

## Chapter 1: Facilitating POSCO's Entry into India

The proposal of South Korean transnational corporation Pohang Iron and Steel Company (POSCO) to establish in Odisha<sup>1</sup> (Orissa) a massive steel-power-port-township project, backed by one of the largest iron ore mining efforts in India, is by far the single largest industrial investments in recent times world-wide. With an initial capital outlay of Rs. 51,000 crores (USD 12 billion at 2005 prices), this is also India's single largest foreign direct investment ever. In its eagerness to secure the project for Odisha, amidst competition from other States<sup>2</sup> to win over the investor, the Odisha Government rushed to conclude a Memorandum of Understanding (MOU) with POSCO on 22<sup>nd</sup> June 2005<sup>3</sup> soon after the company had expressed interest to invest in India.

What the MOU guarantees is a sweetheart of a deal for the Koreans as the State effectively protects POSCO from all business risk. Barring the absence of a sovereign counter-guarantee<sup>4</sup>, the MOU is a clear demonstration of the subordination of the interests of Odisha and of the country to serve POSCO's international growth and expansion plans, and of its unprecedented profit making venture. Some clauses in Section 6 of the MOU amply demonstrates this:

“(xiii) The Government of Orissa will assist the Company in obtaining all clearances, including forest and environmental clearance and approval of the State Pollution Control Board, and the Ministry of Environment and Forest, Government of India under Forest (Conservation) Act, 1980 and Environmental (Protection) Act, 1986 for opening up the iron ore mines, laying roads, constructing township, etc.

(xiv) The Government of Orissa agrees to provide all possible assistance to the Company for acquiring mineral concession for limestone and dolomite within the ambit of the MMDR Act and MC Rules.<sup>5</sup>

(xv) Govt. of Orissa will make best efforts and provide all possible assistance to POSCO for expeditious clearance of applications relating to mining lease and related matters such as forest, environment etc. so as to enable POSCO to start its mining operations in time to synchronise with the commissioning of its steel plant.”

There is little need for any State to so bend over backwards in securing the interest and investment from a foreign direct investor considering the fact that private and public sector investors are fiercely competing for investments in the iron ore mining and steel sectors today. This is indicated in the fact that mineral extraction is amongst the highest growth sectors in India over the past decade. As a recent report by the Ministry of Statistics and Programme Implementation of the annual growth rates across various sectors in GDP terms reveals “(t)he economic activities which registered significant growth in Q1 of 2009-10 over Q1 of 2008-09 are in ‘mining & quarrying’ at 7.9 per cent, ‘electricity, gas & water supply’ at 6.2 per cent, ‘construction’ at 7.1 percent, ‘trade, hotels, transport and communication’ at 8.1 per cent, ‘financing, insurance, real estate and business services’ at 8.1 per cent, and ‘community, social and personal services’ at 6.8 per cent. The growth rates in ‘agriculture, forestry & fishing’ and ‘manufacturing’ are estimated at 2.4 per cent and 3.4 per cent respectively during this period.”<sup>6</sup> Banks and institutional financiers are more than willing to extend an endless supply of credit to Indian industry for launching mining and steel projects given the phenomenal increase in global demand and prices of the metal over the past five years. Seen in this context, the POSCO MOU seems to be a rather unnecessary extension of support to a foreign direct investor and raises a variety of disturbing questions about the intentions of the Odisha and Indian Governments in backing such a deal.

For POSCO, this MOU has been particularly useful in paving the way forward for the project, especially considering that the Odisha Government assured its active involvement in the processing and securing of a variety of statutory clearances. A clear indication of this is in how the location of the steel plant was selected. Upon signing the MOU, POSCO requisitioned 4,004 acres of land in a coastal location for the steel, power and captive port components of its integrated project. The company flatly turned down any suggestion of a non-coastal location, as it was keen on investing only if it was provided a captive port and a captive mine.

Land acquisition is normally the most contentious aspect of industrialisation, especially considering the increasing pressure on productive and fertile land. The company did not have to worry much though as within months of the MOU the Government identified a coastal stretch to locate the project. The selected land were in 8 villages of three Gram Panchayats (GP),<sup>7</sup> i.e., Dhinkia and Govindpur villages in Dhinkia GP, Noliasahi, Bhuyanpal, Polanga and Bayanalakanda in Gadakujang GP, and Nuagaon and Jatadhar villages in Nuagaon GP, of coastal Jagatsinghpur district of Odisha.

On productive and fertile lands of these villages would now come up a massive steel plant with a production capacity of 12 million tonnes per annum (MTPA<sup>8</sup>), which is equivalent to the combined production of the top 6 steel plants of India: Bhilai, Bokaro, Durgapur, Rourkela, Burnpur and Salem<sup>9</sup>. To support this phenomenal production, a captive 400 MW coal fired thermal power plant would be initially set up, which later would have to be expanded to 1,100 MW to meet the plant's energy requirements. The captive port would be capable of handling 170,000 DTW<sup>10</sup> cargo ships – the largest commercial ships ever built. Of the 4,004 acres demanded by the company here, 200 acres would be required for the port and over 1,000 acres would be exclusively dedicated to dump fly ash and other hazardous solid waste. POSCO additionally required 2,000 acres of land to build an Integrated Township to house its large workforce,. Additional land would be required later for a variety of ancillary infrastructure such as fresh water supply from the Jobra barrage across Mahanadi and dedicated road and rail linkages to transport ore from the mines to the steel plant and port.

