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FIAN INTERNATIONAL
FOR THE RIGHT TO FOOD AND NUTRITION

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Human Rights Violations in the Context of Environmental Destruction and Illegal Land Appropriation in Jagatsinghpur District (Odisha)

Submission by FIAN International

1. This information is submitted by FIAN International. FIAN International is an international human rights organization for the right to food and nutrition and has a UN consultative status with the ECOSOC.ⁱ

Summary of the situation in Dhinkia and neighbouring villages, Jagatsinghpur district, Odisha

2. Since 2005, the rural population in Dhinkia, Nuagaon, Govindpur and neighbouring villages in Jagatsinghpur district (Odisha state) has been facing numerous human rights and environmental rights violations such as eviction, loss of livelihood and criminalisation ever since their land had been forcibly acquired for the, now abandoned, POSCO project.ⁱⁱ Instead of returning the land to the villagers after POSCO, a South Korean steel giant, withdrew in March 2017, the Government of Odisha handed over this land to another company, JUSL (JSW Utkal Steel Ltd.), in September 2018, for setting up industrial facilities and infrastructure - including steel and cement plants, a power plant and a port.

3. The livelihood of the people living in the indicated area is based on rice cultivation, fishing and the cultivation of betel leaves - the most lucrative crop in the fertile region. According to estimates, the projects will destroy the livelihoods of at least 40,000 farmers, agricultural workers and fishers.

4. The proposed project site is prone to cyclones and floods, high levels of sea erosion and disasters as well as anticipated droughts – both phenomena are likely to be exacerbated by the project, particularly in the face of increasing climate emergencies.ⁱⁱⁱ The area is also characterized by high levels of air pollution. Serious health impacts are feared due to the additional emissions. Although the environmental clearance has not yet been issued, construction work has already begun: Valuable sand dunes have been damaged and hundreds of thousands of trees have been cut down.

5. Reports suggest that ever since POSCO entered into a Memorandum of Understanding with the Odisha Government in June 2005 to facilitate the construction of an integrated steel plant in Jagatsinghpur district, various laws and procedures have been openly defied, illegal clearances awarded, and deliberate attempts have been made to understate the costs and overstate the advantages of the project. Ever since their land was forcibly acquired, the villagers have been subjected to rampant criminalization of human rights defenders, arbitrary arrests, detention, loss of livelihood and deeply worrisome environment implications.

6. Since the end of 2021, hundreds of police forces have been stationed in the area. Villagers have been required to show identification to enter or leave the village. The situation has escalated since December 4, 2021, when police attempted to arrest a village leader in Dinkia village, the epicentre of the protest. Subsequently, the administration began destroying the betel fields. On January 14, police attacked a group of about 500 people. Many of them, including women, children and the elderly, were injured. Even during the visit of a delegation of the Supreme Court of the state of Odisha, which wanted to get information on the spot, villagers were attacked and injured in the presence of the police.

7. It is highly probable that the inhabitants of Dinkia, Nuagaon, Govindpur and neighbouring villages will plunge into a much more perilous state of despair, if their land, which is a vital livelihood resource for them, is transferred to JUSL without addressing underlying human rights concerns and settling legal claims as per statutory procedures.

Main Areas of Concern

- Disregard of Statutory Rights

8. The intended transfer of people's land is in disregard of India's established legal frameworks and free, prior, and informed consent of the affected communities. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA, 2006) vests significant decision-making power in Gram Sabhas (village councils), and requires proponents of industrial projects diverting protected forest resources, to secure the consent of the affected villages via Gram Sabha resolutions before advancing such projects.^{iv} On several occasions in the past, the Gram Sabhas of Dinkia (e.g. on February 25th, 2020) and other villages of the affected area have passed majority resolutions against any handover of their lands and community forest resources, which are key to sustaining their livelihoods and a healthy environment, and which have been routinely disregarded by the Government.^{vii}

9. Section 4(5) of the FRA, 2006 states that no member of forest dwelling ST (Scheduled Tribes) or OTFD (Other Traditional Forest Dwellers) can be evicted until forest rights claims have been formally adjudicated. However, applications submitted by the residents of Dhinkia, Nuagaon and Gobindpur villages to claim rights over forestland under FRA have not been processed since 2011.^{vii viii}

