

9th September 2010

**ENVIRONMENT AND FOREST CLEARANCE RELATED ISSUES OF THE
POSCO PROJECT IN JAGATSINGHPUR**

**SUBMISSION TO COMMITTEE CONSTITUTED BY MINISTRY OF
ENVIRONMENT AND FORESTS ON POSCO INDIA PVT LTD. Vide
ORDERS DATED 28TH JULY 2010 AND 27th AUGUST 2010**

Dear Members of the Committee,

As you are aware, the State government of Orissa in June 2005 signed a Memorandum of Understanding with the South Korean company Pohang Steel Company (POSCO) for the establishment of a 12 million tonnes per annum Integrated Steel Plant at Ersamma Block of Jagatsinghpur district of the state. The POSCO deal was part of the wave of investments in the steel sector that hit the state in the last few years during which almost 43 MoUs in the iron and steel sector, worth 1,60,132 crores have been signed by the Biju Janata Dal led Naveen Pattnaik Government. The Integrated Steel Project of the third largest Steel Company in the world is the biggest foreign direct investment in the country at 12 million dollars and has the following key components:

- A Mining Project or captive mines to meet the iron ore requirement
- A transportation component – a captive port along with road, rail infrastructure including the dedicated railway line from the mine-belt to Paradeep
- An integrated township; and
- A water supply infrastructure Water Project
- Integrated Steel Plant of 12 MTPA to be constructed in three phases

Considering that the sheer magnitude of the project with all its components, the project will have far reaching diverse socio-economic as well as environmental impacts. As a result there has been growing opposition to the project since the very outset when the plans were known. POSCO had earlier requested for an SEZ status for the implementation of all components of the project. With the delay in the grant of SEZ status, POSCO had begun pursuing clearances of the mining, steel plant and port components of the project separately. Separate Environment Impact Assessments (EIAs) were carried out for the steel plant and the port. The environment clearance applications were reviewed separately by the Ministry of Environment and Forests (MoEF). The critical need for cumulative impact of all three components was completely missing.

In the sections presented below and the annexures along with this submission, we have attempted to highlight some of the social and environmental impacts of various components of POSCO's proposed activities in Orissa, through the lens of the violations of the regulatory procedures related to environment and forest clearances. It also raised issues of relevance through other related processes which also point lapses that have a bearing on the social and ecological scenario in the region.

POSCO's proposed activities are likely to have irreparable damage on local livelihoods of the areas and the fragile ecological systems where the project is to be implemented. Some critical impacts are:

- While the official figure of families being affected is quoted as "upto 400", according to the local leaders of the movement against the POSCO project the entire population of 22000 will be affected by the project in Jagatsinghpur (this does not include the huge degree of damage that will occur in the mining area in Khandadhar), due to displacement of livelihoods based on a thriving agricultural economy. Apart from the paddy cultivation, the most critical livelihood support is provided by the cultivation of *paan* or betel leaf. There are a total of 5000 vines in three panchayats and the daily sale figure by 10,000 betel wine owners is estimated to be 30 lakh leaves generating 7.5 lakh Rs. worth of income
- The port proposed to come up at the mouth of the Jatadhari creek will ravage the sand dunes almost 20 ft high, spawning and breeding grounds of several fish species, a fragile estuarine stretch and much more. The construction at the mouth will cause water logging along the length of the creek and eventually kill it.
- Another prime issue has been the threat to the nesting habitat of the endangered Olive Ridley sea turtles as a result of this project. Several conservationists have pointed out that if the port is allowed to come up, it will irreversibly affect the breeding and nesting ground of this globally significant population, specifically at the beaches of the Devi river mouth. Scientists in the country and abroad have raised concerns regarding the impacts of oil spills, illumination, the cumulative impacts of various ports proposed in close proximity to the three known mass nesting sites in the state. The present project site is at a distance under 10 kilometers from one of Orissa's three known mass nesting beaches. At present, mass nesting of the Olive Ridley sea turtles [a protected species under Schedule – I of the Indian Wild Life (Protection) Act, 1991] takes place at Gahirmatha Marine Sanctuary, the Devi River mouth and at Rushikulya River mouth. Each of these sites has been accorded legal protection. The Jatadhar River mouth forms the northern portion of the Restricted Fishing Zone which the Orissa State Government has declared under the Orissa Marine Fisheries Regulation Act. The Central Empowered Committee appointed by the Supreme Court of India has also reiterated the need for protection of this site. At these nesting beaches, the Olive Ridley sea turtles nest in large numbers averaging about 200,000 turtles per year.
- The port site is located in close proximity to the Devi River mouth mass nesting site for the Olive Ridley turtles. The presence or absence of illumination at a particular site is an important criteria for the selection of a particular beach as a nesting site by adult turtles. Over the years, the intensity of illumination from the Paradip port has intensified although located at distance of approximately 50 kilometres from the Gahirmatha nesting site. Biologists are of the opinion that the illumination and the glow of light from the POSCO port area will inhibit nesting from taking place at the Devi River mouth area (*See Annexure A*).
- The Khandadhar hills where POSCO has proposed its mining operations are covered with forests, inhabited by a wide variety of wildlife and as well as flora. The tribal communities including the aboriginal tribes i.e., Paudi Bhuinyan, form 74% of the population in the surrounding area, are completely dependent on these forests for fuel, fodder, fruits and medicinal plants. The water springs in the area provide water for drinking as well as irrigation. The mining would also affect the famous Khandadhar waterfall – which is also a famous tourist destination of the state.