The State's justification for so locating the site in Jagatsinghpur district for the steel-power-port components of the project was on the claim that there would be very low displacement of human settlements. The government claimed that 3,566.32 acres of the 4,004 acres requested by POSCO is 'government land' (2,958.79 acres forest land and 607.53 acres non-forest 'government land'), and only 437.68 acres (or approximately 10%) consisted private land.<sup>11</sup>



*A typical house in coastal Jagatsinghpur, Odisha*

What has not been reported as widely though is that in addition to this massive demand of land for the steel-power-port complex, over 6,100 acres of the thickly forested land in Kandadhar hills in the Sudergarh district of the State has been identified for a captive iron ore mine for the project. The MOU granted the company an unprecedented deal here as well: POSCO could extract 600 million tonnes of high quality iron ore over a 30 years lease period, 60% of which could be exported without processing. There was a rider though that such export would have to be in tandem with equivalent import of similar quality of iron ore – a specious practice indeed considering that it is in the interest of India not to allow export of raw ore at all and insist on value addition in-country. In addition, the clause demanding that an equal amount of similar quality of ore must be imported back to replace the quantity exported out, raises questions about what this transport game is all about.

There has been widespread criticism of this deal but this has not made much of an impact on key decision makers in Odisha State, and those in the Centre who have consistently backed this project. The effort has been to claim that the project would help Odisha leap forward from its current status as an industrially backward region and as a vaunted destination for global investment. POSCO's interest and investment must not be lost at any cost, therefore, was the oft repeated statement emerging from Odisha administration.

As assured in the MOU, Odisha Government assisted POSCO in rushing through processes involved in a variety of statutory clearances including those from the Centre. Consequently key environmental clearances were accorded in a flurry; this included diversion of forest land for the steel-power-port complex under the provisions of the Forests Conservation Act; clearance for the establishment of the port under the Coastal Regulation Zone Notification; water and air pollution regulation clearances per the Water and Air (Prevention and Control of Pollution) Acts; and final environmental clearance under the Environment Impact Assessment Notification and other regulations per the Environment Protection Act.

All these clearances were based on Rapid Environmental and Social Impact Assessments (REIA)<sup>12</sup>, so called because it considered impacts based on studies conducted during only one season. Various independent analyses of these studies have found them to be highly deficient. For instance, such analysis have revealed that POSCO's REIA has paid scant respect to the fundamental rights of forest dependent communities under the Forest Rights Act, claiming even that such rights did not exist in the villages affected by the project. There was scarce interest in the fact that this region was an highly sensitive zone ecologically, as the beaches here are nesting grounds of the endangered Olive

Ridley Turtles (*Lepidochelys olivacea*)<sup>13</sup> and critical spawning areas for the equally endangered Horse Shoe Crabs (*Carcinoscorpius rotundicauda*), both protected under the Wildlife Protection Act<sup>14</sup>. Then there was the concern that so industrialising the region would expand the critically polluted zone around Paradeep port which is only a dozen kilometres away from the proposed site for the mega POSCO project.

Perhaps aware of the serious intergenerational environmental impacts of the venture, and in an effort of downplaying the massive social impacts of the project, POSCO, Odisha Government and the Ministry of Environment and Forests (MoEF) processed clearances for only small components of the overall integrated mega project. Thus, only 4 MTPA steel plant was processed for environmental clearance and not 12 MTPA steel production that would be in place in just 6 years. The power plant impacts were considered for only 400 MW installed capacity and not the entire 1100 MW that would eventually be needed. The captive port was masqueraded as a 'minor port', thus escaping stringent review demanded for major ports – which is what is proposed by POSCO. Then there was simply no consideration at all of the impacts of a variety of ancillary transport infrastructure such as the dedicated train line from the mines to the port over a distance of 250 kms. and the 90 kms. long water supply linkage. Grossly, and perhaps deliberately, overlooked also was the massive impacts that the mining and township components of the project would cause, both involving extensive land acquisition and conversion of forest land to industrial use. Every regulatory agency at the State and the Centre played an active part in this massive cover-up supported by weak impact assessments containing wrong, misleading and fraudulent data.



*Olive Ridley Turtle*

There are various estimates about the extent of displacement of people the project would cause. Most estimates put the number at well over 20,000, but this only by taking into account the impact of the steel-power-port components. The Odisha Government claims that the number of displaced people would be as low as 471 families (approximately 2,500 people). As for the indirectly displaced communities, especially of those dependent on fisheries, no reliable estimates exist. If the actual social displacement and environmental impacts of the project's mining, pipeline, road/rail networks and township development are comprehensively and honestly assessed, it is only then that the massive and irreversible environmental and social impacts of this project can be fully comprehended.