- Environmental Clearance

10. According to community members, the two public hearings conducted on 20-12-2019 at Gadakujang by the State Pollution Control Board, Odisha upon the application of JUSL to obtain environment clearance from the Ministry of Environment, Forest and Climate Change (MoEFCC), were unlawfully conducted. Information suggests that the procedure stipulated for obtaining environmental clearance for integrated and interlinked projects under the MoEFCC Office Memorandum (OM) dated 24-12-2010 (No. J-11013/41/2006-IA.II (I)) as per the provisions of EIA Notification, 2006 was not adhered to. It appears that components of an integrated and interlinked project were selectively clubbed and broken up in order to bypass detailed scrutiny and comprehensive assessment by all applicable Expert Appraisal Committees (EACs). The public was also misled by the presentation of the project as two separate projects with components that do not have a cumulative impact on the land and environment that they aim to use and impact. A common Environmental Impact Assessment (EIA) was available only in November 2021, almost two years after the public hearings had been conducted. At no point in time did the project-affected communities have an opportunity to be consulted based on the revised EIA.^{ixxxixii}

- Loss of Livelihood

12. Several people whose land and beetle vines were forcibly destroyed and acquired by the Government for POSCO have lost their livelihood sources and are now reduced to daily wagers. Most of these families have no other employable skills and have farmed beetle leaves for generations to earn a livelihood. In addition to the income stream provided by the cultivation of betel or cashews, families in the affected villages also supplement their livelihood in significant ways by accessing common resources, including rice, fish and forest products that are gathered locally and used for household consumption. Diversion of forestland and community resources on which villagers are directly dependent on is thereby negatively impacting on their ability to secure adequate food and sustain themselves. Additionally, severe restraint on their freedom of movement has reduced their ability to get work, access educational facilities and access crops and markets, forcing them to pay inflated prices for everyday necessities that are brought in.^{xiii}

- Impact on the Environment

13. In addition to completely disrupting the livelihood of local communities, acquisition of forest, land and rampant deforestation for the purpose of this project is also negatively affecting the environment.^{xiv} Even though POSCO had withdrawn from the project, subsequent chopping down of betel vines and of over five lakh (500 000) cashew nut and other fruit-bearing trees, crucial for sustaining the livelihood of the locals, has caused large-scale environmental destruction. On account of such large scale felling of trees and destruction of natural flora and fauna, the inhabitants of these villages will also have to directly face the brunt of climate change. As the trees acted as natural barriers and prevented seawater from entering villages, villagers are exposed to tidal surges, powerful storms and cyclones, which are common in the region. Some villagers have also reported a visible rise in temperature, widespread soil erosion and a shortage of firewood.^{xv xvi}

- Criminalization of Human Rights Defenders

14. Several civil society groups and representatives of affected frontline communities have reported registration of false and unfounded cases by state officials in order to curb resistance against land acquisition.^{xvii} Information suggests that more than 400 criminal cases are pending since the time of the anti-POSCO movement. Warrants were issued against around 700 people, including 300 women. Since POSCO left, according to JPPSS' (Jindal-POSCO Pratirodh Sangram Samiti - Anti-Jindal & Anti-POSCO Movement) local legal counsel, approximately 20 new cases have been filed. Reports have also documented instances of baton charge and ruthless beatings of women protestors and children by police officials. The heavy monetary costs associated with seeking legal redress coupled with the inability to undertake regular livelihood activities, has made it impossible for the villagers to live a dignified life. As many of the villagers belong to scheduled castes, the alleged incidents reflects, among others, the violations of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

India's Constitutional and International Obligations and Commitments regarding the Right to Food and Nutrition and Related Rights

15. The **Indian Constitution** has enshrined the protection of the environment^{xviii} and guarantees the right to life as fundamental right to all citizens under Article 21. According to the interpretation by India's Supreme Court, the right to life includes the right to health and medical care, the right to live a life of dignity in a proper environment, the right to economic empowerment of the poor and disadvantaged, the right to livelihood and vests primary responsibility on the State to ensure that this right is not violated. By failing to respect the right to food and nutrition of the villagers and through its omission to settle the rights and claims of the affected communities under the Forest Rights Act (FRA), 2006 before their land is transferred to another project proponent, the Government of India has breached its international obligation under the **International Covenant on Economic, Social and Cultural Rights** (ICESCR) and other related international standards. Under the obligation to

respect, India must refrain from interfering with or curtailing the enjoyment of human rights.