Most of these points have a bearing on the irregularities mentioned below and have substantiations through the Annexures attached with this note.

II. PROBLEMS WITH EIA AND PUBLIC HEARING PROCESS

a) Lacunae in the EIA Reports and no ground level data collection:

The EIA reports for both the steel plant and captive port suffer from several inadequacies and lacunae. We are attaching with our submission two critiques by Mark Chernaik of E-Law and Centre for Science and Environment as *Annexures 1 and 2*.

We would like to bring to your attention Clause 8 (iv) of the EIA notification clearly states, “*deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis.*”

b) Problems with the Public Hearing Process:

- Joint Public Hearing for two projects: The public hearings for both the captive port and the steel plant were held jointly, despite there being two projects. In keeping with the spirit of the EIA notification there should have been two separate public hearings for each of the projects. This goes completely against the spirit of the EIA notification. In this regard we would also like to bring to the attention of the committee, the 19th April 2010 office memorandum of the MoEF which has clarified that, “*the public hearings pertaining to the same projects shall not be held at the same venue and at the same date and time.*” A copy of this office memorandum is attached as *Annexure B*. The office memorandum is based on various instances wherein such multiple hearings have taken place and a related order of the High Court of Delhi (WRIT PETITION (Civil) No. 9340/2009 & CM APPL Nos. 7127/09, 12496/2009, Utkarsh Mandal and Others).
- Public Hearing Venue: The public hearing venue was at a High school, located at Kujanga which is 15 Km away from the project affected area which was a hindrance in the participation in the public hearing process.
- Presence of Police Platoons: The entire public hearing process was held under police presence which is a retrograde practice only to curb open and fair communication at the time of the public hearing.
- Objections not recorded: Please also see <http://www.newindpress.com/NewsItems.asp?ID=IEQ20070415103516> and <http://www.thestatesman.net/page.news.php> and *Annexure 3* which mention that there was severe objection at the time of the public hearing. Persons who attended the public hearing had raised objections that the points raised by them were not recorded adequately in the public hearing. [Also see point (c) below]

We attach with this letter as *Annexures 4, 5 and 6* as some submissions before and after the public hearing which substantiate our points above. There are other letters in Oriya language as submitted by the locally affected people which we would be willing to share with you.

The above points are totally in violation of the procedure of the public hearing laid out in the EIA Notification according to which the public consultation process is to be carried out “*in a systematic, time bound and transparent manner ensuring widest public participation at the project site(s) or in its close proximity*”. The conduct of the public hearing was completely against the text and spirit of the procedure laid out in the EIA notification, 2006.

c) Inadequate appraisal process:

It is also important to note that within three days of the public hearing, its report reached the Ministry of Environment and Forests (MoEF) in New Delhi. From 19.4.2007 onwards, the MoEF's Expert Appraisal Committee on infrastructure projects sat to review the captive port project. In this meeting they dispensed their earlier decision for the need for a site inspection, took view of POSCO's explanations and recommended the clearance of the port project. Quite interestingly one of the special conditions mentioned in the environment clearance letter of POSCO's port project states that all the issues addressed at the time of the public hearing must be addressed comprehensively, and an Action Taken Report must be submitted within six months. In effect, this meant nothing less than sidelining all that was said at the time of the public hearing, to be looked at post facto, even though the concerns were related to the irreparable damage to be caused by the project. Further, there is no record of the action taken report in the public domain through any kind of suo moto disclosure to the affected people and others who had raised concerns. [See Annexure 7 for minutes of the EAC]

