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**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the human right to safe drinking water and sanitation

REFERENCE: UA Housing (2000-9) Water (2008-1)
IND 12/2011

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and Special Rapporteur on the human right to safe drinking water and sanitation pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/8 and 16/2.

We would very much appreciate if your Excellency's Government could contact us urgently about the allegations detailed below. We would prefer to be able to reflect any comment or clarification received from your Excellency's Government in making public our concerns.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **the alleged forced eviction of more than 200 farmers from Polong and Noliasahi villages in Jagatsinghpur district in Orissa state, in order to make way for a steel plant and a captive port**. We would also like to draw your Excellency's Government's attention to reports received regarding **additional alleged planned evictions of more than 470 families living and working in the Erasama block of Jagatsinghpur District and demolition of their houses and crops**. The information received further indicates that the proposed project will extract unsustainable amounts of water from the area.

According to the information received:

- 1) The Ministry of Environment and Forests recently approved land acquisition (4000 acres) in three Gram Panchayats within Jagatsinghpur district, in Orissa state, namely – Dhinkia, Nuagon and Gadakujang. Reportedly, the purpose of the land acquisition is to make way for a

foreign investment project in the area – the building of a steel plant and a captive port on the Muhana River by the South Korean steel company POSCO.

Reportedly, the majority of local communities in the effected area are opposing the project. It is reported that a population of 22,000 people will be affected by the project, including more than 470 families that are to be evicted from their homes and additional farmers who will lose access to lands they have been cultivating for generations. According to information received, the land acquisition will affect the livelihood of local communities, who directly dependent on betel vine and cashew nut cultivation and fishing in the area.

Reports received indicate that Orissa state authorities have already demolished betel vines in the village of Gobindpur, affecting the source of livelihood for the resident population. According to information received, the Orissa state authorities have recently authorized armed police intervention in the affected areas.

Information received also raises concerns that the planned plant will extract large quantities of water, severely impacting the drinking and agricultural water supply to four neighboring districts. Concerns have also been raised that the building of a port on the Muhana River will adversely affect the natural drainage system in the area, resulting in increased siltation in the river, water logging and increased chances of floods.

Reportedly, two expert committees appointed by the Ministry of Environment and Forests, recommended the revocation of the existing environment and forest clearances to the project.

Reports raise concerns as to the adequacy of consultation with the affected communities. We have been informed that on 15 April 2011 an Environment Clearance Public hearing was held on the steel plant and captive port project. However, we are informed that the hearing was held 20 km away from the affected area and that paramilitary forces were deployed in the area a week before, substantially diminishing local communities' ability to participate in the hearing.

We have also been informed that no adequate resettlement alternatives have been proposed to the local communities.

According to information received, the Orissa state authorities' position is that no prior notice or consultation is required, as the majority of lands in question are "common land" owned by the government (3566 acres), while only 438 acres are in private ownership. However, we were

informed that most of the lands in question have been cultivated by local communities for generations. Information received also indicates that local communities have been paying illegal occupancy fines and royalty for betel vine sales to the local authorities. Applications for claims on titles have been repeatedly made by the local communities, but have yet to be accepted.

- 2) Additional information received indicates that on May 2008, at least 200 farmers were forcibly evicted from the common land at Polong and Noliasahi villages, in the Jagatsinghpur district in Orissa state, in order to make way for the POSCO project.

Reports indicate that during the eviction, the Orissa state authorities, aided by 150 armed police force officials, destroyed betel vine crops and cultivation sheds. Following the eviction, the lands were fenced off in order to prevent the farmers from accessing them.

It is reported that no notice has been given to the residents and that the local communities were not consulted before the evictions.

Allegedly, the evicted residents have yet to receive either compensation, or adequate alternative housing and land.

While we do not wish to prejudge the accuracy of these allegations, we would like to remind your Excellency's Government of article 11.1 of the International Covenant on Economic, Social and Cultural Rights, to which India is a party, which states that "the States Parties to present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions". We also recall Human Rights Council resolution 15/9 which specifies that the right to water and sanitation is derived from the right to an adequate standard of living.

The Committee on Economic, Social and Cultural Rights (CESCR) commented on the right to adequate housing in its General Comment No. 4, stressing that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. With "due priority to those social groups living in unfavorable conditions," the right to housing includes guaranteeing: (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. The Committee also added that "the right to housing should be ensured to all persons irrespective of income or access to economic resources".

As stated in resolutions 1993/77 and 2004/28 of the Commission on Human Rights, forced evictions constitute prima facie violations of a wide range of internationally recognized human rights and large-scale evictions may only be carried out

under exceptional circumstances and in full accordance with international human rights law. According to the General Comment No. 7:

“15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. 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; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”

“16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party 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.”

We wish to recall the existence of the Basic principles and guidelines on development-based evictions and displacement (contained in document A/HRC/4/18) that aim at assisting States in developing policies and legislations to prevent forced evictions at the domestic level. Your Excellency’s Government may find useful in the current circumstances the sections of the guidelines that focus on State obligations prior to, during and after evictions.

Concerning the risk of over-extraction of water having an impact on the drinking water supply, we remind your Excellency’s Government that General Assembly resolution 64/292 recognized the human right to safe drinking water and sanitation. In its General Comment 15, the CESCR specified that water should be prioritized for personal and domestic uses. We recall that the General Assembly has recognized “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights” and that this right requires that water and sanitation are available, accessible, affordable, acceptable and safe for everyone without discrimination. This right requires States to prevent third parties from interfering with its enjoyment, including activities which would result in denying people adequate amounts of safe water.

Private actors also have responsibilities in the realization of the human rights guaranteed under international law. The Universal Declaration of Human Rights itself

proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. In this context we would also like to recall the existence of the Guiding Principles on Business and Human rights (contained in document A/HRC/17/31), on the effective prevention of, and remedy for, business-related human rights harm.

It is our responsibility, according to the mandate entrusted to us by the Human Rights Council, to clarify all allegations brought to our attention. We would therefore greatly appreciate detailed information from your Excellency's Government concerning the above situation and about the measures taken by the competent authorities. We would in particular appreciate receiving information on the following points:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims from Polong and Noliasahi villages?
3. What measures have been taken to ensure that the steel plant and captive port project Jagatsinghpur district do not have a negative impact on the livelihoods, the health and access to safe drinking water of neighboring communities? Has an environmental impact assessment been undertaken?
4. Is there any national legal standard prioritizing water for human consumption over other uses?
5. Did appropriate consultations take place with the affected communities? If yes, please give the details, date and outcome of these consultations.
6. To what extent has the land subject to acquisition been duly evaluated? To what extent have measures to provide adequate compensation been put in place for all concerned persons, with a due assessment of the loss of their farming activity? Has compensation been offered to residents who had applied for titles on lands they have been cultivating?
7. What measures have been foreseen to ensure that the persons affected by the planned evictions, will not become homeless?
8. What has been foreseen in terms of relocation? If locations have been designated for the relocation, please provide details on the exact location, including details on the area and quality of land, access to public services and livelihood sources.
9. Could you please provide information on the current situation of the more than 200 farmers from Polong and Noliasahi affected by the alleged evictions?

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Raquel Rolnik

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Catarina de Albuquerque

Special Rapporteur on the human right to safe drinking water and sanitation