16. By inflicting the above-described violence on villagers it appears that the Indian Government has not complied with its obligations under international human rights law. Human rights defenders are entitled to specific protection from the State from arbitrary arrest under false charges, use of force, or deprivation of liberty, under the **United Nations General Assembly's Declaration on Human Rights Defenders 1998**, in whose favor India had voted unanimously with other nations. Additionally, the **International Covenant on Civil and Political Rights (ICCPR)** of which India is a state party, guarantees the right to liberty and protects individuals from arbitrary arrest or detention, and requires any deprivation of liberty to take place in accordance with procedures established by law.

17. Also, the **UN Declaration for the Rights of Peasants and Other People Working in Rural Areas (UNDROP)**, in whose favor India voted, in Article 6(2) explicitly underlines that peasants shall not be subject to arbitrary arrest. Article 15 (4) emphasizes the rights of peasants to determine their food and agricultural systems and to healthy and adequate food produced through ecologically sound and sustainable methods that respect their cultures. Furthermore, Article 17 (1) outlines the individual and collective right to land (access to, use and manage land and water bodies, coastal seas, fisheries and pastures) and Article 17 (4) emphasizes the rights of peasants to be protected against arbitrary and unlawful displacement from their land and prohibits the destruction of agricultural areas and expropriation of land.

18. The human rights violations documented are inextricably linked to and compounded by negative environmental impacts. The protection of the environment is an essential element of a number of international instruments to which India is a party. India's National Biodiversity Target (NBT) 6, formulated under the **Convention on Biological Diversity, (CBD)** commits India to conserve effectively and equitably "ecologically representative areas on land and in inland waters, as well as coastal and marine zones, especially those of particular importance for species, biodiversity and ecosystem services (...)." India has further committed as follows: "By 2020, values of biodiversity are integrated in national and state planning processes, development programmes and poverty alleviation," and "Strategies for reducing rate of degradation, fragmentation and loss of all natural habitats are finalized and actions put in place by 2020 for environmental amelioration and human well-being." So far, these elements have been completely absent in the planning of the JUSL project.

19. Similarly, India's Intended Nationally Determined Contribution (INDC) under the **Paris Agreement** commits India to increase the country's forest cover through a number of programmes, e.g. the Green India Mission (GIM). India further committed to "Planning and implementation of actions to enhance climate resilience and reduce vulnerability to climate change." Furthermore, under the National Agroforestry Policy (NAP), "India aims at encouraging and expanding tree plantation in complementarity and integrated manner with

crops and livestock. It will help protect and stabilize ecosystems, and promote resilient cropping and farming systems to minimize the risk during extreme climatic events. It will also complement achieving the target of increasing forest/ tree cover.” One of the main objectives of the National Water Mission (NWM) is the conservation of water. India has also been identified as one of the countries, which is most vulnerable to the impact of accelerated sea level rise due to global warming.

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

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

22. In the UPR in 2017, India supported the following recommendations relevant in this context:

- Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, tribes and other vulnerable populations^{xix};
- In the spirit of its Constitution, (...), further invest in dedicated human rights training of police officials to register and investigate cases of discrimination and violence and to hold them accountable when they fail to do so^{xx};
- Continue strengthening the policies in favour of the rights of peasants and other persons working in rural areas^{xxi};
- Continue implementing its international commitments to achieve its nationally determined contributions under the Paris Agreement of 2015^{xxii};
- Continue its efforts to effectively enforce its environmental policies and further increase the growth of forest cover in the country^{xxiii};
- Continue national efforts to realize social and economic development and eradicate poverty, and achieve comprehensive sustainable development for all^{xxiv};
- Continue its programmes for the promotion of socioeconomic development, with a particular focus on the country’s rights-based approach to food security targeting the most vulnerable groups^{xxv};

- Continue strengthening efforts aimed at promoting food security and eradicate all forms of malnutrition (...)xxvi;
- Continue efforts to reduce poverty, improve the well-being of the people, protect and enforce the rights of vulnerable groups of the population.xxvii

