.

<sup>302</sup> Ministry of Environment and Forests of the Government of India, POSCO: Final Order and Other Relevant Documents (Jan. 31 2011), <http://envfor.nic.in/sites/default/files/Posco31012011.pdf>.

<sup>303</sup> Praffulla Samantra v. Union of India and Others, Appeal No. 8/2011 (National Green Tribunal, 2012) ¶ 2, *available at* [http://www.greentribunal.in/judgment/8-2011\(Ap\)\\_30Mar2012\\_final\\_order.pdf](http://www.greentribunal.in/judgment/8-2011(Ap)_30Mar2012_final_order.pdf).

<sup>304</sup> *Id.* at 22.

<sup>305</sup> *Id.* ¶ 7.2.

<sup>306</sup> *Id.* ¶ 8.1.

<sup>307</sup> Praffulla Samantara v. Union of India & Ors, Original Application No. 123 of 2013 (National Green Tribunal, 2013), *available at* [http://www.greentribunal.in/orderinpdf/123-2013\(OA\)\\_28May2013.pdf](http://www.greentribunal.in/orderinpdf/123-2013(OA)_28May2013.pdf).

<sup>308</sup> Interview with B.D. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>309</sup> *See* UDHR, *supra* note 175, art. 8; ICCPR, *supra* note 143, art. 2(3) (requiring States parties to ensure “an effective remedy” for persons whose rights have been violated and placing obligations upon the “competent authorities [to] enforce such remedies when granted.”).

<sup>310</sup> ESCR Committee, *General Comment No. 7*, *supra* note 148, para. 13.



<sup>311</sup> *Id.* para. 16. See also Comm'n on Human Rights, Miloon Kothari, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, at 13, 15, U.N. Doc. E/CN.4/2005/48 (Mar. 3, 2005), available at <http://www2.ohchr.org/english/bodies/chr/sessions/61/lisdocs.htm> (commenting that homelessness is intimately linked to landlessness, and that the displacement of communities as a result of large-scale development projects can drive the poor to marginal areas for farming and threaten social and ecological sustainability).

<sup>312</sup> ESCR Committee, *General Comment No. 7*, *supra* note 148, para. 16.

<sup>313</sup> Forest Rights Act, *supra* note 57, Chapter 3.1(m) and 3.4(e). See also Letter from Ministry of Tribal Affairs to States, Guidelines (July 12, 2012), quoted in Orissa Mining Corporation Ltd. v. Ministry of Environment & Forest, Writ Petition (Civil) No. 180 of 2011, ¶ 49 (India Supreme Court, 2013) ("There may be some cases of major diversions of forest land for non-forest purposes under the Forest (Conservation) Act, 1980 after the enactment of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 but before the issue of Ministry of Environment & Forests' letter dated 30.07.2009, referred to above. In case, any evictions of forest dwelling Scheduled Tribes and other traditional forest dwellers have taken place without settlement of their rights due to such major diversions of forest land under the Forest (Conservation) Act, 1980, the District Level Committees may be advised to bring such cases of evictions, if any, to the notice of the State Level Monitoring Committee for appropriate action against violation of the provisions contained in Section 4(5) of the Act.").

<sup>314</sup> Orissa Resettlement and Rehabilitation Policy (2006), available at [http://www.odisha.gov.in/revenue/R\\_R\\_Policies/18040\\_14\\_05\\_06.pdf](http://www.odisha.gov.in/revenue/R_R_Policies/18040_14_05_06.pdf).

<sup>315</sup> MoEF MAJORITY REPORT, *supra* note 38, at 60.

<sup>316</sup> Orissa Resettlement and Rehabilitation Policy (2006), *supra* note 314, at 5 ("For the purpose of R&R benefits under this Policy, Development Projects are classified into the following types: A. Industrial Projects; B. Mining Projects; C. Irrigation Projects, National Parks and Sanctuaries; D. Urban Projects and Linear Projects like roads and railways, power lines; and E. Any other Projects").

<sup>317</sup> *Id.* at 6. ("Subject to the details regarding provision of employment as enunciated elsewhere in the Policy the project authorities shall give preference in the matter of employment, both direct and indirect as well as through contractors employed by them, for execution, operation and maintenance of the project, to local persons...").

<sup>318</sup> *Id.* at 7 ("For the purpose of employment, each original family will nominate one member of such family.").

<sup>319</sup> Interview with J.H. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>320</sup> Interview with Shishir Mohapatra, PPSS General Secretary, in undisclosed location, Odisha (Nov. 28, 2012).

<sup>321</sup> Orissa Resettlement and Rehabilitation Policy, *supra* note 314, at 6-7 ("The project proponent will give preference to the nominated members of the displaced / other families in the matter of employment. The order of preference will be as follows: (i) Displaced families losing all land including homestead land, (ii) Displaced families losing more than 2/3<sup>rd</sup> of agricultural land and homestead land, (iii) Displaced families losing more than 1/3<sup>rd</sup> of agricultural land and homestead land, (iv) Displaced families losing only homestead land but not agricultural land, (v) Families losing all agricultural land but not homestead land.").

<sup>322</sup> *Id.* at 6-7.

<sup>323</sup> MoEF MAJORITY REPORT, *supra* note 38, at 129-30 ("The women in these project affected villages are mostly labourers on agricultural land or betel vine cultivation. They are not land owners and due to the poor educational and other skills they are unemployable in highly mechanised companies such as POSCO steel plant. The youth too are poorly educated and only 2-5 % are graduates or professionals in this area. Hence a guarantee of both a temporary or permanent job is not there. Since the hiring is outsourced by POSCO to contractors they will not overlook or intervene in hiring of personnel from among the displaced or project affected people. The contractor chooses the people and most of the time the best qualified will get the jobs.").

<sup>324</sup> Orissa Resettlement and Rehabilitation Policy, *supra* note 314, at 8.

<sup>325</sup> *Id.* at 8 (stating, "Provision of Homestead Land: -Subject to availability, each displaced family will be given at least 1/10<sup>th</sup> of an acre for land free of cost in a resettlement habitat for homestead purpose.").

<sup>326</sup> Interview with Abhay Sahoo, PPSS President, in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>327</sup> MoEF MAJORITY REPORT, *supra* note 38, at 60 ("The POSCO package for resettlement and rehabilitation follows the ORRP [Orissa Resettlement and Rehabilitation Policy] more or less faithfully, improving the rates of land compensation all around and additionally including the betel vine growers or so called 'Encroachers'. A statement indicating the rehabilitation package as per State Government norms, the package initially declared by POSCO, and the package finally approved in the RPDAC [Rehabilitation and Periphery Development Advisory Committee] is at Annexure C-26. In some cases, as is apparent, e.g. the rates to be given per acre to encroachers of agricultural land,

to cultivators of betel vines, payments to labourers engaged in the cultivation of betel vines, to owners of private agricultural land, the benefits have been significantly enhanced by the RPDAC. However, the R&R package as it is called is more a land acquisition and one time compensation for diverting the land for POSCO especially in the case of PAFs [project affected families] who are literally all families belonging to these three project affected GPs. These are a total of 3578 families. All these families are losing either all or partially, government land that they are cultivating since their forefathers (Socio-economic report of POSCO project site by Xavier Institute of Management, January 2008, Annexure B11). Each of these families are on an average earning Rs 1,00,000 to Rs 1,50,000 per betel vine unit (each unit = 10-15 decimals of land, 100 decimals= one acre). During the Committee's visit to the villages we were told that each family on an average can earn Rs. 1 lakh annually from one unit of betel vines and add to their total earnings in a substantial way as compared to one point compensation offered by R&R which amounts to one years annual income per betel vine unit. (Rs 1 lakh per 10 decimals of betel vine as compensation for acquisition of this land in the enhanced R&R package).").

<sup>328</sup> Orissa Resettlement and Rehabilitation Policy, *supra* note 314, at 7.

<sup>329</sup> *Id.* at 8 ("Assistance for Self-relocation: -Each of the displaced family who opts for self-relocation elsewhere other than the resettlement habitat shall be given a one time cash grant of Rs. 50,000 in lieu of homestead land.")

<sup>330</sup> MoEF MAJORITY REPORT, *supra* note 38, at 127 ("The POSCO package for resettlement and rehabilitation follows the ORRP more or less faithfully, improving the rates of land compensation all around and additionally including the betel vine growers or so called 'Encroachers'.")

