

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to food; the Special Rapporteur on the situation of human rights defenders and; the Special Rapporteur on the rights of indigenous peoples

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Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to food; Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 35/7, 32/8, 34/5 and 33/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **construction of a boundary wall around the lands of 22,000 people, including Adivasi communities, living in Jagatsinghpur District, Odisha, after the South Korean company POSCO withdrew its plan to establish an integrated steel plant and a captive port in this area. This boundary wall would reportedly deny people access to their traditional land, resulting in forced evictions and the destruction of their livelihoods and has been initiated without good faith consultations nor the consent of the affected communities.**

We had expressed our concerns related to this case and its adverse impact on human rights through a prior communication and a press statement in 2013.

According to the new information received:

On 22 June 2005, South Korean steel company POSCO (formerly Pohang Iron and Steel Company) signed a Memorandum of Understanding with the Government of Odisha to invest in a \$12 billion project consisting of iron ore mines and an integrated steel plant in the Jagatsinghpur district of Odisha. The project was originally proposed to be built on 6,000 acres of land, including 2,428 hectares of forestland in Khandahar Hills for mining the iron ore required for the steel plant. According to the affected people, most of the land proposed to be used for the project was common land, village property which falls under the authority of local bodies. Therefore, besides adversely affecting the environment and water sources, the proposed project (as planned and agreed by the Government) may have caused forced displacement of these people and the destruction of their cultivation and trees used as means of subsistence.

The affected people allege that state authorities have consistently failed to recognize local Adivasi communities' individual and community rights over common lands, as recognized under the Scheduled Tribes and Other Traditional Forest Dwellers

(Recognition of Forest Rights Act) Act (FRA). Many villagers said that they had submitted forest rights claims to local authorities, but these claims were not processed. In addition, villagers have not been adequately consulted regarding this project. In 2010, a special Forest Rights Committee constituted by the Ministry of Tribal Affairs and the Ministry of Environment and Forests (MoEF) recommended that land could only be handed over to POSCO after forest rights claims from residents of affected villages were resolved. Despite these findings, in 2011 and 2013, 2,700 acres of common land were reportedly forcibly taken over by the government in the villages of Nuagaon, Gadakjunga and Dhinkia without having settled the forest claims.

In 2013, eight independent UN human rights experts called for a halt to the project, citing serious human rights concerns including the impact of forced evictions on livelihoods and access to natural resources. In 2015, Norges Bank decided to exclude the company from the investment universe of the Norwegian Government Pension Fund Global.

In March 2017, POSCO stated that it was withdrawing from the project and requested the Odisha government to take back the land transferred to the company. Since March 2017, the Government of Odisha reportedly started constructing a boundary wall around the acquired land transferred back by POSCO to the Odisha Industrial Infrastructure Development Corporation, without having settled the forest rights claims over the land. The boundary wall allegedly encroaches upon peoples' right to access and cultivate their lands and may lead to the destruction of trees and cultivations, which are means of peoples' subsistence. According to some media reports, the Government of Odisha is planning to sign a Memorandum of Understanding (MOU) to hand over this land to another company, JSW Steel Limited.

The human rights defenders who have expressed their concerns in relation to this project and its impact have reportedly been subjected to violence, harassment and intimidation, as well as arbitrary detentions and false charges, because of their activities to assemble peacefully and collectively defend their human rights. Four persons were reportedly killed since 2005 (namely, ██████████, ██████████, ██████████ and ██████████) and nearly 2,500 arrest warrants were issued and 420 criminal cases registered since 2005. In most of these cases, the number of accused people is not stated, allowing the police to implicate any person in the case and leaving villagers vulnerable to arrest. In the last 12 years, it is reported that more than 400 people were arrested. The two most recent detentions, Mr. ██████████ and Mr. ██████████ occurred on the 19th of December 2017 in the village of Dhinkia.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that acts are being undertaken without consulting and ensuring the free, prior and informed consent of the affected communities. The failure to address land claims and the construction of a boundary wall would deny people access to their traditional land,