Obfuscation of facts, disinformation campaigns, active denial of public domain information and deliberate disregard for various social, scientific, legal, economic and community concerns has been the basis for pushing this mega project through various clearance stages. The Principle of Prior and Informed Consent from project affected communities has been ritually complied with and often not at all. In so doing, POSCO India along with the Odisha and Union Governments have fundamentally flouted various statutory and regulatory norms and procedures contained in a variety of environmental, forest conservation, pollution control and governance legislations.



*A village pond in Dhinkia*

The only saving grace in this rather despairing situation is the resolute and peaceful resistance to the project from directly affected communities for over six years now. Under the leadership of POSCO Pratirodh Sangram Samithi (POSCO Resistance Movement henceforth referred to as PPSS), communities have staunchly resisted repeated attempts by the Odisha State to dispossess them of their highly productive and beautiful

lands. Women, children, men, youth and village elders in project affected villages have repeatedly suffered the brutality of the Odisha State and are yet determined not to allow the POSCO project to come up here. Villagers have barricaded the entry points to their villages and have not allowed any State functionary or company official to enter; clearly demonstrating their resolve and the resilience of their long campaign.

#### **Jairam Ramesh extends tenuous hope:**

A critical clearance by Ministry of Environment and Forests (MoEF) for diversion of forests to industrialisation by POSCO was extended on 29 December 2009<sup>15</sup>. This was short-lived, however, as Jairam Ramesh, Indian Minister of State (independent charge) for Environment and Forests stayed the order in response to complaints that the diversion fundamentally violated the provisions of the recently enacted Forest Rights Act, 2006. To specifically investigate the basis of such contentions, and help establish the truth of this matter, Ramesh requested a review by a Committee headed by N. C. Saxena (former Member of Indian Planning Commission) which had been established to review nation wide compliance with the Forest Rights Act.<sup>16</sup> Based on a visit to the POSCO affected villages, a sub-committee of the Saxena Committee reported in August 2010 that there indeed had been flagrant violations of the Act and recommended that the Forest Clearances granted should be revoked.

Only a few weeks earlier, the Saxena Committee had similarly exposed serious violations of the Forest Rights Act in the bauxite mining project by UK transnational Vedanta in Niyamgiri hills of Odisha. Ramesh had immediately acted on the basis of these findings and cancelled all clearances granted to the company. This strident action provided communities affected by POSCO hope that similar action would follow. However, Ramesh did not revoke the clearances granted, but merely stayed the diversion of forest land. Yet, communities felt that this could be a beginning to set right the wrongs of the past.

Demands intensified meanwhile for comprehensively reviewing the forest, environmental and coastal regulation zone clearances that POSCO had secured, as it was alleged that these had been fraudulently obtained. In response to these demands, Ramesh appointed another independent investigation by appointing former Indian Environment Secretary Meena Gupta as Chair. This Committee visited the affected villages, conducted several meetings with officials of the Odisha Government and POSCO, met with those opposing the project and returned with a comprehensive report in October 2010 recommending by a majority decision that the environmental, coastal regulation and forest clearances accorded to POSCO must be withdrawn as they had all been secured on the basis of fraud and misinformation. The majority finding also concluded that the project should proceed only after an independent and comprehensive Environmental and Social Impact Assessment of its impacts and a full-fledged review of the site. They also recommended that fresh Statutory Environmental Public Hearings would have to be held in strict compliance with law as those that had been held were found to be deficient and violative of human rights.

This was a difficult situation for Ramesh. He was drawing flak from many political and business quarters for raising environmental concerns and refusing to clear various industrial and infrastructure projects. The Odisha Government accused him of targeting the State as it was ruled by a non-Congress party. The Indian Prime Minister Dr. Manmohan Singh was worried about such decisions and ensuing delay would adversely affect foreign direct investment potential of India. He was also worried about how it would affect his pro-investment image during his visit to South Korea in November 2010 to attend the G 20 summit. In fact earlier in the year, Singh had strongly assured visiting South Korean President Lee Myung-bak, Guest of the State in the 60<sup>th</sup> Republic Day celebrations of 2010<sup>17</sup>, that the POSCO project would soon see the light of day. Now eleven months later, it seemed rather unlikely that the POSCO investment would succeed, what with two investigative committees reporting serious violations in project permissions secured, and recommending that these clearances must be revoked.

For Jairam Ramesh the difficult task of implementing India's environmental, forests and forest rights laws in right earnest and yet not coming in the way of an aggressive pro-investment climate was becoming increasingly apparent. If Ramesh keeled over to support POSCO, despite the expose' of illegalities and fraud, the reputation he had gained in a short time of being India's most effective Environment Minister would be seriously damaged. There was also the vexatious issue of not jeopardising the strong claim of the Congress led United Progressive Alliance (UPA)<sup>18</sup> Government as being the architect of the Forest Rights Act enacted in 2006. This law sought to correct historical injustices of denial of forest rights of tribals and other traditional forest dwellers (OTFD), and the Congress claimed a lot of credit for its unanimous approval in Parliament. The POSCO project would now be indicative of how serious the Government was in implementing the Act.