III. LACK OF TRANSPARENCY IN SEEKING ENVIRONMENT AND FOREST CLEARANCES

a) Non disclosure of all components of project: Break Up of Clearances

As mentioned above the POSCO project as indicated in the MoU with the state government has several components, but the project authorities chose to pursue each of them separately. As a result of which there was no cumulative disclosure or assessment of the impacts of the mining project. This lack of disclosure also has a bearing on the manner in which the impacts of the loss of forests are assessed, as that is also done only for individual components of the project and not the entire array of activities. This was brought to the attention of the MoEF as well as the Central Empowered Committee (CEC) by social and environmental organisations. Attached are the copies of these submissions as well as the report of the CEC which indicates the same, to substantiate our point here as Annexures 8, 9 and 10.

b) Clearance letters still not available on MoEF website: Concerned citizens have been pointing to the lack of availability of POSCO's environment and forest clearances letters on the MoEF website since 2007. The situation still remains the same at the time of writing this letter. Annexure 11 are the letters sent to MoEF back in 2007.

We once again refer to Clause 8 (iv) of the EIA notification, 2006 which has been mentioned in the point I (a) above.

IV. FOREST CLEARANCE

The forest clearance process of the various proposed POSCO projects has also been an area of concern essentially for the impacts on the area as well as the procedural irregularities. For the reasons cited below we believe that the forest clearance granted to the POSCO steel plant is illegal.

a) Forest clearance despite lack of transparency and irreparable forest loss:

The setting up of the steel plant and port requires a diversion of 1,253.255 ha of forest land for non-forest use. This is a mandatory procedure to be followed as per the Forest Conservation Act, 1980.

The grant of clearance would mean felling of about 280,000 trees. As per procedure, the proposal was considered by the Forest Advisory Committee (FAC) under the MoEF on 9 August 2007. This committee recommended the grant of forest clearance. However the project also came under the scrutiny of the 27 April 2007 order of the Supreme Court according to which all fresh decisions of the FAC would be subject to review by the Supreme Court bench in the T N Godavarman v/s Thirumulpad case. Before taking a final view, the apex court now seeks comments of the Central Empowered Committee (CEC) set up as a monitoring body by the same bench.

The CEC in its 14.11.2007 report (see Annexure 10) amongst other things recommended two critical points which also took on board the mining component of POSCO's projected activities. We reiterate these points:

- “The CEC is of the view that instead of piecemeal diversion of forest land for the project, it would be appropriate that the total forest land required for the project including for mining is assessed and a decision for diversion of forest land is taken for the entire forest land after considering the ecological importance of the area, number of trees required to be felled, adequacy and effectiveness of the R&R plan for the project affected persons and benefits accruing to the State. The diversion of forest land for the plant, without taking a decision for the linked uses particularly the mining project may not be in order.
- “Since the number of trees involved is about 2.8 lakhs, it would be in order that an independent expert committee including representatives of the NGOs should undertake a site visit in order to assess the impact of the cutting of such a large number of trees and suggest mitigative measures for the area, specially since there is a large dependence of local population on these forests. Subject to the compliance of the above observations the proposed diversion of foresee land may be permitted.”

The Supreme Court through its 8.8.2008 order sent the proposal back to the MoEF to consider for grant of forest clearance, indicating that they did not have an objection in this regard. The court order does not say anything about the CEC's recommendation that the impacts of the project need to be considered in its entirety. It does however recognize that 2.8 lakh trees in the coastal area are to be felled for which mitigation measures should be put in place. For this they have appointed one of the CEC members, S.K.Patnaik along with representatives of MoEF and Orissa government to suggest mitigation measures.

The project was granted final forest clearance on 29th December 2009 despite the above mentioned lacunae as well as critical violations mentioned below.

b) Violation of Forest clearance with no FRA process (illegal)

The provisions under the Scheduled Tribes and Other Traditional Forest-Dwellers Recognition of Forest Rights Act, 2006 (*referred to further as FRA*) and its relation to the forest clearance process are very important to consider. The Act provides for settlement of rights by recognising the right of forest-dwellers to occupy, cultivate, use and protect areas within which they were residing before December 13, 2005. The rules for the Act were notified in January 2008. So, the forest clearance for the project could not have been granted till this process of filing claims and conferring rights was initiated and completed. This is especially so because back in March 2008, the Palli sabha in Dhinkia village had already passed a resolution citing sections of the legislation declaring that they did not consent to any proposed diversion. This is attached as *Annexure 12*.

