

I. REPORT SUBMITTED BY MS. MEENA GUPTA

Executive Summary

Over the approximately two and a half months of the existence of the POSCO Enquiry Committee, the four members of the Committee spent a considerable amount of time studying documents and reports relevant to the POSCO enquiry, some obtained by us through our own efforts, some, papers submitted to us by various stakeholders and interested parties; meeting a large number of people, viz. persons belonging to the affected villages in Jagatsinghpur district, organisations and persons concerned about the environment, wildlife, livelihoods and displacement, officials of the State Govt of Orissa, members of political parties, representatives of POSCO, and sundry others; visiting several of the affected villages and the site of the proposed captive port of POSCO; and deliberating at length among themselves.

While the Committee was looking into various aspects of the POSCO issue, another committee headed by Mr. NC Saxena, set up to look into the implementation of the Forest Rights Act and several other issues connected with a proposed bauxite mine lease (linked to M/s Vedanta Alumina Ltd) in the Niyamgiri hills of Kalahandi district of Orissa, submitted its report. That report was a scathing indictment of the Govt of Orissa's poor implementation of the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act in the area, its neglect of the rights of tribals belonging to the Primitive Tribal Groups, and its turning a blind eye to major violations of the Environment Protection Act and the Forest Conservation Act. Acting on this report, the Ministry of Environment and Forests rejected the application for forest clearance of the Orissa Mining Corporation which would have led to the mining of bauxite in the Niyamgiri hills. Since both the POSCO and the Vedanta projects are located in Orissa, both are mineral based industries, and both have a major chunk of forest land within its area, there was an immediate assumption that POSCO too would be treated similarly by the Committee and the MOEF.

It is important to point out that POSCO and Vedanta are very different projects and operate in different environs and circumstances. Vedanta's alumina plant (and the bauxite mine for which lease was applied for by the Orissa Mining Corporation), is located in the less developed western part of Orissa, in a Scheduled Area which is home to two Primitive Tribal Groups (PTGs). These tribes are forest dwellers whose livelihood and culture depend on the dense forests in the area; displacing them would destroy their lives. Scheduled Tribes enjoy an important Constitutional status, and disturbing or displacing them stands on a different footing from displacement of other people. POSCO's plant, on the other hand is to be located in a coastal district, in the more developed eastern part of Orissa; the area is not a Scheduled Area and has virtually no Scheduled Tribe people. The people to be displaced are mostly agricultural and fishermen families (about 700 families); several are Scheduled Castes. Though POSCO is also to be located on forest land (for which clearance under the Forest Conservation Act is necessary), the area recorded as forest is mainly

sandy waste, with some scrub forest, apart from the casuarina plantations in the area. A very important difference also is that while the construction of the Vedanta project is almost complete (including unauthorised construction of the expanded portion for which no environment clearance had been taken), construction on the POSCO project is yet to start, the land not having been handed over to the company by the State Government, so far.

It is indicative of the complex nature of the problem that the committee members during their examination of the project, formed very different impressions and came to very different conclusions. Despite efforts to arrive at a consensus, members of the Committee could not agree on the conclusions on several of the issues. On some of the issues there was agreement on what the conclusion should be, but not on the reasons leading to the conclusion. Basically, there were two divergent views, one held by three members (viz. Dr. Urmila Pingle, Dr. Devendra Pandey and Dr. V Suresh), and one held by a single member, myself. Attempts were made to combine both views in a single report, but no agreement could be reached on the best way to do that. Therefore it was finally decided to present the two different sets of findings in two separate reports – not a very happy solution, but in the circumstances, unavoidable. In this summary, which is of the findings of my report, I will, nevertheless, attempt to mention the few areas of agreement and of some areas of disagreement between the views held by me and those held by the other three members (which will be presented in a separate report).

On the issue of implementation of the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, (henceforth referred to as the Forest Rights Act or FRA), it was felt that the efforts made to implement the FRA in the POSCO project area, in 2008 and 2009, suffered from some shortcomings and inadequacies. This, as well as the circumstances prevailing in the area at the time, with many of the villages opposed to POSCO, might have resulted in the people of the area not submitting their claims for recognition of forest rights. To debar such people, permanently, from filing their claims and getting their forest rights recognised, seems to be a violation of natural justice. It is therefore recommended that the exercise of recognition of forest rights be undertaken in the project villages afresh: Gram Sabhas be convened again, the Forest Rights Committees of the Gram Sabhas/ Palli Sabhas be re-formed, claims be re-invited by them, and a resolution passed within the time limit specified under the rules. The Sub Divisional Level Committee (SDLC) and the District Level Committee (DLC) should thereafter meet and complete the exercise. Since this exercise is being done for the second time and also because the handing over of the forest land earmarked for the POSCO project cannot proceed until a final decision is taken on the claims, a time limit should be specified and adhered to. There was broad agreement in the Committee that the procedure to recognise forest rights should be re-done in the project villages.

As far as resettlement and rehabilitation is concerned, while nothing can compensate for the trauma of displacement, the finding is that the R and R package is a good one,

better than the norms laid down in the Orissa Govt's Resettlement and Rehabilitation Policy, and the villagers who are not opposed to the project are satisfied with it. The process of discussing the benefits and the list of displaced persons/ beneficiaries at the RPDAC meetings where representatives of the affected villages are present is a good one and ensures transparency. However landless labourers seem to have got very limited benefits even though their livelihoods will be affected, and this is worth looking into. It needs also to be ascertained whether fishermen, other than those of Nolia Sahi village, have fishing rights along the coast and in the area of the POSCO project, and if it is so, they need to be compensated. The other Committee members disagreed to some extent. They felt that higher compensation should be paid for the paan plots, but basically they felt that the forest land should not be diverted at all.

On the issue of compliance with the environment and CRZ clearances, it was found that the work to establish either POSCO's steel plant or the captive port had not yet started. In fact the required land had also not been handed over to the company as several essential statutory clearances had not yet been obtained by the State Government. Therefore the issue of assessing compliance at this point of time was premature. However while studying the EC and talking to various stakeholders several matters that cause concern emerged. Important among them is the issue of water supply to the plant from the Jobra barrage, and the stress and deprivation it could cause at the source; the issue of the Paradeep industrial area fast developing into a critically polluted area and the need to take mitigative action; the issue of having a captive port at Jatadhar Muhan, so close to Paradeep, causing environmental damage and affecting estuarine fauna and flora; the issue of several ports coming up on the Orissa coast causing changes to the shoreline and threatening endangered species; etc. There are thus a number of issues relating to EC and CRZ which need to be looked at afresh. The MOEF should consider doing this at the earliest by requiring a comprehensive EIA to be prepared both for the steel plant and for the port and asking the Expert Appraisal Committee concerned to examine various aspects, so that additional conditions, if required, can be imposed on the project before it construction starts. The other members of the Committee did not agree with this. Their view was that the EC granted for the steel plant and EC and CRZ clearance granted to the captive port should be cancelled forthwith, because of flaws in the studies, and shortcomings in the clearances granted.

Chapter One

Introduction

Background: In June, 2005, the Pohang Steel Company (POSCO), Korea and the State of Orissa signed a Memorandum of Understanding (MOU) for setting up an integrated steel plant with a total capacity of 12 million tonnes per annum in the Jagatsinghpur district of Orissa, located along the coast of Orissa. An Indian company, known as POSCO- India was to be established which would develop and operate the steel plant to produce a total of 12 MT of steel per annum. Initially the steel plant would produce 4 MT of steel per year and this would be increased in phases to 8 MT and thereafter to 12 MT. The proposed investment was Rs. 51,000 crores or 12 billion US\$. As per the MOU the company would also develop and operate: 1) mining facilities in the areas allocated by the government of Orissa / Government of India; 2) road, rail and port infrastructure, including a dedicated railway line from the mine belt to Paradeep; 3) An integrated township; and 4) water supply infrastructure. The State government undertook to facilitate clearances and approvals of the Central Government as and when required and to smoothen the process of obtaining other State clearances and ensure that the project proceeded according to the planned schedule.

The integrated steel plant is proposed to be located in Kujang Tehsil of Jagatsinghpur district, Orissa, about 12 km from Paradeep. The proposed project requires a total of 4004 acres of land of which 437.68 acres (or 10% approximately) is private land, and 3566.32 is government land (2958.79 acres forest land and 607.53 acres non-forest government land). The land for the proposed project lies in 8 villages of three Gram Panchayats, i.e. Dhinkia and Govindpur villages in Dhinkia GP, Noliasahi, Bhuyanpal, Polanga and Bayanalakanda in Gadakujang GP, and Nuagaon and Jatadhar villages (the latter, an uninhabited village) in Nuagaon GP. Of the eight villages, two, viz. Noliasahi and Patna fall fully within the project area and the families in these villages would need to be resettled and rehabilitated in other areas. According to reports, a total of 471 families would be displaced by the project.