<sup>331</sup> *Id.* at 127 ("During the Committee's visit to the villages we were told that each family on an average can earn Rs. 1 lakh annually from one unit of betel vines and add to their total earnings in a substantial way as compared to one point compensation offered by R&R which amounts to one year's annual income per betel vine unit.").

<sup>332</sup> ESCR Committee, *General Comment No. 7*, *supra* note 148, para. 16. *See also* Kothari, *Basic principles and guidelines on development based evictions and displacement: Annex 1*, *supra* note 181, ¶ 60. ("Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.").

<sup>333</sup> MoEF MAJORITY REPORT, *supra* note 38, at 131.

<sup>334</sup> MoEF GUPTA MINORITY REPORT, *supra* note 255, at 31 ("It appears that a large number of fishermen who may have rights in the area have got left out. The State Govt needs to verify whether such rights exist or not and compensate them if they do."). *See also id.* at 26 ("Landless agricultural and other labourers have not been included in the list of affected persons and no benefits have been given to them (except for those working in betel vine cultivation and those compensated for their homesteads on government land). Since landless workers are people at the bottom of the heap, it is not enough to relocate them. They need to be compensated for their loss of livelihood.").

<sup>335</sup> MoEF MAJORITY REPORT, *supra* note 38, at 123-124.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.* at 86, s.4(5).

<sup>338</sup> *Id.* at 237, 127 ("The POSCO package for resettlement and rehabilitation follows the ORRP more or less faithfully, improving the rates of land compensation all around and additionally including the betel vine growers or so called 'Encroachers'.")

<sup>339</sup> MoEF GUPTA MINORITY REPORT, *supra* note 255, at 26

<sup>340</sup> HUMAN RIGHTS WATCH, *BROKEN PEOPLE: CASTE VIOLENCE AGAINST INDIA'S "UNTOUCHABLES"* 27-29 (1999), available at <http://www.hrw.org/reports/1999/03/01/broken-people-0>.

<sup>341</sup> MoEF MAJORITY REPORT, *supra* note 38, at 87.

<sup>342</sup> MoEF GUPTA MINORITY REPORT, *supra* note 255, at 26

<sup>343</sup> MoEF MAJORITY REPORT, *supra* note 38, at 228-29 ("The resettlement and rehabilitation package on offer is focused on payment of one time compensation. This compensation too is very small as compared to the incomes people derive in this area, particularly in the case of betel vine cultivators. There is no comprehensive 'resettlement' or 'rehabilitation' package even proposed despite a specific request for the same.").

<sup>344</sup> *See supra* notes 120-122 and accompanying text.

<sup>345</sup> Press Release, Housing and Land Rights Network, *Violence against Villagers and Forced Land Acquisition for POSCO Project in Odisha: Gross Violation of Human Rights*, at 2 (Feb. 8, 2013), available at [http://www.hic-sarp.org/documents/Press\\_Release\\_POSCO\\_HLRN\\_8\\_Feb\\_2013.pdf](http://www.hic-sarp.org/documents/Press_Release_POSCO_HLRN_8_Feb_2013.pdf).

<sup>346</sup> ICCPR, *supra* note 143, art. 9 (1) ("Everyone has the right to liberty and security of person.") Human Rights Committee, *Draft General Comment 35 on Article 9 - Liberty and security of person*, ¶ 8, CCPR/C/107/R.3 (January 28, 2013) ("The right to 'security of person' in article 9 is independent from the right to liberty of person, and refers to freedom from bodily injury, including fatal injury. ... Officials of States parties violate the right to personal security when they unjustifiably inflict bodily injury, regardless of whether the victim is detained or non-detained.

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The right to personal security also obliges States parties to take appropriate measures to protect individuals, whether detained or non-detained, from known threats to life or bodily integrity proceeding from either governmental or private sources. States parties must take both prospective measures to prevent future injury and retrospective measures such as enforcement of criminal laws in response to past injury. ... States parties must respond appropriately to patterns of violence against categories of victims such as intimidation of human rights defenders and journalists, violence against women .... They should also protect their populations against excessive use of force in law enforcement ...”).

<sup>347</sup> See, e.g., Human Rights Committee, *Anthony Leehong v. Jamaica*, Communication No. 613/1995, ¶ 9.3, U.N. Doc. CCPR/C/66/D/613/1995 (1999). (“With respect to the author's claim that he was shot by the police from behind before being arrested, the Committee reiterates its jurisprudence where it has held that it is insufficient for the State party to simply say that there has been no breach of the Covenant. Consequently, the Committee finds that in the circumstances the State party not having provided any evidence in respect of the investigation it alleges to have carried out the shooting remains uncontested and due weight must be given to the author's allegations. Accordingly, the Committee finds that there has been a violation of article 9, paragraph 1, with respect to the author's right to security of the person.”).

<sup>348</sup> Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990) [hereinafter UN Basic Principles on the Use of Force]. *Code of Conduct for Law Enforcement Officials*, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979) [hereinafter UN Code of Conduct].

<sup>349</sup> UN Basic Principles on the Use of Force, *supra* note 348, princs. 4, 10 (“Law enforcement officials, in carrying out their duty, shall, as far as possible, apply nonviolent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”); “In the circumstances provided for under Principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”).

<sup>350</sup> *Id.* princ. 5 (a) (“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved.”).

<sup>351</sup> *Id.* princ. 5(b) (“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: ... (b) Minimize damage and injury, and respect and preserve human life.”).

<sup>352</sup> *Id.* princ. 5(c) (“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: ... (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.”); See also UN Code of Conduct, *supra* note 348, art. 6 (“Law Enforcement officials shall ensure the full protections of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention wherever required.”).

<sup>353</sup> See, e.g., Interview with H.N. in undisclosed location, Odisha (Nov. 28, 2012) (“Several times the police have beaten me with *lathi*, being physically attacked. In one instance, I was guarding a barricade. The police—7-8 platoon of 50 police each—destroyed [the barricade] and beat me. They beat us all – my wife, my mother. Then the police destroyed the betel vine.”). Interview with Manorama Khatua in Jagatsinghpur district, Odisha (Nov. 29, 2012) (“Then the people told the police – go back, we will not leave our home. The people protested and shouted slogans from 4AM to 12 noon. At 12 noon, Navin Patnaik sent message – fire rubber bullets, use tear gas. They fired bullets into women, on their upper bodies. 4 rubber bullets hit the chest of a woman named Shanti Das. Another man got hit by 40 rubber bullets. ... The police targeted the chest and heads of people. 62 were injured. When the legal order was received to fire, the police attacked in full force. Rubber bullets came with such force that it broke the teeth. And the target was the chest of head, the upper bodies. Think of police who were targeting the heads and chest of women, what kind of people were they.”).

<sup>354</sup> Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012). (“It was a POSCO Andolan Meeting. We were hungry so we could not run. So many people were hit. We ran into the river and even there the police kept firing. 100 to 150 people were shot. There were men, women and elders and people fell in the river and still they kept firing. They also set fire to our bicycles and motorcycles.”).

<sup>355</sup> *Entry Point to Proposed Posco Plant Cleared of Agitators*, THE ECONOMIC TIMES (May 15, 2010), [http://articles.economictimes.indiatimes.com/2010-05-15/news/27587208\\_1\\_anti-posco-balitutha-mega-steel-plant](http://articles.economictimes.indiatimes.com/2010-05-15/news/27587208_1_anti-posco-balitutha-mega-steel-plant).