Meanwhile, the independent investigation reports were reviewed by various committees in the Ministry. The Forest Advisory Committee, for instance, recommended against diversion of land for the project until the Forest Rights Act was fully implemented. In the weeks that followed, no clear decision emerged, uncharacteristic of Jairam Ramesh known to take decisions on the spur. Finally, he released a “speaking order” on 31 January 2011 approving the controversial environmental and coastal regulation zone clearances granted to POSCO. To ensure that his strong Environment Minister image was not eroded, perhaps, he argued that this was a fair decision as several additional conditions had been imposed. But most of these were in the nature of seeking more information based on further studies, and thus seemed to once more expose how little was known about the project and its impacts; yet critical decisions were being made to push the project through regardless of its social and environmental impacts. The decision was not final, however, as Ramesh made the diversion of forest land for POSCO subject to Odisha Government providing him “categorical assurances” that it had fully implemented the Forest Rights Act in the project affected areas. Seeking such assurances from an applicant Government (a party interested in the project's clearance), in matters involving and impacting the fundamental rights of thousands is tantamount to subordinating relevant facts to mere opinion. Ramesh, though, defended his decision claiming the additional conditions offered a variety of safeguards that would mitigate environmental and social impacts, and that in fact it was a very strong decision.

In the months that followed, the Odisha Government repeatedly assured Ramesh that all was well with its POSCO proposal. The exercise of implementing Forest Rights was undertaken by the Gram Panchayats in the affected villages and the Odisha Government, but with contrasting results. The Dinkia Panchayat comprehensively claimed forest rights and rejected the project, while the exercise conducted by the Odisha Government through the office of the District Collector promoted the view that legitimate Forest Rights did not exist in the region. As these reports reached the Minister, he flip-flopped, sometimes supporting local community contentions of violations of their rights, making audacious statements on how critical the meaningful implementation Forests Rights Act is, and at other times clarifying that his Ministry would not block the project's progress.

This tussle ended eventually on 2<sup>nd</sup> May 2011 when Jairam Ramesh bought hook, line and sinker into the Odisha Government's 'assurances' that the Forest Rights Act did not apply to the POSCO affected villages. He lifted the stay on the operation of the December 2009 clearance of the Ministry for the diversion of forest land in the POSCO project affected villages. By so doing he ignored the substantial findings by two independent fact finding committees that he had appointed and which had found that the Forest Rights Act did apply to the region. He also chose to reject the recommendation of the statutory Forest Advisory Committee that the project must not be supported in violation of legitimate forest rights that existed. And most critically he comprehensively rejected the well documented evidence produced by local communities of forest rights that they enjoyed for generations and of serious human rights and environmental violations that formed the basis of clearing the project. Ramesh thus now paved the way for the Odisha Government to displace thousands of people, and destroy forests and other sensitive ecosystems, all to benefit POSCO and its integrated project.

## Chapter 2: Appreciating the Water Landscape

As one traverses the district of Jagatsinghpur in Odisha, the amazing influence of water on land is evident all around. This is particularly the case during monsoons, when the great Mahanadi sumptuously meanders through its innumerable streams, rivulets and tributaries to join the Brahmani and form a massive estuarine complex and one of India's most extensive and fertile deltaic regions. Land surfaces rather incidentally in this amazingly diverse aquatic ecosystem.

Nature's grandeur in the coastal Jagatsinghpur district of Odisha leaves one awestruck and benumbed, at once. About 8,000 years ago this region was frozen ice. This may seem like a long period in human terms but is really inconsequential time in the earth's evolutionary history. As the earth warmed up and the ice age receded, warm salty waters of the sea returned to reclaim land and created conditions for the emergence of swamp and forest land rich in biodiversity.

For millennia a monumental struggle of the elements has been played out in this region. Massive amounts of fresh water brought down by the monsoon rains has determinedly pushed through the delta into the Bay of Bengal; only to be held back by the surging sea bringing with it loads of salt, silt and nutrients. Life thrives here even as it tenaciously confronts ferocious cyclones that batter the region energetically, and rather frequently. Amidst this awesome dance of nature are massive coastal sand dunes rising resiliently against an overpowering sea. Cyclonic storms sometimes work such rage into the sea that powerful and tall waves effortlessly lift massive amounts of water and rush into land swamping villages, forests and creeks leaving behind an unbelievable scale of destruction. Against this awesome swell of the waters, what we humans propose and build looks rather trivial and insignificant. Everything is transient in this amorphous assemblage of land and water; one can only survive if one bends with respect to the forces of nature. Resisting would be foolish.



*A typical view of POSCO affected villages*

As the monsoon passes over, and the swollen rivers recede, tidal action plays an interesting role to form extensive brackish water zones which are excellent spawning grounds for a variety of aquatic fauna. The constant replenishing of alluvial soil and nutrients makes the region amongst the most fertile food growing areas of India. Birds and turtles

travel from across the world to partake in nature's feast as this scintillating dance-drama between land and sea unfolds year after year. Along the margins of this land, mangroves hang on resolutely and work with the sand dunes to shelter inland regions from the rage of the frequent cyclones. Thus, lush paddies, grazing pastures, *paan kethis* (betel vines), fruit and vegetable orchards, fishing and sedate aquaculture fields help support a variety of livelihoods in tens of villages in the low lying inland areas.