The location of the proposed captive minor port is approximately 12 km south of Paradeep Port. The proposed port is adjacent to the steel plant.

The lease for the captive iron ore mines is yet to be granted. A site for the iron ore mines was selected at Khandadhar in Sundargarh district and the State Government had granted a prospecting licence to POSCO India. However on certain other parties going to court, the High Court of Orissa struck down the order in July 2010, stating that the relative merits in deciding in favour of POSCO India were insufficient and asked the Orissa Government to hear all the applications for mines once again and take a decision within 4 months. The Orissa Government is preparing to go on appeal to the Supreme Court against this order.

Progress: Though the MOU was signed between POSCO and the Government of Orissa on 22 June, 2005, very little progress has been made on the project. There are a number of reasons for this. Environment and CRZ clearances from the Govt of India were received after some lapse of time, in 2007, forest clearance under the

Forest (Conservation) Act, also from Govt of India was received in Dec 2009 (since suspended), and though State Government clearances, viz. Consent to Establish from the State Pollution Control Board, were received fairly early, on 19 Nov 2006 (for the captive port) and 12 June 2007 (for the steel plant). No mining lease has been given as yet, and the allotment of a prospecting licence for mining has been caught up in legal problems. But also a very important reason for the delay in establishment of the project, it appears, has been the opposition from some of the villages and families within the project area, and from certain organisations.

Response to POSCO project: Initially the opposition to the POSCO project was widespread in all the eight villages where it was supposed to be sited. Subsequently, a number of the villagers changed their opinion, (due to their realization that not all 8 villages but only 2 hamlets - Patna in Dhinkia village and Nolia Sahi - would be fully displaced, and a small part of Gadakujang; they also realized that most of the land that would be given was government land, not private land; the fairly liberal compensation package, and the possibility of jobs for their children in the future was, no doubt a persuading factor, as well). At present, in almost every village, except one, the villagers are almost equally divided between supporters of the POSCO project and opponents of the project. One village, Dhinkia, however, has remained steadfastly opposed to the project; so much so that the villagers drove out of the village the few families that were favourably inclined towards the project. The villagers of Dhinkia also started a blockade of the village to prevent government or POSCO officials from entering the village. The blockade continues even now. In addition to the villagers, an organization spearheading the protest is the POSCO Protirodh Sangram Samiti (PPSS).

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.

The POSCO project has, unfortunately, divided the villagers of the eight project villages into opposing camps and has created a great deal of hostility within the villages, in what was earlier a peaceful, agricultural area. The hostility has reached levels where violent assaults among the villagers have taken place, as well as confrontation with the police, resulting in grievous injuries and even in one death.

It is interesting to note that the protest principally seems to be centred around not the acquisition of private agricultural or other land by the government for POSCO (that extent is only 10%) but on the diversion of forest land. This is possibly because many of the villagers cultivate *paan* or betel vine on the forest land, and earn a good income from it. The *paan* grown is reportedly of the expensive variety.

The land classified as forest is today mainly sandy waste, with the principal tree species being casuarina, planted after a major cyclone in 1971. There are also some cashew and other trees and shrubs. The vegetation, other than the casuarina plantations can, at best, be described as scrub forest. However it is very good land for cultivating *paan*. (Curiously no *paan* seems to be cultivated on private agricultural land). The people in the villages falling in the project area besides cultivating *paan* on the forest land, also collect cashew and some other forest produce and fuel wood from this area.

There is a difference of opinion on how long the *paan* cultivation on the forest land has been going on. Some of the villagers claim that it has been going on from the time of their forefathers, from the days when the land was part of the Bardhaman Estate; others claim that the cultivation started about 20 to 30 years ago. The villagers, as of now, are considered to be encroachers by the government as their rights on this land have not so far been recognized or settled.

Clearances and permissions obtained: While the protests in some of the villages continued, POSCO took steps to get the statutory clearances required for their project. Environment Impact Assessment (EIA) reports were prepared for the integrated steel plant (4 MT per annum) and its captive power plant (400 MW), and the captive port based on rapid environment impact assessment (REIA), which is assessment based on one season data and not on the whole year's data. The public hearing was held, a combined hearing, for the steel plant and the port, on 15 April, 2007. Based on the EIA reports and the proceedings of the public hearing, the Expert Appraisal Committee (EAC) entrusted with the task of appraisal by the Ministry of Environment and Forests (MOEF), Government of India, recommended clearance for the captive port and for the integrated steel plant. Based on this, the MOEF gave Environment Clearance (EC) for the captive port on 15 May, 2007 and to the steel plant on July 19, 2007.

Since the port project was to come up within the Coastal Regulation Zone (CRZ) area, CRZ clearance was also required to be taken from the MOEF. This clearance was also given on 15 May 2007, along with the EC.

Another major clearance required by POSCO was under the Forest (Conservation) Act, 1980, for permission to divert forest land for non-forest purposes. Since almost 74% of the land to be given to POSCO was forest land, with about 2.8 lakh trees, such clearance was required by law. The preliminary (or in principle) forest clearance was given on the basis of the advice of the Forest Advisory Committee (and after scrutiny by the Central Empowered Committee (CEC) and clearance by the Supreme Court) on 19 Sept, 2008. The project was granted final clearance on Dec 29, 2009.

FRA: However, a development had taken place, in the meanwhile, which necessitated additional action by the State Government before handing over the forest land could take place: the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, (known commonly as the Forest Rights Act or FRA), had been passed and was brought into force on 1 Jan 2008. Before any forest land could be diverted for other purposes, therefore, the process of recognition of forest rights under the FRA to Scheduled tribe forest dwellers (STFD) and other traditional forest dwellers (OTFD) had to be initiated and completed. The MOEF had written to all the State Governments on 30 July 2009 that to facilitate clearance under the Forest Conservation Act, the State Governments should enclose

evidence of initiation or clearance of the process of recognition under the FRA. The letter spells out what kind of evidence should be provided. **(Annexe 1.1)**

Based on the letter of the MOEF, the Chief Secretary of Orissa wrote a letter to all Collectors on 24 Oct 2009, requesting them to provide the certificates as required **(Annexe 1.2)**. The Collector of Jagatsinghpur, in turn, on 19 Dec, 2009, forwarded the Chief Secretary's letter to the Block Development Officer of Ersama Block, stating the proposed diversion for POSCO is required to be approved in the **Palli Sabhas** of the area, and asked for a certificate to be given on this basis **(Annexe 1.3)**

However, the final forest clearance was given by MOEF on 29 Dec, 2009, without receiving any of these certificates from the State Government. When the matter came in for criticism, the MOEF issued a clarification on 8 Jan, 2010 that the forest clearance was "conditional" to compliance with the July 2009 circular of the Ministry, and to the consent of the forest dwellers therein. **(Annexe 1.4)**

It is reported that after the Collector of Jagatsinghpur had written to the BDO, Ersama on 19 Dec 2009, to organize Palli Sabhas and get their consent for forest diversion for the POSCO project area, the BDO, Ersama had written to the Sarpanches of Dinkia, Nuagaon and Govindpur on 19 January, 2010 requiring them to hold Palli Sabhas before 10 February, 2010 to discuss and approve the proposal for diversion of forest land for POSCO. It is claimed that in response to this letter, the Palli Sabhas of Dinkia, Govindpur and Nuagaon met on Feb 5, Feb 6 and Feb 4, 2010 respectively and passed resolutions rejecting diversion of forest land for establishing the POSCO steel plant, asserting their eligibility as other traditional forest dwellers (OTFDs) under the Forest Rights Act and invoking their powers under section 5 of the Act to protect forests, wildlife, biodiversity and their cultural and natural heritage. The State Government has questioned the genuineness of these Palli Sabha resolutions. The letter of the Principal Secretary, Forests and Environment, Government of Orissa, dated 13 Aug 2010 (Annexe 1.5) states that no such resolutions were passed in the presence of official members nor had such resolutions been given to any authority. He states that a scrutiny of records does not show receipt of any such resolutions in the district office or Block office, and the first time such a resolution was received was on 24 July 2010, that too, in English, (when the 3 member team of the Forest Rights Act Committee were visiting Orissa) by the Sub Collector, Jagatsinghpur. The State Govt is of the view that these resolutions were manufactured subsequently with malafide intention. It does seem a little strange that the Palli Sabhas did not send the resolutions to any one in the Government between February and July. There are also other inconsistencies: initially only two Palli Sabhas were stated to have passed resolutions (the letter of the Principal Secretary mentions only two), but the POSCO Enquiry Committee was told that there were resolutions of three Palli Sabhas. Despite the Committee wanting to see the original minutes recorded in the Palli Sabha, no such record could be produced.