<sup>356</sup> Interview with M.S. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

- <sup>357</sup> Interview with H.K. in Jagatsinghpur district, Odisha (Nov. 29, 2012).
- <sup>358</sup> Interview with S.T. in Jagatsinghpur district, Odisha (Nov. 29, 2012).
- <sup>359</sup> Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012).
- <sup>360</sup> Interview with M.D. in Jagatsinghpur district, Odisha (Nov. 29, 2012).
- <sup>361</sup> *Police Set Fire, Beat Up Women and Children: PPSS*, HINDUSTAN TIMES (May 16, 2010), <http://www.hindustantimes.com/News-Feed/Bhubaneswar/Police-set-fire-beat-up-women-and-children-PPSS/Article1-544379.aspx>. (“[Jagatsinghpur Superintendent of Police Debadutta] Singh also claimed there was no casualty or serious injury during the yesterday’s operation during which police fired rubber bullets and used tear gas and batons to clear the road to Balitutha in the face of opposition put up by more than 1,000 people. Reports on Saturday said at least 30 people were injured in the police action, which took place when at least 50 crude bombs were thrown at them.”) *See also Entry Point to Proposed Posco Plant Cleared of Agitators*, THE ECONOMIC TIMES *supra* note 355 (“‘The people on dharna at Balitutha defying prohibitory orders have been evicted,’ Jagatsinghpur Superintendent of Police Debadutta Singh said. The police which ordered the 1000-odd protesters, mostly women and children, to leave immediately cracked down when 50 crude bombs were thrown at them, he said.”).
- <sup>362</sup> *Scrap Posco steel project: fact-finding team*, THE HINDU (May 27, 2010), <http://www.thehindu.com/news/national/other-states/scrap-posco-steel-project-factfinding-team/article439235.ece>; *Scrap POSCO project, says fact-finding team*, THE NEW INDIAN EXPRESS (May 31, 2010), <http://newindianexpress.com/states/odisha/article276511.ece>; *Scrap Posco*, COUNTERCURRENTS.ORG (May 27, 2010), <http://www.countercurrents.org/fft270510.htm>.
- <sup>363</sup> *Scrap Posco*, COUNTERCURRENTS.ORG, *supra* note 362.
- <sup>364</sup> *Id.*
- <sup>365</sup> Ashis Senapati & Ashok Pradhan, *Odisha resumes land acquisition for Posco plant*, TIMES OF INDIA (Feb. 4, 2013), <http://timesofindia.indiatimes.com/city/bhubaneswar/Odisha-resumes-land-acquisition-for-Posco-plant/articleshow/18326906.cms>. *See also*: Ashis Senapati & Ashok Pradhan, *At 4am, Odisha cops swoop to acquire land for Posco*, TIMES OF INDIA (Feb. 4, 2013), <http://timesofindia.indiatimes.com/india/At-4am-Odisha-cops-swoop-to-acquire-land-for-Posco/articleshow/18325942.cms>.
- <sup>366</sup> *Posco land acquisition resumes amid police-protesters clashes*, TIMES OF INDIA (Feb. 3, 2013), <http://timesofindia.indiatimes.com/business/india-business/Posco-land-acquisition-resumes-amid-police-protesters-clashes/articleshow/18322818.cms>. (“As the police personnel cordoned the area, demolition of betel-vines and tree felling was undertaken at Mathsahi locality of Gobindapur. Officials of Odisha’s Industrial Infrastructure Corporation (IDCO) and Posco-India were present in the area during the work.”).
- <sup>367</sup> Senapati & Pradhan, *Odisha resumes land acquisition for Posco plant*, *supra* note 365.
- <sup>368</sup> *Posco land acquisition resumes amid police-protesters clashes*, *supra* note 366; *see also* Rajaram Satapathy, *Odisha villagers steel themselves for war*, TIMES OF INDIA (Feb. 5, 2013), <http://timesofindia.indiatimes.com/india/Odisha-villagers-steel-themselves-for-war/articleshow/18340815.cms>.
- <sup>369</sup> Senapati & Pradhan, *Odisha resumes land acquisition for Posco plant*, TIMES OF INDIA, *supra* note 365.
- <sup>370</sup> Satapathy, *Odisha villagers steel themselves for war*, *supra* note 368.
- <sup>371</sup> Ashis Senapati, *Caught in the steel trap*, TIMES OF INDIA (Feb. 7, 2013), <http://timesofindia.indiatimes.com/city/bhubaneswar/Caught-in-the-steel-trap/articleshow/18374629.cms>.
- <sup>372</sup> *Clash stalls land acquisition for Posco project for sometime*, TIMES OF INDIA (Feb. 5, 2013), <http://timesofindia.indiatimes.com/business/india-business/Clash-stalls-land-acquisition-for-Posco-project-for-sometime/articleshow/18352548.cms>. Rajaram Satapathy, *Odisha stops Posco land acquisition*, TIMES OF INDIA (Feb. 7, 2013), <http://timesofindia.indiatimes.com/india/Odisha-stops-Posco-land-acquisition/articleshow/18374737.cms>.
- <sup>373</sup> Rajaram Satapathy, *Cops pull out after gherao at Posco site*, TIMES OF INDIA (Feb. 8, 2013), <http://timesofindia.indiatimes.com/city/bhubaneswar/Cops-pull-out-after-gherao-at-Posco-site/articleshow/18392913.cms>; *see also* *Odisha govt temporarily suspends land acquisition for Posco*, TIMES OF INDIA (Feb. 8, 2013), <http://timesofindia.indiatimes.com/india/Odisha-govt-temporarily-suspends-land-acquisition-for-Posco/articleshow/18397102.cms>.
- <sup>374</sup> Pradeep Baisakh, *Land Acquisition in Proposed POSCO Area Temporarily Halted*, TEHELKA.COM (Feb. 7, 2013), <http://tehelka.com/land-acquisition-in-proposed-posco-area-temporarily-halted/>; *see also* *Posco land acquisition resumes amid police-protesters clashes*, *supra* note 366; *see also* Photograph of POSCO officials and government authorities, *Bonhomie between POSCO and Dist officials* (Feb. 14, 2013), <http://miningzone.org/ppss/bonhomie-between-posco-and-dist-officials>.



<sup>375</sup> *Commitment*, POSCO-INDIA, <http://posco-india.com/website/sustainability/commitment.htm> (last visited Jun. 13, 2013) (“The approach towards the land securing process has been consensual and peaceful with regard to the local community. POSCO is committed to a fair land acquisition process and has been cooperating with the Govt. of Odisha and the Govt. of India in making all statutory compliances, including those of the environment, to obtain required approvals and clearances for the project. POSCO has been highly sensitive to the human rights of the local community from the inception of the project. POSCO has never infringed upon any human right of any individual in the course of project implementation. Its policy has been inclusive and protective. POSCO has, therefore, always urged the Govt. of Odisha to first safeguard the human rights and livelihood of innocent villagers and rejects/deplores any unlawful violence against them. As per the MoU, securing land is the responsibility of the Govt. of Odisha. POSCO will take over the land once the land is cleared of encroachments by the Govt. in accordance with the applicable laws and regulations.”).

<sup>376</sup> Interview with C.G. in undisclosed location, Odisha, India (Nov. 28, 2012).

<sup>377</sup> *Id.*

<sup>378</sup> Interview with M.S. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>379</sup> ICCPR, *supra* note 143, art. 2.

<sup>380</sup> UN Human Rights Committee, *General Comment No. 31 on article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 8, U.N. Doc. CCPR/C/74/CRP.4/Rev.6 (2004) [hereinafter CCPR, *General Comment No. 31*]. (“[T]he positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.”).

<sup>381</sup> *Id.* ¶ 15.

<sup>382</sup> *Id.* ¶ 8.

<sup>383</sup> *Id.* ¶ 15. See also UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: resolution / adopted by the General Assembly*, ¶ 3b, A/RES/60/147 (2006).

<sup>384</sup> ICCPR, *supra* note 143, art. 2(1).

<sup>385</sup> Interview with H.K. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>386</sup> Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>387</sup> Interview with Manorama Khatua in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>388</sup> *26 Posco Supporters Held for Clashes*, HINDUSTAN TIMES (Jun. 22, 2008),

<http://www.hindustantimes.com/News-Feed/Orissa/26-Posco-supporters-held-for-clashes/Article1-318919.aspx>.

(“A group of Posco supporters allegedly hurled country-made bombs at the rival group. A 35-year-old man, Bula Mandal died, while two sustained injuries, Kujanga police station in charge Anil Mishra told IANS.”) Other sources identify the deceased as Tapan ‘Dula’ Mandal. See, e.g., Ashis Senapati, *Widows bear the brunt of Posco violence*, TIMES OF INDIA (Mar. 14, 2013) [http://articles.timesofindia.indiatimes.com/2013-03-14/bhubaneswar/37712337\\_1\\_betel-vine-anti-posco-patana.](http://articles.timesofindia.indiatimes.com/2013-03-14/bhubaneswar/37712337_1_betel-vine-anti-posco-patana.)

<sup>389</sup> Interview with A.D. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>390</sup> Interview with H.K. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>391</sup> *26 Posco Supporters Held for Clashes*, *supra* note 388. (“After the incident, angry protestors confined nearly 60 project supporters in a school for over 24 hours. A police team rescued them Saturday night and arrested 26 of them on the basis of a complaint lodged by Mandal’s wife Sabita, Mishra said.”).