resulting in forced evictions and the destruction of their livelihoods. We are furthermore concerned over allegation of harassment, intimidation and arbitrary arrests of people who seek to exercise their rights.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information or observations that you may have in relation to the above-mentioned allegations and concerns.
2. Please indicate the steps taken by the Government to settle forest rights claims submitted by villages of Dhinkia, Nuagaon and Gadkujang in the concerned areas under the FRA.
3. Please indicate what measures have been undertaken to consult in good faith with affected peoples, relating to the steel mining project as well as the alleged construction of the wall, and what steps have been taken to obtain their free, prior and informed consent before taking any decision to use common lands for industrial purposes.
4. Please provide information about the steps, if any, taken by the Government to avoid that unaddressed concerns of affected local communities due to the alleged allotment of the land to a new company, that have led to escalating tensions and resistance.
5. Please provide information on the cases filed against affected community members since 2012, their legal grounds and the current judicial status of these criminal cases.
6. Please provide information regarding the investigation related to the killings of Tapan Mandal, Tarun Mandal, Narahari Sahoo and Manas Jena.
7. Please provide information on measures taken by your Excellency's Government to ensure that public sector undertakings and private companies implement the UN Guiding Principles on Business and Human Rights, including conducting human rights due diligence and remedying adverse impacts.
8. Please provide information about the measures that the Government has taken, or is considering to take, to ensure that the community members have access to effective remedies, including adequate reparation, in line with the

Guiding Principles and the United Nations Declaration on the rights of indigenous peoples.

9. Please indicate what measures are taken to ensure that the alleged construction of the wall will not affect their access to cultivable land and in turn the availability and accessibility of food.
10. Please indicate the measures adopted, both immediate and structural, to ensure that human rights defenders, can carry out their work without fear of stigmatization, intimidation, harassment or retaliation of any kind.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Anita Ramasastry
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Hilal Elver
Special Rapporteur on the right to food

Michel Forst
Special Rapporteur on the situation of human rights defenders

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In particular, we would like to refer to the Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/4) in 2011. The Guiding Principles have been established as the authoritative global standard for all States and businesses with regard to preventing and addressing adverse business-related human rights impacts.

Principle 1 provides: "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication."

Principle 4 sets out that States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

In addition, the Guiding Principles 11 to 24 and 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. In this connection, we recall that the Guiding Principles have identified two main components to the responsibility to respect human rights for business enterprises, which require 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" (Guiding Principle 13). This dual requirement is further elaborated by the requirement that the business enterprise put in place:

1. A policy commitment to meet their responsibility to respect human rights;
2. A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights. The business enterprise should communicate how impacts are addressed; and
3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (Guiding Principle 15).

The Principle 25 states that as part of their duty to protect against business-related human rights abuse, "States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within

their territory and/or jurisdiction those affected have access to effective remedy”. As underlined in the commentary to Guiding Principle 25, “State-based judicial and non-judicial grievance mechanisms should form the foundation of a wider system of remedy. Within such a system, operational-level grievance mechanisms can provide early stage recourse and resolution.”

Guiding Principle 26 further notes that States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

Guiding Principle 28 highlights that “States should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms.” The Commentary to Guiding Principle 29 further provides that operational-level grievance mechanisms should not be used to preclude access to judicial or non-judicial grievance mechanisms.

Guiding Principle 31 clarifies that in order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.”

With regards to the right to food, article 25 of the Universal Declaration of Human Rights (UDHR) recognizes the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food.” Furthermore, article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – which India ratified on 10 Apr 1979 - stipulates that States “recognize 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” and requires them to “take appropriate steps to ensure the realization of this right.”

The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the ICESCR, has further defined the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfill the right to food. The Committee considers that the core content of the right to adequate food implies, inter alia, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility.

Reference should be made as well to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. Of particular relevance are articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 12, (1) and (3), provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms, as well as for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts that result in violations of human rights and fundamental freedoms.

Finally, we would like to draw the attention of your Excellency’s Government to relevant articles in the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly on 13 September 2007 with an affirmative vote by India. Article 26 of the Declaration states the right of indigenous peoples to “the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” and for legal recognition of those rights “with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned”. Furthermore, Article 32 recognizes the right of indigenous peoples “to determine and develop priorities and strategies for the development or use of their lands or territories and other resources” and to be consulted

“through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.” Article 28 sets out that indigenous peoples have “the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent”.