Thousands of years of human labour has helped turn what were swamp lands and dense coastal forests into the fertile food growing region that it is today. The villages of Dhinkia, Gobindpur, Nuagaon, Noliasahi, Polanga, Bayanalakanda, Bhuyanpal and Jatadhar, all directly impacted by the POSCO steel-power-port project, rely very heavily on the land forms and biodiversity of the area to support their agricultural and fishing activities. This rich biodiversity and the many ways of life that this grand and ecologically productive landscape supports, is today seriously threatened with imminent destruction.

#### **History reveals long and intricate relationships between local communities and the forests:**

A report filed in 1930 by R. L. Derry, District Forest Officer of Puri Division is a revelation of the ecological richness of this landscape during the early decades of the 20<sup>th</sup> century. Of the forest types prevalent in this region, then known as the Kujang Estate, Derry reports the following:

**“The area is typical of the mangrove swamp formations of the coast.** In this estate it forms a well defined band running the whole length of the eastern or coastal boundary. In place, as near the old Garh-Kujang, it is hardly 2-3 miles broad. Higher up around Hookitoal and Falsepoint the band widens to a breadth of 8-10 miles. The tract is typical of deltaic swamps and consists largely of low lying marshy saline islands interlaced by a network of creeks and rivers. These islands are formed from accumulation of silt deposits brought down by the many rivers of the Mahanadi delta, and subsequently stabilized by the mangrove tidal forests that spring up. The older and higher groups of the inside islands is often free from inundation at high tide and subject to partial inundation only at spring tide. On the western boundary, on the landward sides, the high ground gradually merges into the cultivated alluvial formations behind.”<sup>19</sup> (emphasis added)

Derry also reports that the main feature of the landscape was a complex intermingling of wetlands and mangroves rich in biodiversity:

“There is no sharp line dividing a large number of species of these types for they gradually merge from one to the other. In the marshy localities there is commonly a narrow strip, rarely more than 200 yards in breadth which is regularly inundated by the tides. Along these strips are to be seen the numerous species with their characteristic still like roots and pneumatophores, *Thizophora muricata*, *Avicennia*, *Sonneratia*, *Bruguiera*, *Kandelia* and *Carapa Ovata*. Behind this, there is a higher fringe of muddy ground which gradually rises above the normal flood level and spreads back into the inundated areas. More characteristically there appears to be the *Sundari*, *Jamun*, *Ficus* and other species of the upland areas. A note may be made here of the *Hintal* (*Phoenix paludosa*) which is to be seen growing sporadically throughout the rather drier marshy localities in almost pure patches. From Boitarkud to Sandhakud, on either side of the Atharbank river, it was plentiful and gregarious. This palm is valued in the estate, being extensively used for the purpose which canes and bamboos serve elsewhere.”

Such forests must have abounded with a variety of wildlife. Village elders speak of times when the fear of the tiger was widespread; it was not rare for this great predator to venture out from the swamps and make a kill of an unwary human. Leopards were a common sight until very recently, while jackal and hyena still compete with feral dogs in stealing the eggs of the great ocean roamers - Olive Ridley Turtles that nest on the sands of Jatadhar creek and other beaches of Odisha every summer.

Andrew Sterling, a Baptist Missionary and Persian Secretary to the Bengal Government, traversed through Odisha in the early decades of the 19<sup>th</sup> century. He has vividly and exhaustively described the Odisha of his times in his various writings, most importantly in a pioneering essay **“Orissa: Its Geography, Statistics, History, Religion and Antiquities”**<sup>20</sup>. Following is an excerpt from Sterling's essay based on his traverses through coastal areas of Odisha:

“The territories along the bay of Bengal are subject to frequent hurricanes, which greatly injure the farmer; and the lowlands, in spite of embankments, liable to ruinous inundations from the sudden overflowing of

rivers. The buffaloes are a fine large breed, and supply the natives with milk and ghee; but the oxen are of a very inferior description, and the horses mere carrion. The low lands abound with hogs, deer, tigers, and jackals; and the highlands are infested by wild beasts in such numbers, that *they are in many places, regaining the country which had been wrested from them by human cunning and combination!* The rivers and waters swarm with fish, reptiles, and alligators<sup>21</sup>; the plains and jungles with winged vermin. The chief rivers are the Godavery, the Mahanuddy, and the Subunreeka, besides innumerable hill streams of a short course, and small channel. The principal towns are, *Cuttack, Juggernaut, Ganjam, and Vizagapatam.*" (Emphasis in original)

The swamp lands that constituted the region which now falls in coastal Jagatsinghpur district is vividly described by Sterling as follows:

"The first region has much of the character of the Sunderbands, in its swamps and marshes, innumerable winding streams swarming with alligators, its dense jungles and noxious atmosphere ; but wants entirely that grandeur of forest scenery, which diversifies and gives a romantic character to many parts of the latter. The broadest part of it is divided amongst the Rajas of Kanka and Kujang<sup>22</sup>, and the Khandaits of Herrispur, Meriehpur, Bishenpur, Golra, and others of less note. The Killah or Zemindari estate of Al likewise comes in for a share. Northward of Kanka the quantity of jungle diminishes up to the neighbourhood of Balasore, but the whole space is intersected by numberless nullahs which deposit, and creeks which retain, a quantity of fine mud, forming morasses and quicksands highly dangerous to the unwary or uninformed traveller."