<sup>392</sup> Interview with H.K. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>393</sup> MEHER ENGINEER ET AL., HEIGHTENED TENSIONS IN POSCO PROJECT AREA: FACT FINDING REPORT ON THE SITUATION IN THE WAKE OF BOMB BLAST IN JAGATSINGHPUR DISTRICT, ODISHA 2-3, 5 (Apr. 2013) [hereinafter HEIGHTENED TENSIONS], available at <http://www.scribd.com/doc/136178201/Fact-Finding-Report-Posco-Final>. See also text accompanying *infra* note 407.

<sup>394</sup> *Id.* at 3. See also *Four Anti-Posco Activists Killed in “Bomb Attack”*, THE STATESMAN (Mar. 2, 2013), [http://www.thestatesman.net/index.php?option=com\\_content&view=article&id=445950&catid=36](http://www.thestatesman.net/index.php?option=com_content&view=article&id=445950&catid=36) (initially reporting four deaths, including Laxman Parmanik, who ultimately survived serious injuries.).

<sup>395</sup> HEIGHTENED TENSIONS, *supra* note 393, at 4.

<sup>396</sup> *Bombing in POSCO Area: When We Don’t Question* (Samadrusti TV broadcast March 4, 2013) [hereinafter *Bombing in POSCO Area*], available at [http://www.youtube.com/watch?v=565aksMHUAA&feature=em-share\\_video\\_user](http://www.youtube.com/watch?v=565aksMHUAA&feature=em-share_video_user).



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<sup>397</sup> Ashis Senapati, *Widows bear the brunt of Posco violence*, TIMES OF INDIA (Mar. 14, 2013) [http://articles.timesofindia.indiatimes.com/2013-03-14/bhubaneswar/37712337\\_1\\_betel-vine-anti-posco-patana](http://articles.timesofindia.indiatimes.com/2013-03-14/bhubaneswar/37712337_1_betel-vine-anti-posco-patana).

<sup>398</sup> HEIGHTENED TENSIONS, *supra* note 393, at 3-4. The national fact-finding team was comprised of twelve academics, lawyers and human rights activists.

<sup>399</sup> *Bombing in POSCO Area*, *supra* note 396.

<sup>400</sup> HEIGHTENED TENSIONS, *supra* note 393, at 4.

<sup>401</sup> *Id.* at 4.

<sup>402</sup> *Id.* at 7.

<sup>403</sup> *Id.*

<sup>404</sup> *Id.*

<sup>405</sup> *Id.* at 5.

<sup>406</sup> *Id.* at 6. The police's failure to investigate these crimes is consistent with similar patterns of police abuse documented in other parts of the country. In 2009 Human Rights Watch concluded that "[p]olice in India frequently fail to register crime complaints, called First Information Reports (FIRs), and to investigate crimes." HUMAN RIGHTS WATCH, *BROKEN SYSTEM: DYSFUNCTION, ABUSE, AND IMPUNITY IN THE INDIAN POLICE 5* (2009) [hereinafter HRW, *BROKEN SYSTEM*], available at <http://www.hrw.org/reports/2009/08/04/broken-system>.

<sup>407</sup> HEIGHTENED TENSIONS, *supra* note 393, at 5.

<sup>408</sup> CAPTIVE DEMOCRACY, *supra* note 138, at 16.

<sup>409</sup> *Id.* at 16-17.

<sup>410</sup> HRW, *BROKEN SYSTEM*, *supra* note 406, at 7.

<sup>411</sup> *Id.*

<sup>412</sup> *Id.*

<sup>413</sup> CAPTIVE DEMOCRACY, *supra* note 138, at 16.

<sup>414</sup> ICCPR, *supra* note 143, art. 9(1).

<sup>415</sup> *Id.* art. 9; MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 224-225 (1993).

<sup>416</sup> ICCPR, *supra* note 143, arts. 9, 19, 21, and 22. UN Human Rights Committee, *General Comment No. 34: Freedoms of opinion and expression (Article 19)*, ¶¶ 9, 23, U.N. Doc. CCPR/C/GC/34 (2012).

<sup>417</sup> Interview with Bichitrananda Sena in Jagatsinghpur district, Odisha (Nov. 28, 2012).

<sup>418</sup> CAPTIVE DEMOCRACY, *supra* note 138, at 6.

<sup>419</sup> Interview with D.R. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>420</sup> Interview with N.Y. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>421</sup> Interview with J.H. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>422</sup> Interview with H.N. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>423</sup> Interview with Bichitrananda Sena in Jagatsinghpur district, Odisha (Nov. 28, 2012).

<sup>424</sup> *Id.*

<sup>425</sup> HRW, *BROKEN SYSTEM*, *supra* note 406, at 7.

<sup>426</sup> *Id.*

<sup>427</sup> CAPTIVE DEMOCRACY, *supra* note 138, at 12.

<sup>428</sup> *Id.* at 14.

<sup>429</sup> *Id.* at 17.

<sup>430</sup> Interview with J.H. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>431</sup> Interview with Bichitrananda Sena in Jagatsinghpur district, Odisha (Nov. 28, 2012).

<sup>432</sup> *Id.*

<sup>433</sup> Interview with Manorama Khatua in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>434</sup> Interview with J.H. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>435</sup> Interview with Manorama Khatua in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>436</sup> Interview with Bichitrananda Sena in Jagatsinghpur district, Odisha (Nov. 28, 2012).

<sup>437</sup> *Id.*

<sup>438</sup> Interview with S.T. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>439</sup> CAPTIVE DEMOCRACY, *supra* note 138, at 5.

<sup>440</sup> *Id.*

<sup>441</sup> Interview with Shishir Mohapatra, PPSS General Secretary, in undisclosed location, Odisha (Nov. 28, 2012).

<sup>442</sup> Interview with Manorama Khatua in Jagatsinghpur district, Odisha (Nov. 29, 2012). *See also*: Email from P.S. to Authors (June 12, 2013, 8:01 AM) (on file with authors).

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<sup>443</sup> Soumyajit Pattnaik, *Anti-Posco Leader Held*, HINDUSTAN TIMES (Oct. 13, 2008), <http://www.hindustantimes.com/News-Feed/Orissa/Anti-Posco-leader-held/Article1-344285.aspx>.

<sup>444</sup> Priya Ranjan Sahu, *Top anti-Posco leader Abhay Sahu arrested*, HINDUSTAN TIMES (Nov. 25, 2011), <http://www.hindustantimes.com/News-Feed/Orissa/Top-anti-Posco-leader-Abhay-Sahu-arrested/Article1-774037.aspx>. See also Press Release, FIDH, India: Release on bail of Mr. Abhay Sahoo / Ongoing detention of Mr. Narayan Reddy (March 16, 2012), available at <http://www.fidh.org/India-Release-on-bail-of-Mr-Abhay>. Email from P.S. to Authors (June 12, 2013, 8:01 AM) (on file with authors).

<sup>445</sup> Sandeep Mishra, *Anti-Posco leader Abhay Sahoo arrested*, TIMES OF INDIA (May 12, 2013), [http://articles.timesofindia.indiatimes.com/2013-05-12/bhubaneswar/39202833\\_1\\_biju-patnaik-airport-posco-pratirodh-sangram-samiti-dhinkia](http://articles.timesofindia.indiatimes.com/2013-05-12/bhubaneswar/39202833_1_biju-patnaik-airport-posco-pratirodh-sangram-samiti-dhinkia).

<sup>446</sup> ICCPR, *supra* note 143, art. 12(1).

<sup>447</sup> UN Human Rights Committee, *General Comment No. 27: Freedom of movement (Article 12)*, ¶ 1, CCPR/C/21/Rev.1/Add.9 (1999) [hereinafter Human Rights Committee, *General Comment No. 27*].

<sup>448</sup> *Id.* ¶ 6.

<sup>449</sup> *Id.* ¶¶ 11, 18.

<sup>450</sup> *Id.* ¶ 14. See also *id.* ¶ 16 (stating that “The application of restrictions in any individual case must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality.”).

<sup>451</sup> *Id.* ¶ 18.

<sup>452</sup> Interview with Shishir Mohapatra, PPSS General Secretary, in undisclosed location, Odisha (Nov. 28, 2012).