The Collector of Jagatsinghpur wrote to the State government that the **Palli Sabhas** had been conducted in all 3 GPs covering the POSCO project area and no claim for settlement of rights from Scheduled Tribes and other traditional forest dwellers had been received; also that as no Scheduled Tribes or traditional forest dwellers reside in the aforesaid area, the question of settlement of rights of tribal people /other traditional forest dwellers under the Forest Rights Act did not arise. The State

Government on 16 March, 2010 sent this information to the MOEF. The MOEF wrote to the State Government on 15 April, 2010 asking for English translations of the Oriya documents that had been enclosed. The translations were sent and were found to be proceedings of the meetings of **Palli Sabhas** held in early 2008 for constitution of Forest Rights Committees, along with the names of the members. It is quite obvious that the State Government and the MOEF were talking at cross purposes. While the MOEF in their letter dated 3 Aug 2009 had requested for certificates to say that the entire process of recognition of forest rights had been initiated and completed, and the Gram Sabha had consented to the diversion, the State Government were referring to the fact that no claims had been filed before the Gram Sabha or the Forest Rights Committees set up in 2008, and, since no rights had been recognized, no clearance of the Gram Sabha was required to be taken. Clause (b) of MOEF's letter dated 3 Aug 2009 is relevant in this context. This matter will be examined in further detail in the Chapter on FRA.

Visit of team of Saxena Committee: On 24 July, 2010, a three member team of the MOEF/ MOTA committee to look into the implementation of the Forest Rights Act in India visited Orissa and reported that the FRA process had not been completed and observed that archival, documentary and oral evidence existed that the people living there were OTFDs and thus eligible to stake their claims under the FRA. The team also observed that the State government was denying them this status and not accepting their claims that they had been cultivating the forest land for more than 3 generations. In addition, they stated, the **Palli Sabha** resolutions rejecting diversion of their forest land for the POSCO project was not being acknowledged. The team therefore recommended that the forest clearance already given should be withdrawn.

The MOEF vide its letter dated 5 August, 2010 quoted the report of the Committee and directed the Government of Orissa not to hand over any forest land to the user agency (**Annexe 1.6**)

Constitution of POSCO Enquiry Committee: In the meanwhile, the MOEF had on 28 July 2010, already constituted a four member Committee to examine the compliance with the Forest Rights Act (FRA) 2006, and the Rehabilitation and Resettlement provisions, pending which, presumably, a final decision would be taken on handing over of the said forest land to the User agency. The four member Committee consisted of:

1. Ms Meena Gupta IAS(Retd), Former Secretary, Ministry of Environment and forests;
2. Dr Urmila Pingle, an expert on tribal issues, Hyderabad ;
3. Dr Devendra Pandey .IFS (Retd), former Director, Forest survey of India, Dehradun
4. Dr V. Suresh, Advocate, Madras High court.

In the initial order setting up the Committee, the Terms of Reference (TORs) were restricted to `investigation and ascertainment of the status of the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006 (generally referred to as Forest Rights Act or FRA) in and around the

forest land'. However, the MoEF by its letter dated 27.08.2010 (**Annexe 1.7**) partially modified the earlier order and set out the following terms of reference:

- i) Investigation and ascertainment of the status of the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006 in and around the forest land;
- ii) Investigation and ascertainment of the status of the implementation of the Rehabilitation and Resettlement provisions in respect of the said project;
- iii) Review compliance with Environmental (EIA), Coastal Regulation Zone (CRZ) and other clearances and permissions under various statutes, rules, notifications etc.
- iv) Review compliance with *pari passu* conditionalities imposed in item (iii) and (iv) above
- v) any other matter in furtherance of the above objectives.

The date of submission of the report of the Committee originally fixed for 27 Aug 2010, was extended to the 30th of September 2010, and further to 18 Oct 2010.

Functioning of Committee: The Committee undertook two field visits to Orissa and to the project area; the first visit was from 27 to 30 August, 2010, and the second from 19 to 22/24 Sept, 2010. During the first visit the Committee confined its enquiry to the Forest Rights Act. It visited the villages of Dhinkia, Govindpur, Nuagaon and Noliasahi, met the project affected persons, other concerned citizens, representatives of political parties, officials of the Regional Office of the MOEF in Bhubaneswar, and officials of the Government of Orissa, among them senior officials such as the Principal Secretary, Environment and Forest, the PCCF Orissa (Wildlife), the CMD, IDCO, the Revenue Divisional Commissioner, Cuttack, the District Collector, Jagatsinghpur and others. Representatives of different political parties formally met the Committee and submitted representations. During the second field visit Committee members visited the port site along with senior officials of POSCO and officials of the State Pollution Control Board, the MOEF's Regional Office and the District Administration. The Committee also sat through a detailed presentation about the POSCO project made by the officials of POSCO.

The Committee members also had some other meetings with State government officials and thereafter discussed how the report would be written. Since the four Committee members lived in four different places, it was agreed that the different chapters would be written by the different members and would be circulated to the others for their comments or recording any different perceptions. However it was clear even after the second visit that the Committee members had totally different perceptions and coming to a consensus would be difficult. In the event, even though there were some points of agreement, two separate reports had to be written.

Chapter Two

Implementation of the Forest Rights Act

The second term of reference (TOR) which the POSCO Enquiry Committee is supposed to look into is the implementation of the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, in the forest land earmarked for the POSCO project.

According to the law as it exists at present, if any forest land is proposed to be diverted for non-forest purposes, a clearance has to be obtained from the Government of India, Ministry of Environment and Forests, under the Forest (Conservation) Act, 1980. Of the total land earmarked for the POSCO project (4004 acres), 2958.79 acres (about 74%) is forest land. Therefore forest clearance is an essential requirement before land can be given to POSCO for its industrial project.

The Government of Orissa applied for forest clearance to the MOEF on 26 June 2007. As per procedure, the Forest Advisory Committee (meant to examine such proposals under the FCA), considered the issue and, subject to certain conditions, recommended grant of Stage 1 (or preliminary) clearance. At that time, by virtue of an interim order of the Supreme Court in the TN Godavarman Thirumalpad vs. Union of India case, all forest clearances needed the approval of the Supreme Court before they could be approved by the government. Accordingly the proposed Stage 1 clearance was scrutinised by the Central Empowered Committee (CEC) appointed by the Supreme Court and thereafter was cleared by the Supreme Court on 8 Aug 2008. The Stage 1 forest clearance was then issued by the MOEF on 19 Sept 2008, subject to the usual conditions of land being made available for compensatory afforestation, payment of compensatory afforestation costs, payment of NPV, etc. **(Annexe 2.1)**. It is important to note that the conditions at that stage did not include any provision regarding action under the Forest Rights Act.

On 3 Dec 2009, the State Government wrote to MOEF that the conditions laid down in the preliminary clearance had been fulfilled and sought final clearance.

Meanwhile an important development had taken place in the country which would have far reaching consequences on the diversion of forest land for non-forest purposes. The Forest Rights Act was passed in 2006, requiring the rights over forest land of Scheduled Tribe as well as other traditional forest dwellers to be recognised. This included individual as well as community rights and covered a variety of different rights (cultivation, grazing, collection of minor forest produce, protection of forests, etc). The Forest Rights Act was a unique Act meant to rectify the historic wrongs done to forest dwelling tribes as well as other traditional forest dwellers, of depriving them of their rights when the forests were declared reserved or protected forests. The procedure the Forest Rights Act prescribed for recognition of rights was also unique, in that it involved, unlike other Acts, the Gram Sabha (or Palli Sabha) as

an institution, for inviting claims and taking a view on what, and whose, rights should be recognised. According to the FRA, the Gram Sabha or the Palli Sabha (made up of the entire adult population of the village or hamlet) and not the Gram Panchayat is the first level of the 3 tier structure entrusted with recognising the rights. The Gram Sabha/ Palli Sabha is expected to invite claims from the inhabitants of the village for recognition of rights through a Forest Rights Committee (FRC) set up for the purpose and assess the claims along with the evidence submitted, pass a resolution on the claims received, and send it to the next tier, viz. the Sub Divisional Level Committee (SDLC). It goes without saying that the government machinery, in particular the forest and revenue departments, are expected to assist the GS/ PS with technical and other support, providing the maps, assisting with the demarcation and measurement of the land, helping with the documentary evidence. Though the Act does not specify the time frame within which the resolution of the GS/PS on the claims has to be passed, the rules framed under the Act state that individual claims should be made to the GS within 3 months of its calling for such claims. This period can be extended further if necessary (Rule 11(1)(a)). It is necessary to mention a caveat here: the time limit of 3 months according to the rules applies to claims of individual rights; as regards claims of community rights, a date has to be fixed for this, and no provision for extension of the period is mentioned (Rule 11(1)(b)). This was the interpretation of the Orissa Govt SC and ST department. The Ministry of Tribal Affairs (MOTA) which is the administrative Ministry for the FRA can be asked to clarify the matter.