Sterling may not have been able to appreciate the grandeur of Indian forests because of its impenetrability, and perhaps because it was unfamiliar terrain to a traveller used to British woodlands. His essay, though, is useful in reviewing the quality of forests and of the variety of wildlife that existed. He notes that "(t)he prevailing timber is the Sundari. Extensive thickets of the thorny bamboo render travelling impracticable in most parts of Kujang, Herrispur, &c.<sup>23</sup>, except by water. The whole of the jungles abound with leopards, tigers, and wild buffaloes, and the rivers at the flowing of the tide are perfectly surcharged with large and voracious alligators of the most dangerous kind." He also records that in "...this wild inhospitable tract, however, *the finest salt of all India is manufactured*, which under the monopoly system, yields annually to the Government a net revenue little short of *eighteen lacs of rupees*. The produce, distinguished for its whiteness and purity before it has passed into the hands of the merchants, is of the species called Pangah procured by boiling." (Emphasis in original)

Such thick jungles and brackish water areas were systematically converted by hard labour of generations of farmers into the prime agriculture land that is abundant today. According to Sterling, the rice then grown in this coastal region was highly valued and was even exported. He notes that the then prevalent "(o)ccasional patches of rice cultivation are to be met with in this portion of the Rajwara producing sufficient grain for local consumption, and the Raja of Kanka exports a considerable quantity both to Calcutta and Cuttack." Sterling reports that "(r)ice is the great article of produce, and consequently of food, throughout Orissa Proper" and describes various rice varieties that were grown in different regions, across seasons and also of the inventiveness of farmers in engaging multiple cropping methods to get maximum returns from their paddies. Sterling describes in considerable detail the highly evolved tradition of tobacco and cotton cultivation and documents a wide variety of industrial products that were derived from plants, primarily for production of muslin, coarse fabric and in textile dyeing.

Sterling reports a large diversity of fruits and vegetables that were grown in orchards. He did not consider these orchards to be extraordinarily different from what he had seen in the rest of India, but did observe that there was "...no deficiency however of the humbler kinds of pot herbs, and cucurbitaceous<sup>24</sup> plants, with the Hibiscus esculentus, the *egg plant*, the *sweet potatoe*, and *Capsicum annuum*..... The more common fruits are as elsewhere, the *Mango*, the *Phalsa*, the *Jam*, the *Guava*, *Custard Apple*, the *Hurphaleri*, the *Chalta*, the *Kendhu*, the *Pomegranate*, the *Cashewnut*, the *Jack*, the *Bel*, the *Kath-Bel* or *Wood Apple*, and the *Kharanj*, from whose fruit an oil is extracted, used for burning by the natives. The *Wine palm* and the *Khajur* abound in particular quarters." The now ubiquitous coconut and betel nut trees were not so widely cultivated in the region for Sterling reports that "(w)e rarely meet with the *Cocoanut* and *S'upari* except near Brahmin villages, though they would thrive every where in Cuttack...." (Emphasis in original)

About fisheries in the region, Sterling describes that:

"(t)he sea all along the coast of the Bay of Bengal yields abundance of fine fish, of which upwards of sixty-one edible kinds are enumerated, by the natives. Those most prized by Europeans are the *Sole* or *Banspatti*,



*Tapsiya* (Mango Fish,) *Phirki* (Ponifret,) *Gajkariaa* (Whiting,) *Hilsa* (Sable Fish,) *Kharanga* or *Mullet*, a fish called the *Bijay Ram* something resembling Mackerel, and the *Sal* or *Salia*. The Chilka Lake produces noble *Bhekti* or Cockup. The value of the excellent *Turtle*, *Oysters*, *Crabs*, and *Prawns*, found off *False Point*, and in other parts, was unknown to the natives prior to their subjection to the British rule, but they are now of course eagerly sought after, to supply the stations of Balasore, Cuttack, and Juggernaut. The great season for fishing is in the winter months, from October to February, whilst the wind and the surf are moderate. At this time all along the northern coast the fishermen go out in parties of from twenty to thirty each, with large nets, which they set up before the commencement of flood tide, with the aid of bamboo poles, in the form of a vast triangle, leaving the base open towards the shore. As the tide retires the fishermen take in and close up the nearest nets, thus driving the fish into the apex of the triangle where there is a net placed with a large pouch ready for their reception. The quantity obtained at a haul in this way is often prodigious. The produce is taken to the neighbouring villages for sale, after reserving a sufficiency for home consumption; and a large quantity travels far into the interior, unprepared in any way, which it of course reaches in the last stage of putridity, but not on that account a bit the less palatable or acceptable to the nice and scrupulous Hindu." (Emphasis in original)

Quite obviously, this description is steeped in the then prevalent colonial and caste-based traditions of discourse, a practice to be abhorred in present times. Sifting through this problematic discourse, though, one notes some important observations that Sterling makes, such as the ecological status of the Olive Ridley Turtles and the Horse-shoe Crabs. Both these species, critically endangered today, were in great abundance then and were not commercially exploited by local communities. Until, of course, the British created a demand and a market for such "eagerly sought after" produce of the sea.