<sup>453</sup> Interview with Abhay Sahoo, PPSS President, in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>454</sup> Interview with H.N. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>455</sup> Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>456</sup> Interview with PPSS leader Manorama Khatua in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>457</sup> Interview with D.R. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>458</sup> CAPTIVE DEMOCRACY, *supra* note 138, at 18.

<sup>459</sup> Human Rights Committee, *General Comment No. 27*, *supra* note 447, ¶ 16.

<sup>460</sup> Interview with Manorama Khatua in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>461</sup> *Id.*

<sup>462</sup> *Id.*

<sup>463</sup> *Posco land acquisition resumes amid police-protesters clashes*, *supra* note 366.

<sup>464</sup> Press Release, Dr. B.D. Sharma et al., PUCL, Dhinkia under Virtual Siege (January 2008), available at <http://www.pucl.org/bulletins/2008/PUCLjan08.pdf>.

<sup>465</sup> Human Rights Committee, *General Comment No. 27*, *supra* note 447, ¶ 13.

<sup>466</sup> Interview with R.B. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>467</sup> Interview with N.Y. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>468</sup> ICESCR, *supra* note 142, art. 11(1).

<sup>469</sup> ESCR Committee, *General Comment No. 12*, *supra* note 171, para. 6.

<sup>470</sup> *Id.* ¶ 15.

<sup>471</sup> *Id.* ¶ 18.

<sup>472</sup> ICESCR, *supra* note 142, art. 6(1).

<sup>473</sup> ESCR Committee, *General Comment No. 18*, *supra* note, ¶ 6.

<sup>474</sup> ICESCR, *supra* note 142, art. 2(2); ESCR Committee, *General Comment No. 18*, *supra* note 149, ¶ 12(b)(i).

<sup>475</sup> See, e.g., interview with D.R. in undisclosed location, Odisha (Nov. 28, 2012) (“Because of police charges, people cannot come out and sell.”); Interview with F.C. in undisclosed location, Odisha (Nov. 28, 2012) (commenting that he cannot get to his lands because the police are occupying the lands and noting that “the forces are harassing the people and not letting them move freely.”) Interview with S.N. in undisclosed location, Odisha (Nov. 28, 2012). (stating that restrictions in their movement have made it harder to sell their produce) Interview with B.D. in undisclosed location, Odisha (Nov. 28, 2012). (explaining that he faces challenges in selling his produce because “goons” threaten to take action against them if they come out of the village, adding that now they live in fear.).

<sup>476</sup> Interview with Shishir Mohapatra, PPSS General Secretary, in undisclosed location, Odisha (Nov. 28, 2012).

<sup>477</sup> CAPTIVE DEMOCRACY, *supra* note 138, at 20.

<sup>478</sup> See, e.g., interview with F.C. in undisclosed location, Odisha (Nov. 28, 2012) (“A lot of the betel leaf gardens were destroyed by the police. This is causing economic issues.”); Interview with D.R. in undisclosed location, Odisha (Nov. 28, 2012) (“Two valuable betel vines have been damaged, and the police have forcibly destroyed one

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of his vines. While the people are protesting, the police secretly came and destroyed one of the most important vines, which has seriously impacted my family's income.”).

<sup>479</sup> Interview with H.N. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>480</sup> Interview with Manorama Khatua in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>481</sup> Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>482</sup> CAPTIVE DEMOCRACY, *supra* note 138, at 20.

<sup>483</sup> *Id.*

<sup>484</sup> *Id.*

<sup>485</sup> *Id.*

<sup>486</sup> Interview with S.N. in undisclosed location, Odisha (Nov. 28, 2012) (stating that “We are continuing our protest, so we have little time to dedicate to agriculture and animals,” and adding that production has decreased as a result. S.N. further added that time that used to be dedicated to their livelihoods is now being diverted into activities such as keeping watch in the village and protest activity.); Interview with N.Y. in undisclosed location, Odisha (Nov. 28, 2012). (“They have put us in difficulty, our agriculture has collapsed, we have become jobless as we have to devote our time in protest.”).

<sup>487</sup> Interview with N.J. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>488</sup> ESCR Committee, *General Comment No.3*, *supra* note 151, ¶ 9.

<sup>489</sup> ICESCR, *supra* note 142, art. 2(2). Committee on Economic, Social & Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 7, U.N. Doc. E/C.12/GC/20 (2009) [hereinafter ESCR Committee, *General Comment No.20*].

<sup>490</sup> Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>491</sup> ICESCR, *supra* note 142, art. 12.

<sup>492</sup> Committee on Economic, Social & Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health*, ¶ 50, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter ESCR Committee, *General Comment No. 14*].

<sup>493</sup> *Id.* ¶ 35.

<sup>494</sup> *Id.* ¶ 12(b)(ii).

<sup>495</sup> CEDAW, *supra* note 144, art. 12.

<sup>496</sup> *Id.* art. 14(2)(b).

<sup>497</sup> CRC, *supra* note 145, art. 24.

<sup>498</sup> *See, e.g.*, Interview with J.H. in undisclosed location, Odisha (Nov. 28, 2012) (“The pro-POSCO people have lodged 10-15 false cases against me. We cannot go outside, even to the medical center...Police arrest us and take us to police station.”); Interview with R.S. in undisclosed location, Odisha (Nov. 28, 2012) (“When out of fear we were not going outside, if needed, we were bringing the medicines through others. But we could not go outside at that time.”); Interview with N.Y. in undisclosed location, Odisha (Nov. 28, 2012) (“Government administration has lodged false cases against us. We are not able to go outside. We also cannot go to doctors.”).

<sup>499</sup> Interview with F.C. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>500</sup> *See, e.g.*, Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012). (“If someone gets sick, he will telephone and the doctor will come in. It is very expensive because he must travel. Some people are unable to get the treatment needed.”).

<sup>501</sup> Interview with H.K. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>502</sup> *Id.*

<sup>503</sup> Interview with D.R. in undisclosed location, Odisha (Nov. 28, 2012). (“More impact is felt upon women than men, because they themselves cannot go outside, and women have so many cases of criminal allegations. ...Some women have 2-3 pending charges against them, which is more than the men are charged with. They do this because the women protest, and the government is trying to frighten them.”)

<sup>504</sup> CAPTIVE DEMOCRACY, *supra* note 138, at 7.

<sup>505</sup> Interview with N.Y. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>506</sup> Interview with D.R. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>507</sup> Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>508</sup> Interview with H.N. in undisclosed location, Odisha, India (Nov. 28, 2012).

<sup>509</sup> *See, e.g.*, Interview with F.C. in undisclosed location, Odisha, India (Nov. 28, 2012) (commenting that he does not think he is safe and that he is afraid of being attacked or arrested).

<sup>510</sup> Interview with V.T. in undisclosed Location, Odisha, India (Nov. 28, 2012).

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<sup>511</sup> CAPTIVE DEMOCRACY, *supra* note 138, at 19.

<sup>512</sup> Interview with S.N. in undisclosed location, Odisha, India (Nov. 28, 2012).

<sup>513</sup> Interview with C.G. in undisclosed location, Odisha, India (Nov. 28, 2012).

<sup>514</sup> See, e.g., interview with A.D. in Jagatsinghpur district, Odisha (Nov. 29, 2012). (“The last eight years so many conflicts have been created between brothers and between communities.”); Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012) (“Socially, the people have been divided based on pro-POSCO and anti-POSCO thoughts. The long-term relationships have been damaged.”).

<sup>515</sup> ICESCR, *supra* note 142, art. 12.

<sup>516</sup> ESCR Committee, *General Comment No. 14*, *supra* note 492, ¶ 4.

<sup>517</sup> ESCR Committee, *General Comment No. 20*, *supra* note 489, ¶ 7.

<sup>518</sup> Interview with M.S. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>519</sup> CRC, *supra* note 145, art. 3.

<sup>520</sup> *Id.* art. 6.

<sup>521</sup> *Id.* art. 12.

<sup>522</sup> ICESCR, *supra* note 142, art. 13; CRC, *supra* note 145, art. 28.

<sup>523</sup> ESCR Committee, *General Comment No. 13*, *supra* note 150, ¶¶ 1, 6b.