The next tier for assessing the claims, viz. the SDLC would then examine the claims and evidence, hear aggrieved persons, if any, and send their recommendations to the third and highest level, viz. the District Level Committee (DLC). It is important to note that the composition of the SDLC and the DLC has 3 government representatives and 3 non-government representatives (to represent the ST and OT forest dwellers) so as to ensure fairness in the decision making.

The DLC again considers the claims along with the evidence, hears any aggrieved persons and thereafter passes the final order on recognition of rights. It needs to be emphasised that the DLC's order is final, and any appeal lies not to the State Government or GOI but to the court.

The FRA was passed by Parliament in December 2006, but was brought into effect only from 1 Jan 2008. The process of recognition of rights throughout the country started thereafter. In Orissa, too, the process of convening GS/ PS (the terms are used inter-changeably in Orissa) began throughout the State, the SC and ST department taking the lead and playing a very pro-active role.

Though the original Stage 1 clearance granted under the FCA to the Govt of Orissa by MOEF on 19 Sept 2008 did not contain any condition relating to action required under the FRA, the MOEF sent a general letter on 30 July 2007 (**Annexe 1.1**) and an almost identical letter on 3 Aug 2009 (**Annexe 2.2**) to all State Governments laying down what action had to be taken under the FRA and what certificates needed

to be provided before diversion of forest land could be permitted for non-forest purposes. Some of the conditions specified in the letter, though, are somewhat ambiguous, and some are not in accordance with the FRA. For instance condition (b) of **Annexe 2.2** that the State should provide 'A letter from the State Govt certifying that proposals for such diversion (with full details of the project and its implications in vernacular/local languages have been placed before each concerned Gram Sabha of forest dwellers, *who are eligible under FRA*' (emphasis mine). It is not clear whether a certificate from the GS/PS is required only in areas where there are forest rights holders or in other areas as well, i.e. where there are no forest rights holders. The consent of the GS/ PS to the diversion of forest land, as mentioned, while certainly laudable as being in the democratic tradition, is not something specified in the FRA, and therefore can be challenged in court. The quorum of 50% attendance of the GS is wrong since the Rules mention the required quorum as being two thirds of all members of the Gram Sabha (rule 4(2)).

On 3 Dec 2009 the Government of Orissa wrote to the MOEF (**Annexe 2.3**), stating that the Stage 1 clearance conditions had been fulfilled and therefore the final forest clearance may be granted. They also mentioned that the conditions spelt out in MOEF letter dated 3 Aug 2009 had not been complied with since the Stage 1 clearance letter had been received prior to the recent instruction of the MOEF, but would provide the certificates required if the MOEF said they were necessary.

The MOEF, on 29 Dec 2009 gave its Stage 2 or final clearance (**Annexe 2.4**) indicating among other conditions, the following: 'The rights of the tribal people will be settled as per the provisions of the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, before implementation of the project'. Strangely the rights of OTFDs are not mentioned! MOEF did not consider whether the State Government had taken action in accordance with its letter of 3 Aug 2009 or had sent the necessary certificates. However on 8 January, 2010, MOEF sent another letter to the Government of Orissa (**Annexe 1.2**) indicating that the final forest clearance was conditional on settlement of rights under the Forest Rights Act and no forest land should be handed over to the User Agency before the settlement of rights was done.

Meanwhile in parallel action taken on the MOEF letter of 30 July 2009 (and the almost identical letter of 3 Aug 2009), addressed to the State Governments, to ensure compliance with the FRA before submitting proposals for diversion of forest land, and among other things to obtain the consent or rejection of the Gram Sabha to the diversion, the Chief Secretary, Orissa had written to all the Collectors in the State to do the needful the Collector of Jagatsinghpur had written to the BDO, Ersama, and the BDO Ersama had written to the Sarpanches to convene the GS meeting before 10 February 2010, and give the necessary certificate. It is the contention of some of the villagers who met us, that consequent to this letter, the GSs of Dhinkia, Nuagaon and Govindpur were convened on 5, 6, and 4 Feb 2010 respectively, and resolutions were passed that forest diversion for the POSCO project would not be permitted. The

State Government has strongly refuted the claim that any such GS/ PS meetings were called and resolutions passed. In the letter of the Principal Secretary, Forests and Environment dated 13 Aug 2010 (**Annexe 1.3**) it is stated that the claim to have held these meetings and passed resolutions were an after-thought and the documents manufactured at a later date, since no State Government office or official had received any such document between early Feb 2010, when the meetings were said to have been convened and the resolutions passed, and late July 2010 (a period of more than 4 months). On 24 July, when the issue was revived as a result of the visit of the 3 member team of the NC Saxena FRA Committee, a copy was handed over to the Sub Collector Jagatsinghpur. The State Govt claims that the only copy they have received was the one in English received by the Sub Collector on 24 July 2010. It is strange that a GS proceeding should be in English. No record of the resolution in the GS proceedings register could be shown to us (the Committee) or any other corroborating evidence adduced. On the basis of this it is difficult to believe that the resolutions said to have been passed by the Gram Sabhas on Feb 4, 5, and 6, 2010 are genuine.

The State Government's stand is that action under the FRA was taken throughout the State following the coming into force of the Act on 1 Jan 2008, and Gram Sabhas/ Palli Sabhas were convened in most of the forest areas of the State on 23 March 2008, in accordance with the circular of the State Government. In the villages in the POSCO project area the Palli Sabha meetings and the formation of the Forest Rights Committees (FRCs) were done on different dates as per the statement (**Annexe 2.5**). The meetings are found to have been held on primarily 4 different dates: 23.3.2008, 17.1.2009, 18.1.2009, and 19.1.2009, and FRCs were constituted. However during the 3 month period that the GS/PS is supposed to receive claims (as prescribed in the FR Rules), no forest rights claim, whether individual or community, was made and therefore the SDLC which met on 5 Nov 2009 and deliberated on claims made by some other villages (Gram Sabha, Padmapur from which 48 individual claims were received), did not recognise any claims from the project villages (**Annexe 2.6**). The State Govt stand is that since the 3 month period for making the claims was over, it was assumed that there were no claims. The State Govt officials stated that they did not ask for any certificate from the GS/ PS about completion of the claim hearing period, nor did they separately verify whether any claim had been made, but not referred to the SDLC. The DLC met on 16 Nov 2009 and finalised the claims received. No claims from the affected villages found place. Nor was there any attempt to ascertain from these or other villages whether there were any claims (**Annexe 2.7**).

The villagers opposed to POSCO, particularly from Dinkia and Nuagaon, claimed variously that (1) they had not submitted claims because a conflict was going on between them and the State Govt about the acquisition of land for the POSCO project; (2) that they had sent some 250 claims to the Tahsildar which had been returned back to them; (3) that they had sent some 40 individual claims to the Sub-Collector (SDO) and received an acknowledgement but nothing further had

happened; (4) that they had sent claims to the MOEF; (5) that the Gram Sabhas convened on 23 March 2008 in which the Forest Rights Committees were formed lacked the necessary quorum and were therefore not according to law; (6) that the Gram Sabhas held on 23 March 2008 were called by the State Government and not voluntarily by the Gram Sabhas/ Palli Sabhas concerned, and the format by which the FRCs were formed were prototypes artificially foisted on the villages by the Govt. Though some of these positions are contradictory and one can find holes in some of the others, the fact remains that many of the people of the area feel that they have legitimate claims over the forest land in accordance with the Forest Rights Act. They also produced some documents in support of their claims which may or may not be genuine, but which need to be looked into. They state, that they have been cultivating the forest land, growing *paan* on it for generations, and that they have documentary evidence of such long term possession. A number of documents were shown to our committee (and earlier to the 3 member team of the NC Saxena Committee) and the documents certainly appear to be old and genuine, but they do need to be verified rigorously, and which precise piece of land they relate to needs to be ascertained. The State Govt feels that the documents are fabricated. The Committee did not have the expertise or the legal status to take a view about these documents. All such claims and documents should have been made to the GS, the SDLC, and the DLC, who, under law are the bodies to take a view on them. Besides individual rights (appropriately all *paan* cultivation can only be claimed as individual forest rights) the villagers are also claiming that they have community forest rights over the forest land in question. This also needs to be looked into.