Recommendations

23. FIAN International requests the Human Rights Council to consider recommending the Indian Government with regard to the intended projects by JUSL:

- Reject the applications for environmental clearance;xxviii
- Give due consideration to both recent and previous Gram Sabha resolutions rejecting diversion of forestland, and urgently process individual and community forest rights claims as per FRA, 2006;
- Quash the public hearings conducted on December 20, 2019 and require them to be re-conducted as per the procedure established by the EIA notification, 2006, and give due consideration to this aspect in the process for environmental clearance;
- Follow due procedure established by law and withdraw all false and fabricated cases against affected villagers, withdraw the police force from Dinkia and restore people's free move;
- Ensure that all relevant international obligations and commitments, e.g. the CESC (especially the right to adequate food), the CCPR, the CBD, the Paris Agreement on climate change, the 2030 SDGs, and the UNDROP are prioritized and implemented;
- Invite, as a matter of priority, the UN Special Rapporteur on the right to food and the UN Special Rapporteur on Human Rights and the Environment;
- Expedite the implementation of the previous recommendations relevant to the human right to adequate food and nutrition as well as on environmental rights provided by the Treaty-based and Charter-based bodies of the United Nations, in particular of CESC, CEDAW and the UPR under the Human Rights Council.

ⁱ FIAN International: <https://www.fian.org/en/>

ⁱⁱ <https://www.escr-net.org/resources/price-steel-human-rights-and-forced-evictions-posco-india-project>

ⁱⁱⁱ The environment ministry's Roy Paul committee had recommended to undertake a comprehensive drainage study. However, no such assessments have been carried out in the draft EIA report. K. Roy Paul committee report stated, "*The Committee, therefore, recommends that a comprehensive area drainage study taking into account the topography, the severe historical floods and cyclones occurred and reported for the region may be carried out. The satellite Imageries of the area for the period of severe historical floods need to be analysed and the impact of the project on the natural drainage pattern should be, assessed and adequately addressed by the project proponent. Reputed national Institutions like NRSC and SAC may be engaged to 'carry out these assessments.'*" The Committee further observed, that the water availability and source sustainability needed close scrutiny. POSCO had been advised to look for other sources to augment water availability than the identified Jobra barrage of Mahanadi River near Cuttack. https://www.sol-asso.fr/wp-content/uploads/2013/06/Note_on_POSCO_Roy_Paul_committee_report_full_note_12-4-2013_1_.pdf

^{iv}Section 5 and section 6, Forest Rights Act, 2006

^v 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, (2010) at 64, See also, The Price of Steel: Human Rights and Forced Evictions in the POSCO-India Project, International Human Rights Clinic, ESCR-Net, (New York, NYU School of Law, 2013) p. 31

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

^{vii} Three different official committee reports i.e., the Saxena Committee, the POSCO Enquiry Committee^{vii} and the Forest Advisory Committee have highlighted the blatant disregard for Gram Sabha resolutions and other statutory rights under FRA, 2006 by the State Government: Report National Committee on Forest Rights Act, (December 2010) p. 104, available at http://www.indiaenvironmentportal.org.in/files/file/Final%20Report_MoEF_FRA%20Committee%20report_Dec%202010.pdf; 'FAC advises environment ministry to reject forest nod to Posco', November 3, 2010 available at <https://www.livemint.com/Politics/IXn0OA4brWnaCgPTriLRRK/FAC-advises-environment-ministry-to-reject-forest-nod-to-Pos.html>

^{viii} Obtaining the consent of Gram Sabha before diverting forestland is a statutory requirement and the State Government must ensure that forest rights over these lands are ensured and vested after the withdrawal of POSCO in March 2017. Failure to do so will entail liability upon the Government under FRA as well as the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act) 1989 (The Atrocities Act), which makes interference with the enjoyment of forest rights of members of a Scheduled Caste or a Scheduled Tribe an 'atrocious' punishable with imprisonment. The Atrocities Act also makes punishable willful neglect of duties that are required to be performed by a public servant. - Section 3(1)(g) of the Atrocities Act, 1989 (Inserted by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015)

^{ix} MoEFCC Memorandum, No. J-11013/41/2006-IA.II(I), 24 December 2010

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

^{xi} This amounts to "false and misleading" data, which also makes the projects liable to be cancelled as per Section 8 (vi) of the EIA notification, 2006.