<sup>524</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 5. See also *Team From Child Rights Panel Visits Posco Protest Site*, TIMES OF INDIA (Jul. 4, 2011), [http://articles.timesofindia.indiatimes.com/2011-07-04/bhubaneswar/29735408\\_1\\_anti-posco-posco-project-jagatsinghpur-district-collector; Nageshwar Patnaik, NCPCR Visits Posco Project Site, Stunned by the Presence of Cops, THE ECONOMIC TIMES \(Jul. 4, 2011\), http://articles.economictimes.indiatimes.com/2011-07-04/news/29735936\\_1\\_anti-posco-ppss-posco-pratirodh-sangram-samiti](http://articles.timesofindia.indiatimes.com/2011-07-04/bhubaneswar/29735408_1_anti-posco-posco-project-jagatsinghpur-district-collector; Nageshwar Patnaik, NCPCR Visits Posco Project Site, Stunned by the Presence of Cops, THE ECONOMIC TIMES (Jul. 4, 2011), http://articles.economictimes.indiatimes.com/2011-07-04/news/29735936_1_anti-posco-ppss-posco-pratirodh-sangram-samiti).

<sup>525</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 7.

<sup>526</sup> Interview with F.C. in undisclosed location, Odisha (Nov. 28, 2012) (“The police have stayed at the school to control things... They occupied the school for 4 months.”); Interview with M.S. in Jagatsinghpur district, Odisha (Nov. 29, 2012) (“In 2011, the police set up camp in the school for two months so it remained completely closed.”).

<sup>527</sup> Interview with M.S. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>528</sup> P. Sainath, *Never Let School Interfere with your Education*, THE HINDU (Jul. 18, 2011), <http://www.thehindu.com/opinion/op-ed/never-let-school-interfere-with-your-education/article2248021.ece>.

<sup>529</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 14.

<sup>530</sup> *Id.* at 12-13.

<sup>531</sup> *Id.* at 13-14. For more information on Anganwadi centers, see *infra* text accompanying note 605.

<sup>532</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 13-14..

<sup>533</sup> *Id.*

<sup>534</sup> Interview with R.B. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>535</sup> Interview with Shishir Mohapatra, PPSS General Secretary, in undisclosed location, Odisha (Nov. 28, 2012).

<sup>536</sup> See, e.g., Interview with M.S. in Jagatsinghpur district, Odisha (Nov. 29, 2012) (“So when things get bad we have to close the school. My 12-year-old and eight-year-old go to school 10 km away. We have to keep them home from school. For the last 7 to 8 years, the children have had to stop school a lot. Just for the last 3 to 4 months they have been able to go regularly.”).

<sup>537</sup> Interview with C.G. in undisclosed location, Odisha (Nov. 28, 2012).

<sup>538</sup> Interview with Sudhir Patnaik in Bhubaneswar, Odisha (Nov. 27, 2012) (“The role of children has been critical in this struggle. Children, on their own accord, have engaged in several acts of resistance, including being the first to lie down in front of the entry to the village to prevent the cops from entering.”).

<sup>539</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 20 (“The participation of children in the agitation appears to be voluntary and the children think that they are protecting the interest of their families which is contrary to the allegations that children are being coerced to participating in the agitation.”).

<sup>540</sup> Interview with F.C. in undisclosed location, Odisha (Nov. 28, 2012) (“High school and college students have been harassed if they protest. They are putting fake charges on them.”)

<sup>541</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 17.

<sup>542</sup> *Id.* at 18.

<sup>543</sup> *Id.* (“Their common version was that therefore they had been joining with their parents voluntarily and decidedly in this agitation to prevent taking over of their lands by the Government machinery for the POSCO project. They told that they would not go to school til the POSCO project went away from their village.”).

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<sup>544</sup> ESCR Committee, *General Comment No. 13*, *supra* note 150, ¶¶ 46, 47.

<sup>545</sup> *Green Tribunal Order Leaves Pro-Posco Villagers in the Lurch*, TIMES OF INDIA (Apr. 21, 2012), [http://articles.timesofindia.indiatimes.com/2012-04-21/bhubaneswar/31378455\\_1\\_surjit-das-pro-industry-villagers-anti-posco-villagers](http://articles.timesofindia.indiatimes.com/2012-04-21/bhubaneswar/31378455_1_surjit-das-pro-industry-villagers-anti-posco-villagers).

<sup>546</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>547</sup> Press Release, POSCO-India, Transit Camp Construction for the Homeless (Nov. 7, 2011), *available at* <http://posco-india.com/website/press-room/news/transit-camp-construction-for-the-homeless.htm>.

<sup>548</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>549</sup> POSCO's Reply to Brief Note, *infra* note 618, at 3-4. *See also* LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 1 (citing a "stand-off" between opponents and supporters of the POSCO-India project as the reason why camp residents initially left their villages.).

<sup>550</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 2.

<sup>551</sup> *See infra* Parts III.C.3-6.

<sup>552</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 2.

<sup>553</sup> *See supra* Part II.A and II.B (describing generally India's obligations to respect, protect and fulfill human rights, as well as POSCO's responsibility to respect human rights).

<sup>554</sup> ICESCR, *supra* note 142, art. 11(1); ESCR Committee, *General Comment No. 4*, *supra* note 182, ¶ 8 (noting that "While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following: (a) Legal security of tenure; (b) Availability of services, materials, facilities and infrastructure; (c) Affordability; (d) Habitability; (e) Accessibility; (f) Location; and (g) Cultural adequacy.").

<sup>555</sup> ESCR Committee, *General Comment No. 4*, *supra* note 182, ¶ 8(b); ESCR Committee, *General Comment No. 15*, *supra* note 171, paras. 3, 16 (c), 29 (Acknowledging the critical importance of the right to water for the realization of the right to adequate housing, noting that a key element of the habitability of housing is provision of sufficient drinking water, and noting that sanitation services are another fundamentally important right, contained within the right to water, which must feature in any adequate housing).

<sup>556</sup> ESCR Committee, *General Comment No. 4*, *supra* note 182, ¶ 8(d).

<sup>557</sup> *Id.* ¶ 8(f).

<sup>558</sup> Interview with D.P. in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>559</sup> *See supra* Part I.C.

<sup>560</sup> *Climate in Orissa*, ORISSA TOURISM BOARD, <http://www.orissatourism.org/climate-in-orissa.html> (last visited Jun. 16, 2013).

<sup>561</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>562</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 2.

<sup>563</sup> *Asbestos*, WORLD HEALTH ORGANIZATION, [http://www.who.int/ipcs/assessment/public\\_health/asbestos/en/](http://www.who.int/ipcs/assessment/public_health/asbestos/en/) (last visited Jun. 13, 2013) ("All types of asbestos cause lung cancer, mesothelioma, cancer of the larynx and ovary, and asbestosis (fibrosis of the lungs). Exposure to asbestos occurs through inhalation of fibres in air in the working environment, ambient air in the vicinity of point sources such as factories handling asbestos, or indoor air in housing and buildings containing friable (crumbly) asbestos materials.").

<sup>564</sup> ESCR Committee, *General Comment No. 15*, *supra* note 171, paras. 2-3 (Adding that an "adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements [...] The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.").

<sup>565</sup> *Id.* ¶ 12(a).

<sup>566</sup> *Id.* ¶ 12(b).

<sup>567</sup> *Id.* ¶ 10.

<sup>568</sup> *Id.* ¶ 12(b).

<sup>569</sup> Interview with D.P. in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>570</sup> *Id.*

<sup>571</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>572</sup> Interview with D.P. in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>573</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>574</sup> *See supra* Part I.C.



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<sup>575</sup> ICESCR, *supra* note 142, art. 6(1).

<sup>576</sup> *Id.*

<sup>577</sup> *Id.* art. 7(a)(ii). *See also* ESCR Committee, *General Comment No. 18*, *supra* note 149, ¶ 44 (noting that states should take measures to implement the right to work, such as an employment strategy that ensures “equal access to economic resources and to technical and vocational training, particularly for women, disadvantaged and marginalized individuals and groups, and should respect and protect self-employment as well as employment with remuneration that enables workers and their families to enjoy an adequate standard of living as stipulated in article 7 (a) (ii) of the Covenant.”).

<sup>578</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 1-2.

<sup>579</sup> The Mahatma Gandhi National Rural Employment Guarantee Act 2005, Ministry of Rural Development, GOVERNMENT OF INDIA, <http://nrega.nic.in/netnrega/home.aspx> (last visited Jun. 16, 2013).