It is a fact that the area is not a Scheduled Area (under Schedule V of the Constitution of India) as in the case of Lanjigarh and Niyamgiri (the Vedanta case) and that there are very few Scheduled Tribe persons in the area. As per the voters list of 2007, provided to us by the State Govt, the total number of STs in the villages in question was less than 30, all of them in the villages of Polanga and Bayanalakanda. Therefore the possibility of there being ST forest dwellers in the area is very unlikely. The claims made by the others for forest rights are to be assessed as claims made for rights by OTFDs, for which different and more rigorous proof is required. The OTFDs have to show primary residence in and dependence on forest land for 3 generations (75 years).

The State Govt's stand is that the land in question was primarily waste land, which was declared as protected forest only on 4 Oct 1961. i.e. about 50 years ago. Since it was not forest before that, dependence on forests for 75 years is not possible. They also state that if the claimants had been in occupation for 75 years or more, their rights would have been settled when the lands of the former Bardhaman Estate were taken over under the Orissa Estate Abolition Act, 1952, and ownership rights settled with the tenants, or subsequently, directly by the State Govt on land which was classified as waste land, or after 1961 when the land was declared as forest and pre-1980 'encroachers' were identified for settling of forest land under the Forest Conservation Act, 1980. It is pertinent to point out that in the identification of pre-

1980 encroachers on forest land done throughout the State, 4 districts out of 30 reported no such encroachment. Jagatsinghpur, where the land to be given to POSCO is situated, is one of the districts, the others being Puri, Balasore and Bhadrak. The State Govt's contention, therefore, is that the probability of the claimants being in occupation/ cultivation for 75 years is very slender.

Moreover, they claim, action for recognition of forest rights under the FRA was duly taken in Jagatsinghpur as elsewhere in the State and much effort had been made to make people in the State, particularly in the tribal areas, aware of the provisions of the Act so that claims could be filed. In fact the Orissa Govt's efforts for effective implementation of the FRA have been praised even by others (e.g. Mr. NC Saxena in the Vedanta report), and a large number of claims for forest rights have been filed by ST forest dwellers and granted to them. The State Govt claims that this is evidence of the State having taken adequate measures to make people aware about the FRA. I am inclined to agree with this view. To think that tribals in Koraput and Rayagada could be aware of the Act and file claims, while non-tribals in a coastal and progressive district like Jagatsinghpur could remain unaware, seems a little far-fetched. The more likely cause is that claims were not made because of the conflict situation in the area.

It is also a fact that the FRA is a new Act and procedures have not clearly evolved. There is not much case law on the subject as yet. Therefore to strictly adhere to the time limit of 3 months for receiving claims in the GS, not to make any special effort to find out whether there are claims in an area which is riven by conflict (due to the proposed POSCO project), not to, in other words, go the extra mile, is perhaps going too much by the letter of the law and does not serve the purpose of natural justice. In view of the claims made, albeit late, and the possibility of some of those claims and documents being genuine, it would be worthwhile to re-convene the GS/PSs, re-form the FRCs and set a date of 3 months within which all claims must be made. To demonstrate their bonafides about being willing to recognise genuine claims, the State Govt, particularly the forest and revenue departments should render all assistance during this period. It is suggested that no extension beyond 3 months be permitted to receive the claims, s(ince the claims are being invited by the GS for the second time), and all claims received be assessed and a resolution be passed sending the genuine claims to the SDLC. Thereafter the SDLC and DLC can meet and take a final decision, also preferably within a time limit.

As far as the claims mentioned to the Committee are concerned, it appears they are all claims for individual rights (for *paan* cultivation which can only be individual), but claims are being made by some villagers for community rights as well. These, too, should be examined within the specified time period and a decision made. Till such time as the stipulated date for finalisation of claims is completed (from the new date of convening the Gram Sabhas), the removal of the betel vines, the payment of compensation to the cultivators and the handing over of the forest land to POSCO may not be undertaken.

Conclusions:

1. Since the area is not a Scheduled Area and there are hardly any STs living there, the possibility of ST forest dwellers being present is unlikely. However it is possible that there are other traditional forest dwellers in the area, and that they have genuine documents to prove cultivation and dependence on forest land for more than 75 years. To not give them an opportunity to have their claims recognised just because they might not have participated (due to reasons of conflict, or any other reason) in an exercise done once in the past, would be against the principles of natural justice.
2. The exercise of inviting claims from the villagers of the 8 project affected villages for recognition of forest rights should be undertaken afresh. A limit of time (3 months as spelt out in the FR Rules) should be fixed for the GS to invite claims and no extension should be given since this is the second time around that the exercise is being done. Thereafter the SDLC and DLC should meet and take a final decision in the matter.
3. The State Govt revenue and forest departments should extend all help to enable the exercise to be successfully executed. Efforts should also be made to assess the genuineness of the documents through scientific tests.
4. The handing over of land to POSCO should be taken up only once this exercise is completed and once it is known who are the forest rights holders in the area, and what is the nature of the forest rights.
5. If however, it is found that the community forest rights recognised over the land do not permit the diversion of the land, other adjacent land may have to be thought of, or portions of the forest land may have to be excluded from the land proposed to be given to POSCO.
6. This fresh exercise proposed may delay the diversion of forest land for the POSCO project by some months, and may modify the extent of land to be given to POSCO, but it will, in the end, be a just and fair action.

Chapter Three

Rehabilitation and Resettlement

Introduction: Most large development projects in India, whether they are established on private, government or forest land, cause some displacement of people. Such displacement seriously affects the lives of those displaced, usually adversely. Even where people are not physically displaced from their homes, but lands owned by them, or the lands and resources on which they depend for their livelihood, are acquired or given away for a project, there is considerable hardship caused. Two important aspects, that therefore need to be ensured, whenever any development project is taken up are, first, that the number of people to be displaced or adversely affected by the project is the very minimum; second, that for that absolute minimum number, measures are taken to reduce the adverse impacts as much as possible and resettle them in a manner that leaves them better rather than worse off.

Because the impacts of involuntary displacement due to development projects are often severe, the Govt of India as well as some State Govts have had rehabilitation and resettlement policies in place for several years now. These policies spell out the entitlements of the persons who will be displaced, how they are to be resettled and rehabilitated, what are the minimum facilities and benefits that they should get, and other such details. These policies have been improved and refined over the years. The Govt of India's latest R & R policy is of 2007 (replacing the earlier policy, Rehabilitation and Resettlement of Project Affected Families, 2003). The Govt of Orissa's R & R policy (ORRP) is of 2006.

One of the tasks entrusted to the POSCO Enquiry Committee was to investigate and ascertain the status of implementation of the rehabilitation and resettlement provisions in respect of the POSCO project. The environment clearance granted to the POSCO project by the Ministry of Environment and Forests, on 19 July 2007 (**Annexe 3.1**) states as one of its conditions (clause xv of the specific conditions), *Rehabilitation and resettlement plan shall be implemented as per the policy of the State Govt of Orissa as per the revised R & R policy in a time bound manner and report submitted to the Ministry, its Regional Office at Bhubaneswar, and OPCB.*

During its visit to Orissa, the POSCO Enquiry Committee learnt, from discussions with the State Government officials as well as with the affected people, that till date, no private land has been acquired for the project (though the process for acquisition of land under the Land Acquisition Act is underway). As far as non-forest government land is concerned 561.41 acres have been leased out to the Industrial Infrastructure Development Corporation (IDCO), which is the body dealing with land for the POSCO project. No forest land has been handed over, though 96 betel vine owners on forest land are stated to have voluntarily surrendered their betel vines over 11.85 acres of land and accepted ex-gratia compensation @ Rs. 11.50 lakhs per

acre, as per the rate decided by the RPDAC. However, on receipt of the stop order from the MOEF, this activity has been brought to a halt.

Since no displacement of families has taken place as yet, assessing the implementation of the R & R package was not possible, (except for the compensation paid for the few betel vines that were surrendered, as mentioned above). The Committee, therefore, limited itself to examining aspects such as the extent to which the Orissa R & R Policy had been followed for the POSCO project, the procedure in place to identify the displaced and project affected people; whether such a procedure had managed to capture all those who were affected and displaced; the adequacy of the R & R package for the people displaced or affected; their satisfaction with it; the procedure laid down to finalise the rehab package, etc.