Andrew Sterling's highly observant eye did not miss much. He has documented and interpreted almost everything he saw and encountered during his travels. Not to be missed, therefore, is his examination of how *Paan Kethi* (betel vine, *Piper betel*, L.)<sup>25</sup> cultivation probably emerged in Odisha. He reports that "...the peasantry (was not) acquainted with the method of cultivating the Betle vine, until taught by the natives of Bengal some generations back. The Piper Betle



A Betel Vine farm

now flourishes in the gardens around Pooree and in the neighbourhood of a few Brahmin villages, but the produce can be adequate only to the supply of a very limited consumption, notwithstanding the assertion of the author of the work called the *Ayeen Akbari*, or Institutes of Akber, that 'they have a great variety of the Betle leaf in Orissa.' The spots which are destined for the cultivation of Betle as also of Turmeric, Sugar-cane, &c., require laborious preparation and the application of a large quantity of manure, for which latter purpose the oil cake or Pire made of the refuse of the sesamum, mustard, and other seeds of the same family is generally used. An occasional sprinkling of rotten straw, cow-dung, and ashes, is the only manure expended in the fields which yield the other kinds of produce."

Sterling's record of betel cultivation in the area is strong evidence of the wrong claims by the Odisha Government that this agro-economic practice is of recent origin in the villages affected by the POSCO project. As Sterling reports, it has in fact been recorded even during Mughal times and was a well settled agricultural practice in the early 19<sup>th</sup> century. Interestingly, the current method of betel vine cultivation is not at all different from the practise employed then, as Sterling reports.

### Chapter 3: Politics of Control over Land and Resources

Historical chronicling, such as by Sterling and Derry, should be a major factor influencing any decision that redefines the nature of relationship between natural resource dependent communities and their landscape. This is particularly important when decisions are powerful enough to reassign, fundamentally alter and irreversibly affect the lives and livelihoods of communities and their complex relationships with the ecological characteristics of the place. As is already evident from Sterling's writings, it has taken less than two centuries of commercial poaching to render to a critically endangered status the Olive Ridley Turtle and Horse-shoe crab. Because of a range of transformations in the nature of the land and the coast, fuelled largely by urban and industrial development, fisher folk today may not be able to account for the over 60 varieties of fishes that Sterling documents in the 19<sup>th</sup> century. Similarly, there has been a significant decline in the varieties of rice grown in the region, and possibly of other agricultural produce. Despite these losses, the rich biodiversity of the region remained very much the way Sterling and Derry describe till very recently. A review of Jagatsinghpur's turbulent political history, especially over the past century, helps us appreciate how this landscape became a highly contested terrain and susceptible to major transformations in its ecological nature.

#### **Jagatsinghpur's recent turbulent history and its impact on the ecological and social landscapes:**

The problematic nature of the politics of control of the Kujang estate is documented by N. R. Hota, a Settlement Officer of Cuttack, in a report he filed in his 1966 survey of the region.<sup>26</sup> As the report reveals, the tyrannical rule of the Sendh rulers for close to three centuries from the 17<sup>th</sup> century subordinated the subjects to recurring miseries, and could well have had a very direct bearing on the social and ecological landscapes of the region. The deterioration in the ecological nature of the region was further exacerbated by the demands of post-independent political situation as well.

Hota reports that from 1757 AD one Krishna Chandra "...reigned for 21 years, but did not fight with any one. He had four wives, four concubines, and 16 dasies (slaves). By these he had 18 sons, the eldest of whom ran away and was never heard of afterwards. His second son, Gangadhar Sendh, killed all his 16 brothers and took the kingdom on his father's death. It is even said that he poisoned his own father. Gangadhar Sendh reigned for 14 years. He in collusion with the Raja of Kanika fought and killed the Raja of Kuldih, and divided his Rajya between themselves, Kanika Ranja taking all the places north of the Tantiapal river, and Kujang Raja all to the south, viz., the Chakra Zilla. He established about 122 families, who were thieves and robbers, and granted them jagirs." Clearly, not much can be expected in terms of effective social and economic governance under such rule of robber barons. Such ruthless and immoral rule continued in subsequent decades.

Close to a century later, Jonardan Sendh ruled for 21 years from about 1835. Hota reports that this Sendh "...is said to (have) be(en) (an) extraordinarily oppressive sort of man. He robbed away many of the beautiful and young damsels and virgins from the subjects, and squandered off the entire Raj money in his dissolutions. He killed many of his tenants for trivial offences. He got himself heavily involved into debt, amounting to Rs. 35,000. He therefore applied to Government, requesting his estate to be put under the Court of Wards, and his application was granted. But the estate remained only for a few months under the Court of Wards, as the Raja again applied to have his estate restored to him. After this he died, leaving a minor son, named Lukhindher Sendh. He was only two months old at the time of his father's death. He was declared to be the heir, and the estate was again taken in charge of the Court of Wards."<sup>27</sup>

The British Raj was more than willing to opportunise on such weak governance of the local rulers and bring the subjects to absolute bondage as part of its strategy of subordination to the Victorian Empire. Already the cumulative impact of decades of misrule had terribly impoverished the subjects and British policies only made matters worse. During the great Odisha famine of 1866 "about three-fourths of the tenants either died or emigrated"<sup>28</sup>. Malgovernance and the inability to pay the agreed revenue to the British Crown by the now subordinated Sendh rulers ensured the large Kujang Estate (as it was then called) was attached by the courts. With the demise of the last Sendh, in what is described as tragic circumstances, the estate was purchase for Rs. 3.5 lakhs by the Burdwan Raj of Bengal in 1868. In the period that followed, there was no significant improvement in the economic situation of the people. The only relief that the people received was the relative peace and quiet that they enjoyed in the demise of the unbelievably tyrannical Sendh rule, at least until the independence of India.