<sup>580</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>581</sup> Interview with D.P. in Jagatsinghpur district, Odisha (Nov. 30, 2012). A current resident of Govindpur village interviewed by the Research Team commented that Transit Camp residents are “in very bad shape. They are like day laborers now when they used to have all of this [pointing to his betel vines]. They used to earn even more than me.”

Interview with P.K. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>582</sup> *Green Tribunal Order Leaves Pro-Posco Villagers in the Lurch*, *supra* note 545.

<sup>583</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012); *See also* LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 1 (noting, following a July 2011 visit, that “the POSCO project Authority provides Rs.20/- per day per person towards their subsistence and it would continue till they are shifted to the resettlement colony.”).

<sup>584</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>585</sup> ESCR Committee, *General Comment No. 12*, *supra* note 171, para. 6.

<sup>586</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 2.

<sup>587</sup> ESCR Committee, *General Comment No. 12*, *supra* note 171, para. 12 (noting that access to productive land is one important means by which people can procure adequate food).

<sup>588</sup> *See id.* ¶ 11 (noting that the right to adequate food should not “be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.”).

<sup>589</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>590</sup> ESCR Committee, *General Comment No. 14*, *supra* note 492, ¶ 12.

<sup>591</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>592</sup> ESCR Committee, *General Comment No. 14*, *supra* note 492, ¶ 4.

<sup>593</sup> *Oustees Threaten Protest*, THE TELEGRAPH (Apr. 20, 2013),

[http://www.telegraphindia.com/1130420/jsp/odisha/story\\_16804702.jsp](http://www.telegraphindia.com/1130420/jsp/odisha/story_16804702.jsp) (citing Jagatsinghpur district collector’s statement that “Once the Posco project rehabilitation colony is completed, these families will be accommodated there like the other land losers.”); *See also* FAQ, POSCO-INDIA, <http://posco-india.com/website/press-room/faq.htm> (last visited Jun. 17, 2013) detailing the following answers to questions raised about POSCO’s plans to compensate and resettle area farmers, laborers, and fishermen:

“Q: Do you have any plans for providing alternative livelihood opportunities to the farmers, landless agricultural labourers and fishermen?

POSCO-India’s philosophy on R&R is to provide the displaced and affected people better living condition than before. The Company according to Orissa state new R&R policy will give adequate and fair compensation. Secondly, POSCO-India will finalise its corporate R&R package after the socio-economic survey in the site. For proper compensation, transparent and sincere discussion will be made through RPDAC where village people can participate. Besides compensation, the company is also considering vocational training for their stable living and their children’s future.

Q: Where does the Company plan to have the Rehabilitation Colony & what kind of houses and other facilities like water, recreation etc. Are you going to provide?

POSCO-India to the best of its abilities will try and provide a better way of life to the displaced and affected people. All issues related to rehabilitation colony and other amenities will be discussed in the RPDAC (Rehabilitation and Periphery Development Advisory Committee) with representation from the to-be-displaced families. Facilities to be provided in the Resettlement habitat also will be discussed and decided in the committee.”

<sup>594</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>595</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>596</sup> Interview with S.S. in Jagatsinghpur district, Odisha (Nov. 29, 2012).

<sup>597</sup> For more on India's obligations vis-à-vis children's rights and the right to education, see *supra* Part III.B.3.c.

<sup>598</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 2.

<sup>599</sup> Interviews with Transit Camp residents in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>600</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 2.

<sup>601</sup> Interviews with Transit Camp residents in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>602</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 2. The NCPCR additionally noted a lack of meetings between school teachers and the school-attending children's parents, contrary to what is required under India's Right of Children to Free and Compulsory Education Act, 2009. *Id.*

<sup>603</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 2.

<sup>604</sup> *Integrated Child Development Services (ICDS) Scheme*, Ministry of Women & Child Development, GOVERNMENT OF INDIA, <http://wcd.nic.in/icds.htm> (last visited June 17, 2013) (adding that these objectives are to be achieved through: "supplementary nutrition; immunization; health check-up; referral services; pre-school non-formal education and; nutrition and health education.").

<sup>605</sup> *ICDS Anganwadi, Women and Child Development Department*, GOVERNMENT OF ODISHA, <http://www.wcdorissa.gov.in/Anganwadi.aspx?lnk=ang> (last visited Jun. 17, 2013).

<sup>606</sup> See LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 2 (urging Indian authorities to "[e]nsure functioning of the ICDS Programme and Anganwadi centre in the village, particularly for the girl children and children below 6 years.").

<sup>607</sup> *Organogram, Women and Child Development Department*, GOVERNMENT OF ODISHA, <http://www.wcdorissa.gov.in/Organogram.aspx> (last visited Jun. 17, 2013) (showing that the District Social Welfare Officer oversees the ICDS and Anganwadi (AWS) services in his/her district).

<sup>608</sup> LOV VERMA, REPORT TO NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, *supra* note 10, at 2.

<sup>609</sup> Interview with Transit Camp resident in Jagatsinghpur district, Odisha (Nov. 30, 2012).

<sup>610</sup> *Oustees Threaten Protest*, *supra* note 593 (noting, in April 2013, camp residents' dissatisfaction with their current state, as well as their plans to stage a protest march to the home of Odisha's chief minister).

<sup>611</sup> *Id.*

<sup>612</sup> Letter from ESCR-Net et al., to Berkshire Hathaway (Mar. 20, 2013), available at <http://www.escr-net.org/sites/default/files/Letter%20to%20Berkshire%20Hathaway.pdf>.

<sup>613</sup> Letter from ESCR-Net et al., to JPMorgan Chase (Mar. 20, 2013), available at <http://www.escr-net.org/sites/default/files/Letter%20to%20JP%20Morgan%20Chase.pdf>.

<sup>614</sup> Letter from ESCR-Net et al., to Bank of NY Mellon (Mar. 20, 2013), available at <http://www.escr-net.org/sites/default/files/Letter%20to%20Bank%20of%20Mellon%20New%20York.pdf>.

<sup>615</sup> Letter from ESCR-Net et al., to Deutsche Bank (Mar. 20, 2013), available at <http://www.escr-net.org/sites/default/files/Letter%20to%20Deutsche%20Bank%20AG.pdf>.

<sup>616</sup> Letter from ESCR-Net et al., to Blackrock (Mar. 20, 2013), available at <http://www.escr-net.org/sites/default/files/Letter%20to%20Blackrock.pdf>.

<sup>617</sup> ESCR-Net et al., *Briefing Note: Impacts of POSCO-India's Project on the Lives of Local People in Jagatsinghpur, Odisha, India* (Mar. 20, 2013), available at <http://www.escr-net.org/sites/default/files/briefing-note-posco-india-private-ltd.pdf>.

<sup>618</sup> *POSCO' Reply to Brief Note on 'Impacts of POSCO-India's Project on the Lives of Local People in Jagatsinghpur, Odisha, India'* (Apr. 9, 2013) [hereinafter POSCO's Reply to Brief Note], available at <http://www.escr-net.org/sites/default/files/posco-reply.pdf>. See also *infra* Appendix.

<sup>619</sup> POSCO's Reply to Brief Note, *supra* note 618, at 4.

<sup>620</sup> *Id.*

<sup>621</sup> See *supra* Part II.B detailing business' responsibility to respect human rights under the *Guiding Principles*.

<sup>622</sup> *Guiding Principles on Business and Human Rights*, *supra* note 216, princ. 13.

<sup>623</sup> *Id.* princ. 15 (emphasis added).

<sup>624</sup> *Id.* princ. 16.

<sup>625</sup> *Code of Conduct*, POSCO-INDIA, *supra* note 232.

<sup>626</sup> *Guiding Principles on Business and Human Rights*, *supra* note 216, princ. 23.

<sup>627</sup> *Id.* princ. 18.

<sup>628</sup> *Id.* princ. 18 (b) and commentary to princ. 18 and 23.

<sup>629</sup> *Id.* princ. 19.

<sup>630</sup> *Id.* princ. 19.

<sup>631</sup> *Id.* at commentary to princ. 19.

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<sup>632</sup> POSCO's Reply to Brief Note, *supra* note 618, at 3-4.

<sup>633</sup> *Id.* at commentary to princ. 19.

<sup>634</sup> *Id.*

<sup>635</sup> Suchitra Mohanty & Krishna N. Das, *POSCO's \$12 Billion Odisha Project Boosted by SC Order*, REUTERS (May 10, 2013), <http://in.reuters.com/article/2013/05/10/posco-india-idINDEE94903B20130510>.