The R & R Policy: The Orissa Resettlement and Rehabilitation Policy (ORRP) (**Annex 3.2**) focuses almost entirely on families ‘displaced’ by acquisition of land and very little on families ‘affected’ by acquisition of land. It is important to point out that under the ORRP, a family is classified as a ‘displaced family’ only if its homestead land (i.e. the land on which its dwelling unit is located), is acquired and the family relocated. The loss of agricultural land, either partly or fully, does not entitle a family to be classified as a ‘displaced family’, unless its homestead is also acquired. Almost all the benefits and entitlements spelt out in the ORRP are meant for displaced families. There is no other definition to cover families who are affected due to their agricultural (or other) land being acquired, or because adjacent government or forest land, or other natural resources on which their livelihoods depend, are given away for a development project. There is also no mention of agricultural or other labourers who may get affected by the land acquisition. The Policy does in some cases provide benefits for families other than ‘displaced families’, that is for those who lose part, or all, of their agricultural land, or families who are defined as long term ‘encroachers’ on government land, but these benefits are fairly minimal, and the families are given a lower order of preference. (ORRP, para 9, Rehabilitation Assistance, sub paras I and II; para 10: Benefit to landless and homestead-less encroachers)

Families displaced: The number of families to be displaced due to the POSCO project is available from several sources. The Environment Impact Assessment (EIA) report for the POSCO integrated steel plant, on the basis of which Environment Clearance (EC) was granted, mentions the number of families as being 471. Subsequently, as required under the ORRP, a socio-economic survey was undertaken by the Xavier Institute of Management, Bhubaneswar (XIMB) (January 2008), to enumerate all the families who face displacement due to the project, ascertain their demographic profile, occupational status, income, ownership of assets, and other details. The survey covered six villages in three Gram Panchayats, i.e. all the villages where families are to be displaced because of the POSCO project. These are: Dhinkia and Govindpur villages in Dhinkia GP, Noliasahi, Bhuyanpal and Polanga villages in Gadakujanga GP, and Nuagaon village in Nuagaon GP. Two more villages are also to

be affected by the project, viz. Bayanalakanda in Gadakujang GP, but in this village, as reported, no families are being displaced, and Jatadhar village which is uninhabited. According to the socio economic survey, the number of 'original families' to be displaced from all the six villages is 466 ('original family' has been defined under the Orissa R & R Policy as a unit in which all members live together in a single household with a common kitchen.) The Policy requires certain other categories of persons also to be treated as separate families (even if such persons live together in the same household as others). These categories are: all major sons irrespective of their marital status, unmarried daughters or sisters above the age of 30 years, widows and divorced women, handicapped persons and orphans who are minors. These families are called 'extended families' in the socio economic survey report, and 'separate families' in some other reports. The number of these families is another 252 bringing the total number of families to be displaced in the project area to 718 (466 +252).

The R & R package prepared for the POSCO project covers all of these families. In addition it covers 100% agricultural land losers, partial agricultural land losers, families who had homes on government lands, and people who undertook cultivation on government lands (encroachers). Figures given by POSCO indicate that the number of 100% land losers is 418 and that of partial land losers is 582, but since several of these persons also fall under the displaced persons category, total figures are difficult to arrive at. No figures were given to the Committee on the number of encroachers on government land, either those who have dwelling houses or those doing cultivation, possibly because the enumeration of these persons has not yet been done. No person or family has been recognised as a 'forest rights holder' in this area so far. (This matter has been dealt with in detail in Chapter 2 of this report on the implementation of the Forest Rights Act.) It is possible that those categorised as 'encroachers' could be persons who are forest rights holders.

RPDAC: While the benefits to be given to displaced and project affected persons are expected to follow what is laid down in the ORRP, the details are meant to be worked out and approved by the Rehabilitation and Periphery Development Advisory Committee (RPDAC), a body mandated under the ORRP to oversee the rehabilitation process.

The ORRP states as follows: *In order to encourage participation of displaced persons and their elected representatives in implementation and monitoring of the R & R package, to oversee and monitor periphery development, the government may constitute a Rehabilitation cum Periphery Development Committee (RPDAC) for each or a group of projects falling in one district. The detailed composition of the Committee shall be notified by the government and it may include people's representatives, one or two leading NGOs of the affected area, and select government officers, and any other persons to be notified by the Government. Adequate representation will be given to women and indigenous communities (wherever*

applicable) in the Committee. The Chairman of the Committee will be at liberty to co-opt members for efficient discharge of its functions.

An RPDAC has been set up for the POSCO project with the Revenue Divisional Commissioner (RDC), Cuttack, as its head and with representation from the affected villages and other representatives. The RPDAC has 36 members. The composition of the RPDAC is at **Annexe 3.3**. The RPDAC has so far met twice, the first time in 2006 (as reported to us) and the second time in 2010. The minutes of the second RPDAC meeting are at **Annexe 3.4**. The Committee was informed that the first meeting of the RPDAC was primarily meant to make people aware about the POSCO project. The second meeting held in August 2010, however, took several substantive decisions on a number of important matters, as is apparent from the minutes. The Sarpanches of Dinkia and Nuagaon, however, boycotted the meeting since they are opposed to the project altogether, they did not wish to be involved with finalisation of the R and R package.

POSCO R & R package and procedure to finalise benefits: The POSCO package for resettlement and rehabilitation follows the ORRP more or less faithfully, improving upon it in some places. 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 is at **Annexe 3.5**. 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, etc. the benefits have been significantly enhanced by the RPDAC.

Identification of displaced people: As mentioned earlier, displaced families have been identified through the socio-economic survey conducted by the Xavier Institute of Management. In order to verify the accuracy of the list as well as to invite claims and objections from families who might have been left out, the RPDAC at its 2nd meeting resolved to publish the list of displaced families in the project affected villages for a period of one month, and thereafter to finally prepare and approve the list. The Committee is not aware whether that list has been finalised as yet.

A similar approach has been adopted for betel vine growers. The list of betel vine growers, prepared by the Tahsildars of Kujang and Ersama would also be approved after publication in the villages concerned, and verification of further claims. No mention of such verification of names of prawn cultivators, land losers, those who have houses on government land, etc. has been mentioned, but it is presumed that the RPDAC would adopt a similar procedure. This transparency in trying to ascertain all the families to be displaced and affected by the project is laudable.

As mentioned earlier, one category of project affected person which does not figure in this list at all, is the landless agricultural and/or other labourer. This is perhaps the reason why some fishermen's groups have approached the committee stating that

their rights of fishing (in the estuary where the captive port is to be constructed and along the adjacent coast) have been overlooked.

According to the State Government, the only fishermen who are affected are the displaced fishermen families of Nolia Sahi. The representations received however, indicate that fishing rights along the coastline in question may have been given to some fishing communities by the Raja of Bardhaman (the former owner of most of what is now the project land), prior to the abolition of estates under the Orissa Estate Abolition Act, 1952. It is stated in the representation that villagers of 99 villages belonging to the Kaibartha (fishermen) community of erstwhile Kujanga Estate have enjoyed fishing rights upon 57 tidal rivers and creeks for several generations known as "Saharapentha Machhaaida". These rights were conferred upon them in 1860 by way of permanent lease known as 'sanada'. The State government is stated to have recognized these rights even after vesting of the Estate. It includes the area in Mouza Jatadhar in Khata No. 2.

There is also a reference to the order of the Supreme Court in W.P. Civil No. 561 of 94 where, in the context of CRZ, the Court held that rights of traditional fishing communities will be protected. According to the representation, the location of the POSCO plant in the proposed site was in violation of their rights protected by the court order. There is no consideration of these claims while considering R and R for project affected persons. The State Government needs to look at whether or not these fishing communities are entitled to compensation and rehabilitation benefits, and take action on this basis.

POSCO has proposed to construct a fishing jetty to the south of Jatadhar Muhan, (the mouth of the Jatadhar creek/ river), to facilitate the fishermen community in plying their trade, since Jatadhar Muhan itself, where they currently carry out their fishing would be closed to them, when the captive port is constructed. The fishermen of Noliasahi seem satisfied with this. Whether other fishermen who might have rights in the area would be satisfied as well, needs to be ascertained.

Satisfaction with rehabilitation package: The eight villages that will be affected by the POSCO project (six inhabited) are sharply divided in their reactions to the project. In almost every village, part of the population is opposed to the project and part of it welcomes it. Those villagers who are opposed to POSCO are not willing to discuss the rehabilitation package, or in fact, to attend the RPDAC meetings where the details are finalised. During the Committee's visits to some of the project affected villages, the Committee members had the opportunity to talk about their relocation and the rehabilitation, to some of the villagers who were in favour of the project. These persons appeared quite satisfied with the package. They stated that being human, they would definitely like to get higher benefits, but since they had the opportunity to voice their opinion and deliberate on these issues at the RPDAC, they were not dissatisfied with the outcome.