^{xii} Till date, Environmental Clearance sought by JUSL had not been granted due to numerous shortcomings and inaccurate information submitted by the corporation. In this connection, the respective Expert Appraisal Committees (EACs) – Industry 1 and Infra 1 of the MoEFCC, had raised additional questions for clarifications and repeatedly deferred the application by JUSL. However, during their recent meetings (on 11 February 2022 and 10 March 2022) both committees recommended the approval. The final decision from the MoEFCC is being awaited.

^{xiii} Highlighting concerns over gross human rights abuses, former UN Special Rapporteur on the Right to Food, Olivier De Schutter also had warned that the forcible eviction of people from their lands could tantamount to depriving them of their means of subsistence and violating their right to adequate food and nutrition.

^{xiv} The Centre for Science and Environment (CSE) prepared a marine environmental impact assessment of the proposed POSCO project and highlighted several possible impacts of the project on the local environment and the fishing community including a heightened vulnerability to natural disasters. Construction activities can lead to flattening of sand dunes that act as a natural barrier to water entering into villages. In the past, the National Green Tribunal (NGT) has pointed out several deficiencies in the environmental clearances given to the project. Specifically, in May 2013, NGT reiterated the project's lack of environmental clearance and restricted illegal tree felling in the area.

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

^{xvi} For more information kindly consult annexes: FIAN Intervention letters to EAC Infrastructure and EAC Industry

^{xvii} A report established that, in February 2013, about 230 cases had been filed implicating about 1500-2000 villagers, most of who were taking part in peaceful protests against the project between 2006 and 2012. In most of these complaints, the number of accused is left open-ended which allows police to implicate any person in any case despite not being specifically named therein.

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

^{xix} 161.72 Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, tribes and other vulnerable populations (United States of America);

Source of position: A/HRC/36/10/Add.1 Supported

^{xx} 161.66 In the spirit of its Constitution, which guarantees equal rights to all minorities, further invest in dedicated human rights training of police officials to register and investigate cases of discrimination and violence and to hold them accountable when they fail to do so (Finland); Source of position: A/HRC/36/10/Add.1 Supported

^{xxi} 161.245 Continue strengthening the policies in favour of the rights of peasants and other persons working in rural areas (Plurinational State of Bolivia);

Source of position: A/HRC/36/10/Add.1 Supported

^{xxii} 161.93 Continue implementing its international commitments to achieve its nationally determined contributions under the Paris Agreement of 2015 (United Arab Emirates);

Source of position: A/HRC/36/10/Add.1 Supported

^{xxiii} 161.91 Continue its efforts in relation to its environmental policies (State of Palestine);

Source of position: A/HRC/36/10/Add.1 Supported

161.94 Continue its efforts to effectively enforce its environmental policies and further increase the growth of forest cover in the country (Brunei Darussalam);

Source of position: A/HRC/36/10/Add.1 Supported

^{xxiv} 161.169 Continue national efforts to realize social and economic development and eradicate poverty, and achieve comprehensive sustainable development for all (Egypt);

Source of position: A/HRC/36/10/Add.1 Supported

^{xxv} 161.154 Continue its programmes for the promotion of socioeconomic development, with a particular focus on the country's rights-based approach to food security targeting the most vulnerable groups (Sri Lanka);

Source of position: A/HRC/36/10/Add.1 Supported

^{xxvi} 161.153 Continue strengthening efforts aimed at promoting food security and eradicate all forms of malnutrition, in particular among children under the age of 5 (Libya);

Source of position: A/HRC/36/10/Add.1 Supported

^{xxvii} 161.166 Continue efforts to reduce poverty, improve the well-being of the people, protect and enforce the rights of vulnerable groups of the population (Uzbekistan);

Source of position: A/HRC/36/10/Add.1 Supported

^{xxviii} Proposal for the Development of All-weather, Multi cargo, Greenfield Captive Jetty(ies) for handling capacity 52 MTPA at Jatadhari Muhan River; and the proposal to set up a Greenfield Integrated Steel plant of capacity 13.2 MTPA crude steel with 10 MTPA Cement grinding unit and 900 MW Captive Power Plant near Paradeep Jagatsinghpur District, Odisha