<sup>636</sup> POSCO's Reply to Brief Note, *supra* note 618, at 2.

<sup>637</sup> *Posco land acquisition resumes amid police-protesters clashes*, *supra* note 366. See also *supra* note 374 and accompanying text.

<sup>638</sup> *Guiding Principles on Business and Human Rights*, *supra* note 216, at commentary to princ. 22.

<sup>639</sup> *Id.* princ. 22.

<sup>640</sup> *Id.* princ. 29.

<sup>641</sup> *Id.* princ. 31.

<sup>642</sup> Letter from OHCHR, to SOMO & OECD Watch, Subject: The issue of the applicability of the Guiding Principles on Business and Human Rights to minority shareholders (Apr. 26, 2013), available at [http://www.regjeringen.no/pages/38341402/ohchr\\_nbim.pdf](http://www.regjeringen.no/pages/38341402/ohchr_nbim.pdf).

<sup>643</sup> *Guiding Principles on Business and Human Rights*, *supra* note 216, princ. 13.

<sup>644</sup> The relevant text of the letter stated the following:

“[We] strongly urged POSCO management to:

1. Refrain from any involvement in the interference of the human rights of local people impacted by their proposed steel plant and port operation of POSCO (India) Private Ltd. ('POSCO-India), in the east Indian state of Odisha;
2. Uphold the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act) 2006 (Forest Rights Act), and thereby also the will of the local people as expressed in the gram sabhas (local unit of self governance) of March 23, 2008, February 7, 2010, and October 18, 2012 – all of which denied consent for the taking of their land for use in the project;
3. Refrain from any land acquisition and construction activities in the project area, thereby upholding the suspension on March 30, 2012 by the National Green Tribunal of the 2011 environmental clearance for the project (and subsequent withdrawal by the Ministry of Environment and Forests);
4. Refrain from participating in, and publicly recommend that State authorities permanently halt, all attempts to forcibly enter into the project area for any reason;
5. Refrain from using force and violence against the villagers and those protesting against the project;
6. Respect international human rights law, standards and norms, and stand by POSCO's recently stated intent (in a letter to the UN Secretary General) to uphold human rights (see Briefing Note);
7. Have senior management staff meet with two Indian representatives of the locally affected people during a trip they are making to Seoul, between March 20-22, 2013.

-- Publicly urge the Indian Government to:

1. Refrain from forced entry into the project area and the undertaking of any activities aimed at forcibly evicting local residents of Jagatsingpur District, including the destruction of their means of livelihood (i.e. betel vines);
2. Uphold the provisions of the Forest Rights Act 2006, and thereby also the will of the local people, as expressed in the three aforementioned gram sabhas;
3. Stop using, and/or the threat of using, arrest warrants to harass and detain local people on false criminal charges....

Should POSCO-India reject these recommendations, we respectfully urge your company to withdraw from all investment in POSCO.”

<sup>645</sup> André Abadie, Managing Director, Global Environmental & Social Risk Management, J.P. Morgan, *JPMorgan Chase statement re holdings in POSCO India, Apr 2013* (Apr. 9, 2013) [hereinafter J.P. Morgan Response], available at <http://www.escr-net.org/sites/default/files/jpmorgan-chase-response-re-posco-india-apr-2013.pdf>.

<sup>646</sup> BNY Mellon statement re holdings in POSCO India (Apr. 9, 2013) [hereinafter BNY Mellon Response], available at <http://www.escr-net.org/sites/default/files/bny-mellon-response.pdf>.

<sup>647</sup> Letter from Sabine Miltner, Deutsche Bank Group Sustainability Officer, to Dominic Renfrey, ESCR-Net (Apr. 9, 2013) [hereinafter Deutsche Bank Response], available at <http://www.escr-net.org/sites/default/files/deutsche-bank-response.pdf>.

<sup>648</sup> J.P. Morgan Response, *supra* note 645; All countries of the Organization for Economic Cooperation and Development (OECD) are required to establish an NCP. The role of each NCP is to provide a place to mediate between corporations and affected people in efforts to resolve issues that arise when affected people complain that the provisions of the OECD Guidelines for Multinational Enterprises are not being adhered to. Civil society

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organizations from India, Norway and the Netherlands jointly submitted a complaint to the NCPs of South Korea, Norway and the Netherlands. For more information see *Lok Shakti Abhiyan et al. vs POSCO*, OECDWATCH.org, [http://oecdwatch.org/cases/Case\\_260](http://oecdwatch.org/cases/Case_260) (last visited Jun. 15, 2013).

<sup>649</sup> J.P. Morgan Response, *supra* note 645.

<sup>650</sup> BNY Mellon Response, *supra* note 646.

<sup>651</sup> *Id.*

<sup>652</sup> Deutsche Bank Response, *supra* note 647.

<sup>653</sup> *Id.*

<sup>654</sup> *Guiding Principles on Business and Human Rights*, *supra* note 216, commentary to princ. 22 (Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences; "In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.").

<sup>655</sup> Committee on the Rights of the Child, *Concluding Observations: Republic of Korea*, *supra* note 240.

<sup>656</sup> *Id.*

<sup>657</sup> INITIAL ASSESSMENT: NOTIFICATION AND REQUEST FOR MEDIATION TO THE SOUTH KOREAN, NORWEGIAN AND NETHERLANDS NATIONAL CONTACT POINTS FOR THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES, NETHERLANDS NAT'L CONTACT POINT 8 (Jan. 18, 2013), *available at* [http://www.oecdguidelines.nl/wp-content/uploads/ncp\\_specific\\_instance\\_posco\\_abp\\_initial\\_assessment.pdf](http://www.oecdguidelines.nl/wp-content/uploads/ncp_specific_instance_posco_abp_initial_assessment.pdf) (noting that "as per the 2001 Census, there were 3,350 households with a total population of approximately 22,000 people living in these three Gram Panchayats." In addition the acquisition of the 4004 acres of land, including 438 acres of private land, necessary for construction of the steel plant "would result in 3,578 families losing their land through forced eviction", despite the fact that "the communities have lived and subsisted on these lands for generations, including individuals who have special legal protections under the Scheduled Tribes or Other Traditional Forest Dwellers (Forest Rights Act) 2006.").

<sup>658</sup> *OECD Guidelines on Multinational Enterprises (2011)*, OECD, at 68, 72, *available at* <http://www.oecd.org/investment/guidelinesformultinationalenterprises/48004323.pdf>.

## THE PRICE OF STEEL

### Human Rights and Forced Evictions in the POSCO-India Project

On June 22, 2005, the South Korean steel giant POSCO entered into a Memorandum of Understanding with India's eastern state of Odisha to facilitate the construction of an integrated steel plant, a captive port, and iron ore mines in Odisha. Worth approximately US\$12 billion, the POSCO-India project represents the largest single instance of foreign direct investment in India to date, and will require over 12,000 acres of land. Since the signing of the MoU, the project has made little progress in part due to significant and sustained opposition from affected communities who have used non-violent protest and democratic processes to resist their forced evictions from lands that they have cultivated for generations. The project threatens to displace over 22,000 people in the plant and port area alone, and thousands more face destruction of their livelihoods.

The result of a year-long investigation, *The Price of Steel* documents ongoing human rights violations taking place in the area proposed for the integrated steel plant and captive port in Jagatsinghpur district, Odisha. Testimonies gathered directly from project-affected communities evidence significant and ongoing attempts to illegally evict people from their lands, as well as serious human rights violations against individuals and communities who are resisting forced eviction and defending their human rights. The Report concludes with key policy recommendations, calling on India, POSCO, the Republic of Korea, and POSCO's investors to take immediate action to ensure that human rights are not violated in connection with the POSCO-India project.

#### THE INTERNATIONAL NETWORK FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS / ESCR-NET

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<http://chrgj.org/clinics/international-human-rights-clinic>



Betel leaf cultivation is a mainstay of the local economy, providing a sustainable and profitable source of livelihood for project-affected villagers. The police have destroyed betel vineyards in affected villages in an effort to forcibly acquire land and weaken opposition to the POSCO-India project. (Photo by Research Team)



Project-affected communities have engaged in peaceful actions, such as this one in February 2013, to protest their forced eviction. Indian authorities have actively targeted protestors with violence and arbitrary arrests and detentions. (Photo by local resident)