Conclusions:

1. Resettlement and rehabilitation have not yet started. However details of persons who should get rehabilitation benefits, and rates of the different components of the package are being discussed at the RPDAC meetings by the project affected. The transparency is a positive factor.
2. Overall the R & R package seems to be acceptable. There appears to be a general satisfaction with the rehabilitation package among those who are not opposed to the project.
3. 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.
4. 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.
5. Finally, as the socio economic survey of XIMB mentions, 'displacement amounts to uprooting them from their soil that belonged to them for generations, which can be psychologically a traumatic event. This requires lot of empathy while handling the process of shifting and relocation.' We would like the State Govt to bear this in mind and engage non-governmental and community based organisations who have worked with people, to help in the process of relocation, so as to make the relocation less traumatic.

Chapter Four

Compliance With Environment and CRZ Clearances

Though the POSCO project, as per the MOU signed between the company and the Government of Orissa, has several components, only two of those components, viz. the integrated steel plant with its captive power plant, and the captive port have received some of the statutory clearances required and have made some progress towards getting established. The integrated steel plant has received environment clearance (EC) from the MOEF on 19 July 2007, and the captive port has received EC and Coastal Regulation Zone (CRZ) clearance on 15 May 2007.

The terms of reference (TORs) of the POSCO Enquiry Committee require the Committee to:

‘Review compliance with Environmental (EIA), Coastal Regulation Zone (CRZ) and other clearances and permissions under various statutes, rules, notifications etc.’

There was a difference in the Committee about the mandate that this TOR gave the Committee. According to my interpretation, the TOR required the Committee to look into the **compliance** made so far (by the company, and where required by the State Govt), to the conditions contained in the EC and the CRZ clearance. It did not mean looking into the grant of the EC and the CRZ clearance per se, whether the studies done prior to the grant of EC and CRZ were adequate, whether there were at that time any gaps in data, etc. This is not to say that these things cannot be looked into (if a clear and considered decision is taken in the matter), or that the EC and CRZ are without flaws. It just means that the POSCO Enquiry Committee neither had the mandate nor the expertise to examine these aspects. Moreover, if this, or any other Committee can scrutinize whether the actual grant of the EC and the CRZ clearances by the MOEF are correct or not, it would mean opening up the whole issue of environment and CRZ clearances once again, years after they have been granted. It would also imply that no environment or other clearance given to any project is final, and that any time after the grant of an environment or CRZ clearance to a project, the matter can be re-opened and reviewed by any committee (or anyone else appointed by the government), and the clearances modified or cancelled.

Government action and orders are sometimes erroneous or have serious flaws; but there is a system to correct those flawed or erroneous decisions. If the clearances granted have to be modified in any significant manner, or set aside, that can only be done on appeal by an aggrieved party, by the National Environment Appellate Authority (NEAA) and beyond that, by the Supreme Court. There is of course nothing to bar the Committee from making observations about certain aspects of the clearances granted, such as the possible significant adverse environment impact of the project on specific natural resources, the need to look at certain matters afresh,

and the need to impose additional conditions if warranted; but any such examination must be done by the statutory bodies set up for the purpose and not by any other ad hoc body with limited expertise.

As a planning tool EIAs are now generally accepted as an integral component of sound decision making. The objective of an EIA is to foresee and address potential environmental problems / concerns at an early stage of project planning and design. EIA / EMP are meant to assist planners and government authorities in the decision making process by identifying the key impacts / issues and formulating mitigation measures. An implicit part of the EIA process therefore is ensuring full and comprehensive disclosure of all aspects of the industry, including environmental impacts, dangers, risks and mitigation measures to decision making bodies and all stakeholders.

Central to the EIA process is the quality of the data and information collected, presented and analysed in the EIA which are essential for the decision makers to decide whether to grant environmental clearance to the project or not. Equally important, full disclosure of all aspects of an industry is critical for communities who will be affected because of the project so that they can register their views during the public hearing.

All of this needs to be ensured before grant of environment clearance. Subsequent to that, unless it is found that there was deliberate furnishing of false facts and withholding of data for malafide reasons, a prior environment clearance granted cannot be cancelled. Clause 8(vi) of the EIA notification of 14 Sept 2006 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. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.

An EC granted may also be revoked or cancelled if implementation of any of the conditions stipulated in the EC is not satisfactory. Additional conditions

may also be imposed by the MOEF, if found necessary. Both these stipulations usually form part of the environment clearance order. They were also part of the EC granted to the POSCO integrated steel plant and the captive port.

As far as compliance with the conditions of the EC is concerned, for both the integrated steel plant and the captive port, since work on setting up the plant and the port has not yet started, in fact even the land required has not been handed over to the company by the State Government so far, there was no compliance which could

be assessed. However there are matters which are causing concern even prior to the setting up of the project. By far the most important of these is the issue of provision of water to the plant from the Jobra barrage on the Mahanadi river. POSCO in its application for EC stated that the water would be taken by laying a 86 km long pipeline. Approval was given in the EC for withdrawal of 10 MGD water from the Jobra barrage. As per the EIA for steel plant the Company will have in its premises reservoir for storing water requirement for a period of three days.

During the construction phase the plant is supposed to use water from the Hansua Nallah. This is not however mentioned in the EC and POSCO also seems to have found it unacceptable in view of the salinity. This matter is yet to be sorted out. The issue of supply of water to the plant from the Jobra barrage is facing a great deal of opposition from the public as well as from other political parties. Since the water supply to residents of Cuttack city is from the Jobra barrage, there are concerns that there will be a shortage of drinking water for Cuttack city, a highly emotive issue. Perhaps in consideration of this the State Govt as recently as September 2010 has mooted a plan to supply POSCO with water not from Jobra barrage, but from Hansua Nallah. This will be not just for the construction phase as decided earlier, but also for the steel plant. No finality has been reached on this matter but it is, reportedly, being examined both by the company and by the State Govt. If it is decided to supply water for the steel plant from Hansua Nallah, the EC will have to be modified and for this an EIA will need to be prepared and considered by the EAC. Thereafter additional/ altered conditions will need to be incorporated in the EC. It would be advisable for the MOEF to ask the EAC to look at the whole issue of water supply to the POSCO plant again, with a view to suggesting altered or additional conditions relating to water supply.

Another matter of concern is the high pollution index in the area. The Ministry of Environment and Forests has come out with a Comprehensive Environmental Pollution Index (CEPI), which captures the various health dimensions of environment including air, water and land. The present CEPI is intended to act as an early warning tool. It can help in categorizing the industrial clusters/areas in terms of priority of planning needs for interventions. The CEPI has been applied to 88 selected industrial clusters/areas through an exercise involving the Central Pollution Control Board, the State Pollution Control Board, the Pollution Control Committees, and IIT Delhi. Areas having aggregated CEPI scores of 70 and above have been considered as critically polluted industrial clusters/ areas, and areas having CEPI between 60-70 have been considered as severely polluted areas, to be kept under surveillance and pollution control measures efficiently implemented. The critically polluted industrial clusters/ areas are to be investigated further for formulation of appropriate remedial action plans.

Paradeep, Orissa has a CEPI score of 69.26 which categorises it as a severely polluted area, just bordering on critically polluted. This concern that the Paradeep area is already polluted from existing industries was also raised during the public hearing

and is probably the reason why the emission norms stipulated in the NOC of the SPCB are so stringent. In fact, in the minutes of the meeting of the EAC held on 19 to 21 June 2007 to consider the POSCO integrated steel project of 4 MT an observation is made that the emission norms stipulated in the NOC of the SPCB appear to be much more stringent (Para 6.1.4). Of course, the fact that Paradeep is classified as severely polluted does not mean that no projects whatsoever will be permitted to come up in the area. (In fact other industries have been granted environment clearance in the Paradeep area, much after POSCO was cleared and these are in the process of being established). It merely means that stringent safeguards should be required to be put in place by the industries that come up, to check the increase in pollution levels. The MOEF should get the matter reviewed through the EAC to assess whether additional conditions need to be imposed to prevent Paradeep from tipping over into the critically polluted category.

A further issue that has been causing concern is that while the MOU between POSCO and the Govt of Orissa is for a plant to produce 12 MT of steel per annum, the EIA prepared and the EC applied for and obtained is for 4 MT only, i.e. for the first of the three phases by which the company intends to establish and thereafter expand the project. However the land asked for, the size of the captive port, the requirement of water etc. are all for 12 MT. While EC has been granted for 4 MT by MOEF, there is no guarantee that for subsequent applications made for higher production, that EC will necessarily be granted. In that case the excess land, higher displacement and excess infrastructure will all be a waste. MOEF should take a policy decision that in projects like this it should, right at the beginning, assess it for the full capacity.