Since 30th July 2009, there has also been a circular of the MoEF in operation which also seeks the above, not just for POSCO but for all projects coming up before the MoEF for forest clearance. The circular clearly states, “*The State/UT Governments, where process of settlement of Rights under the FRA is yet to begin, are required to enclose evidences supporting that settlement of rights under FRA 2006 will be initiated and completed before the final approval for proposals.*”. Within five months of the issuance of this circular, the forest clearance for POSCO is granted without the FRA process in the area being complete. The MoEF has justified this clearance by laying down a condition in the clearance letter that the processes under the FRA need to be completed for the clearance to come into effect. This is in complete violation of the FRA as well as MoEF's own circular. However, the MoEF despite submissions has upheld the illegal forest clearance.

It is disconcerting that the MoEF has viewed projects with similar considerations differently. The FRA is the one significant and most critical ground based on which the final forest clearance for the mining in Niyamgiri (Orissa) was not granted in August 2010. However, in complete disregard to its own circular and also the FRA process as being implemented in the country, the forest clearance for the POSCO steel plant remains valid.

We request you to also see: <http://www.indiatogether.org/2010/jul/env-posco.htm>; <http://infochangeindia.org/200812097525/Environment/Analysis/When-people-are-encumbrances-and-projects-are-a-national-necessity.html>.

Letter from the Chairman of the FRA committee set up by the MoEF is attached as *Annexure 13* and MoEF letter halting land acquisition by POSCO as *Annexure 14*.

b) Lack of ground verification before forest clearance

Since the local communities had barricaded the entry of outsiders into the area; the forest clearance had been approved based on an aerial survey. According to Biswajit Mohanty of Wildlife Society of Orissa who had got information in response to a Right to Information application, states that, “The Chief Conservator of Forests, Eastern India Regional Office of Ministry of Environment and Forests, Bhubaneswar could not carry out a site verification of the proposed site and the forests sought to be diverted for proposed Posco's steel plant at Paradip.” He is referring to the Site Inspection Report dated 21.7.2007 submitted by the Chief Conservator of Forests (CCF), MoEF Eastern India Regional Office, Bhubaneswar which was received through the RTI. As per para 2 of the site inspection report dated 21.7.2007, the CCF has mentioned that he has undertaken an aerial view of the area from a low flying helicopter which is a clear violation of the procedures for diversion of forest land under the Forest (Conservation) Act, 1980 and guidelines issued there under.

V. PROBLEMS WITH THE MOU AND EXPIRY OF THE MOU

POSCO's MoU has been ridden with anti people and anti environment clauses which pre-empt the state government support to the project; even before environment and social impact assessments are complete. This completely undermines a free prior informed decision making process on the project. The clauses of the MoU state:

- “The Government of Orissa will recommend such areas as are free from litigation as well as encumbrances. In the event of litigation at any stage, Government of Orissa will diligently defend their recommendations made in favour of the Company in the appropriate

judicial, quasi judicial fora.”

- “All iron ore Mining Leases and Prospecting Licenses shall be clean and free of any encumbrances.”
- “The Government of Orissa will assist the Company in obtaining all clearances, including forest and environment clearance and approval of the State Pollution Control Board, and the Ministry of Environment and Forest, Government of India under Forest (Conservation) Act, 1980 and Environmental (Protection) Act, 1986 for opening up the iron ore mines, laying roads, constructing township etc.”
- “The Government of Orissa agrees to facilitate and use its best efforts to enable the Company to obtain a “No Objection Certificate” (NOC) through the State Pollution Control Board in the minimum possible time for the development and operation of the Project.”

Attached is a critique of the MoU of POSCO with the State Government of Orissa as *Annexure 15*.

The MoU stands expired on 22nd June 2010, and perhaps the new modalities are already underway or perhaps even finalised at the state level. But the MoU has a startling clause which states that “ *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.*” According to the same document the first phase should have meant that 6 MT production of steel should have been commissioned, which has not happened.

We believe that this is an opportune time for the POSCO project with all its violations and irregularities to be reviewed and reassessed. All the existing clearances appraised without application of mind and bias need to be withdrawn with immediate effect.

VI. IMPACTS ON THE PARADIP PORT and OBJECTION OF MINISTRY OF SHIPPING

While POSCO intends to utilize part of this iron ore in its steel plant, the company plans to ship out another part through export. The company had earlier been offered the facilities of the existing government owned Paradip port near the project area for doing so. But at the insistence of POSCO, the mouth of pristine Jatadhar estuary has been “cleared” for the establishment of a captive port. This is despite the fact that in 2006, the Minister of Shipping, T.R.Baalu had written a letter to the Orissa government highlighting concerns on the impacts the setting up of a special facility will have on the commercial viability of existing Paradip port, which is yet another public sector establishment. Yet sanctions are through for setting up of the captive port within a distance of 12 km from the Paradip Port. Established in 1965-66, this mini- ratna company which has consistently logged in growing profits, this should have been the first choice to meet the requirements of POSCO. The Paradip Port Shramik Sangh states that the traffic of 13 MT of iron ore for POSCO can be easily arranged within the 14 cargo berths with an annual capacity of 51.4 million tonnes. In the year 2006-2007 the port handled 38.52 million tonnes cargo from 1452 cargo ships. Exclusive berths have been made available to Paradeep Phosphate Ltd (PPL) and Indian Farmers’ Fertilizer Cooperative Ltd (IFFCO), projects in the vicinity of the Paradip Port. The decision to allow POSCO’s captive port seems to have been made on considerations that don’t include maximising existing infrastructure.

News Reports related to the Ministry of Shipping's Objection are attached as *Annexure 16* and an article on impact of POSCO's activities on various PSUs is attached as *Annexure 17*.

In the light of all the facts related to violations and impacts above, we request the MoEF committee on POSCO to recommend the withdrawal of all existing environment and forest clearances related to POSCO India Limited. We also request the committee to recommend stringent action against the company and individuals (both government and non government) involved abetting these violations.

We look forward to your action in this regard.

Sincerely

S/d

1. Kanchi Kohli, Kalpavriksh, New Delhi
2. Manshi Asher, Environment Research and Action Collective, Himachal Pradesh
3. Vandana Shiva, RFSTE, New Delhi
4. Sudhir Pattnaik, Writer and Activist, Bhubaneswar
5. Vijayan M.J. Delhi Forum, New Delhi
6. Mamata Dash, Activist and Researcher, New Delhi
7. Subrat Kumar Sahu, Independent film maker and Journalist
8. S. Parasuraman, Tata Institute of Social Sciences, Mumbai
9. Sharadchandra Lele, ATREE, Bangalore
10. Dunu Roy, Hazards Centre, New Delhi
11. Aruna Rodrigues, Sunray Harvesters, Mhow
12. Ashok Agrawaal, Advocate, Supreme Court of India, New Delhi
13. Aarthi Sridhar, Dakshin Foundation, Bangalore
14. Joanna Van Gruisen, Baavan Trust
15. P V Satheesh, Deccan Development Society [DDS], Pastapur Village, Andhra Pradesh
16. C N Suresh Kumar, Alliance for Food Sovereignty in South Asia [AFSSA], Hyderabad
17. Vatturi Srinivas, Millet Network of India [MINI], Hyderabad
18. A Giridhar Babu, South Against Genetic Engineering [SAGE], Hyderabad
19. Alliance for Democratising Agricultural Research in South Asia [ADARSA]
20. Jayasri Cherukuri, AP Coalition in Defence of Diversity [APCIDD], Andhra Pradesh
21. Madhumita Dutta, Corporate Accountability Desk, Chennai
22. Mangaraj Panda, Coordinator, Orissa Marine Resources Conservation Consortium, Orissa
23. Subash Patnaik, Project Coordinator, United Artists Association, Ganjam, Orissa
24. M. Parvati, Secretary, Samudram Fishworker Womens' Federation, Orissa
25. Simhachal Nahak, Rushikulya Rayat Mahasabha, Ganjam District, Orissa
26. Nityanand Jayaraman, Independent Journalist, Chennai
27. Aruna Roy/Nikhil Dey/Shankar Singh, Mazdoor Kisan Shakti Sangathan, Rajasthan
28. Shripad Dharmadhikary, Manthan Adhyayan Kendra, Badwani (M.P.) & Pune