This matter was also raised with POSCO when the Committee met their officials in Bhubaneswar. The POSCO officials could give no reason why they had applied for EC for only 4 MT initially when their plant was to ultimately be for 12MT, and within a fairly short period. They merely said that had the steel plant been originally limited to 4 MT, they would have preferred to site it near the source of raw material as that would have been a better business decision. In case they now do not get approval for the bigger plant, they stated that they would have to become more competitive by producing high value steel.

Though POSCO is a major plant with a number of components which will have considerable impact on the environment, the EC granted was on the basis of a rapid EIA only (REIA) and not on the basis of a comprehensive EIA (CEIA). This has come in for a great deal of criticism. Normally only a comprehensive EIA can give an accurate assessment of the impacts on the environment. It is a little surprising therefore that the MOEF did not insist on a comprehensive EIA either for the steel plant or for the captive port. The MOEF needs to take a view that in future it will be mandatory for such projects have to submit a CEIA when EC is applied for. It is understood that POSCO has, in the meanwhile prepared a comprehensive EIA. It would be worthwhile for the EAC to examine this comprehensive EIA to see whether any new and important aspects have emerged.

The captive port has been a fairly contentious issue both politically and environmentally. There is a strong view that the setting up of a captive minor port is unnecessary, particularly when a major port exists only 12 km away, at Paradeep. Paradeep is also being expanded and the belief is that it could easily accommodate the shipping needs of POSCO through dedicated berths. In the past, the Shipping Ministry had objected to the captive port being set up at Jatadhar Muhan, though subsequently they appear to have agreed. The Committee also had a discussion with the acting Chairman of Paradeep Port Trust and he did not feel that the POSCO port would have much impact on Paradeep commercially or environmentally. However ports do have a major effect on the shoreline, eroding certain parts and depositing sand in others. They destroy the biodiversity, both flora and fauna and threaten endangered species with extinction. Therefore ports should be sparingly established. It is understood that Orissa proposes to have a large number of ports along its coast and this is cause for concern. EIA when done for one port at a time (or for one project at a time) is not able to assess the total impact on the environment. The MOEF may consider getting a Strategic Environmental Impact Assessment (SEIA) done of the existing and proposed ports on the Orissa coast to plan for the future.

As far as the captive port of POSCO at Jatadhar Muhan is concerned, having a port at the mouth of an estuary is generally not advisable, because of a number of reasons including its impact on estuarine wildlife. However since an EC has already been given, on the basis of a REIA, it would be worthwhile for the MOEF to study the matter afresh through a CEIA and impose additional conditions to protect the environment.

CRZ clearance has been obtained for the captive port alone, not for the integrated steel plant. It is assumed therefore that the steel plant is not supposed to come up in the CRZ area. However, the plan drawn up by POSCO (**Annexe 4.1**) shows the steel plant very much within, or very close to, the CRZ area. When questioned, the officials stated that the drawing was only an indicative one, and CRZ restrictions would be observed when the plant is constructed. However POSCO should be asked to re-draw their plan to be CRZ compliant and this is something the MOEF and the Govt of Orissa should be vigilant about.

There are thus a number of issues relating to EC and CRZ which need to be looked at afresh and the MOEF should consider doing this at the earliest so that additional conditions, if required, can be imposed on the project before it starts construction.

Conclusions:

1. It would be advisable for the MOEF to ask the EAC to look at the whole issue of water supply to the POSCO plant again, with a view to suggesting altered or additional conditions relating to water supply.
2. The MOEF should ask the EAC to assess whether additional conditions need to be imposed on projects proposed to be established in Paradeep to prevent the area from tipping over from a 'severely polluted' area into the 'critically polluted' area category.
3. MOEF should take a policy decision that in large projects like POSCO where MOUs are signed for large capacities and up-scaling is to be done within a few years, the EIA right from the beginning, should be assessed for the full capacity and EC granted on this basis.
4. The MOEF needs to take a view that in future it will be mandatory for large projects like POSCO which have several components to submit a Comprehensive EIA rather than a Rapid EIA when EC is applied for.
5. It is understood that POSCO has, in the meanwhile prepared a comprehensive EIA. It would be worthwhile for the EAC to examine this comprehensive EIA to see whether any new and important aspects have emerged.
6. Orissa proposes to have a large number of ports along its coast and this is a cause for concern. EIA when done for one port at a time (or for one project at a time) is not able to assess the total impact on the environment. The MOEF may consider getting a Strategic Environmental Impact Assessment (SEIA) done of the existing and proposed ports on the Orissa coast, so that future projects can be assessed on this basis.
7. MOEF should study the matter of the establishment of the captive port afresh through a Comprehensive EIA and impose additional conditions, where necessary, to protect the environment.
8. POSCO should be asked to re-draw their plan of the port and the steel plant to be CRZ compliant. The MOEF and the Govt of Orissa should be vigilant to ensure that the CRZ restrictions are followed.

Chapter Five

Conclusions and Recommendations

Forest Rights Act

1. Since the area is not a Scheduled Area and there are hardly any STs living there, the possibility of ST forest dwellers being present is unlikely. However it is possible that there are other traditional forest dwellers in the area, and that they have genuine documents to prove cultivation and dependence on forest land for more than 75 years. To not give them an opportunity to have their claims recognised just because they might not have participated (due to reasons of conflict, or any other reason) in an exercise done once in the past, would be against the principles of natural justice.
2. The exercise of inviting claims from the villagers of the 8 project affected villages for recognition of forest rights should be undertaken afresh. A limit of time (3 months as spelt out in the FR Rules) should be fixed for the GS to invite claims and no extension should be given since this is the second time around that the exercise is being done. Thereafter the SDLC and DLC should meet and take a final decision in the matter.
3. The State Govt revenue and forest departments should extend all help to enable the exercise to be successfully executed. Efforts should also be made to assess the genuineness of the documents through scientific tests.
4. The handing over of land to POSCO should be taken up only once this exercise is completed and once it is known who are the forest rights holders in the area, and what is the nature of the forest rights.
5. If however, it is found that the community forest rights recognised over the land do not permit the diversion of the land, other adjacent land may have to be thought of, or portions of the forest land may have to be excluded from the land proposed to be given to POSCO.
6. This fresh exercise proposed may delay the diversion of forest land for the POSCO project by some months, and may modify the extent of land to be given to POSCO, but it will, in the end, be a just and fair action.

Resettlement and Rehabilitation

6. Resettlement and rehabilitation have not yet started. However details of persons who should get rehabilitation benefits, and rates of the different components of the package are being discussed at the RPDAC meetings by the project affected. The transparency is a positive factor.
7. Overall the R & R package seems to be acceptable. There appears to be a general satisfaction with the rehabilitation package among those who are not opposed to the project.

8. 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.
9. 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.
10. Finally, as the socio economic survey of XIMB mentions, 'displacement amounts to uprooting them from their soil that belonged to them for generations, which can be psychologically a traumatic event. This requires lot of empathy while handling the process of shifting and relocation.' We would like the State Govt to bear this in mind and engage non-governmental and community based organisations who have worked with people, to help in the process of relocation, so as to make the relocation less traumatic.

Environment and CRZ Clearances

1. It would be advisable for the MOEF to ask the EAC to look at the whole issue of water supply to the POSCO plant again, with a view to suggesting altered or additional conditions relating to water supply.
2. The MOEF should ask the EAC to assess whether additional conditions need to be imposed on projects proposed to be established in Paradeep to prevent the area from tipping over from a 'severely polluted' area into the 'critically polluted' area category.
3. MOEF should take a policy decision that in large projects like POSCO where MOUs are signed for large capacities and up-scaling is to be done within a few years, the EIA right from the beginning, should be assessed for the full capacity and EC granted on this basis.
4. The MOEF needs to take a view that in future it will be mandatory for large projects like POSCO which have several components to submit a Comprehensive EIA rather than a Rapid EIA when EC is applied for.
5. It is understood that POSCO has, in the meanwhile prepared a comprehensive EIA. It would be worthwhile for the EAC to examine this comprehensive EIA to see whether any new and important aspects have emerged.
6. Orissa proposes to have a large number of ports along its coast and this is a cause for concern. EIA when done for one port at a time (or for one project at a time) is not able to assess the total impact on the environment. The MOEF may consider getting a Strategic Environmental Impact Assessment (SEIA) done of the existing and proposed ports on the Orissa coast, so that future projects can be assessed on this basis.
7. MOEF should study the matter of the establishment of the captive port afresh through a Comprehensive EIA and impose additional conditions, where necessary, to protect the environment.

8. POSCO should be asked to re-draw their plan of the port and the steel plant to be CRZ compliant. The MOEF and the Govt of Orissa should be vigilant to ensure that the CRZ restrictions are followed.