## Forests cleared to grow food and settle refugees post partition of the Indian subcontinent:

The division of the Indian subcontinent in 1947 had significant repercussions on the land-use pattern of the Kujang Estate. With the violent birth of India and Pakistan, massive tides of refugees from East Pakistan (now Bangladesh) had to be settled. This played a major role in forcing the conversion of large swathes of the coastal forests into agricultural land. Hota vividly describes this transformation in his report:<sup>29</sup>

“For the first time legalised destruction of Kujang forest block was made in the year 1950 in which Shri. M. N. Guha, the then Collector, Cuttack permitted the Maharaja of Burdwan **to lease out thousands of acres of forest lands.... under the provisions of the Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948 with a view to increase food production of the district under grow more food campaign**. The permission was given with a number of restrictions governing the extent of lands to be leased out to a particular family, the quantity of salami<sup>30</sup> to be realised, preference to be given in granting leases, etc.” (Emphasis added)

M. N. Guha discusses the historic compulsions that forced him to take such drastic steps in his order of 10<sup>th</sup> May 1950.<sup>31</sup> He acknowledges the role of then MLA N. B. Samanta and some local people who helped him rationalise the need to convert large areas of this forest land “for facilitating cultivation” and in order to help settle refugees from Bangladesh on a priority basis. Guha was concerned about protecting the interests of local people on a preferential basis when releasing land for the refugees. This meant converting forests into land suitable for other uses. To help form his judgement on the extent of forest land that had to be converted to settle refugees and make it available for food production, Guha relied heavily on an exhaustive report of G. N. Das, then Assistant Conservator of Forests. It is in Das's report that we find vivid details of the process by which large extents of forest land were converted to cultivation. According to this report:<sup>32</sup>

“The total area of the (Kujang) estate is 370 square miles of which the forest covers over an area of 69.8 square miles or 44,672 acres divided into 35 blocks. ... The area of the unsurveyed forests are only calculated from the topo maps of the estate. There may be a little difference between the area in the topo maps with that on the spot.”

Based on this survey, the actual extent of forest land that was converted to cultivation is reported as follows:

“The total area of cultivable land of 18,490 acres being deducted from the forest areas of 44, 672 acres there remain 26,183 acres as forest. Out of this sandy area of Block No. 3 in whole and 17 and 18 in part is approximately 3,000 acres and thus deducted from the remaining forest areas of 26,182 acres it diminishes to 23,182. The estate authority protected the entire forest area with an idea of supplying house building materials, fuel and Agricultural implements and also to protect the cultivated lands from sand drifts.”

Das was deeply apprehensive over the potential misuse of forest land and expresses his concern in a language that is representative of the territoriality of forest officials and their innate distrust of local communities. He states that:

“The entire existing forest area being used in whole could not meet the demands of the Estate tenants. Tenants naturally will make ill use of the forest to a great extent, the consequences will at least be the conversion of these jungles to waste land. Grazing being an important problem here should also be affected much..... The present system of control over the forest by the Estate is not satisfactory and tenants are exploiting the forest in a large scale and clearing vast plain jungle areas indiscriminately for cultivation against the order of the Maharaja of the Estate prohibiting the reclamation of jungle lands on the 20<sup>th</sup> April 1949. The Sub-Manager of Estate says that he informed the Government in that connection and no action is said to be taken yet. So I would suggest that the Government while taking the question of release of such cultivable jungle lands for reclamation purpose would also arrange to take immediate steps for the protection of the remaining forests and to keep control over these to save them from further denudation.”

Following up on such a massive scale of felling of forests to make way for cultivation and human settlements, Hota reports that there was further conversion of forest land which he qualifies as “legalised destruction of the forest... in the same year .. for the purpose of *rehabilitation of refugees*.” This decision was once more Guha's to take when he converted 3,000 acres of forest land to cultivation. But aware of the risks that such massive destruction of coastal

forests posed, particularly in making the region highly vulnerable to cyclones, Guha ensured that **“1,000 (one thousand) acres.....strip... will be reserved for safe guard(ing) against cyclone and erosion and the rest will also be leased out (only on obtaining) the opinion of the Forest Department..”** (Emphasis added)

### **Declaring village forests as “Protected Forests”**

From this historical evidence it is clear that the coastal stretches of Jagatsinghpur district were extensively forested and, as Derry reported, were predominantly mangrove forests. The 1950s witnessed widespread felling of large swathes of these coastal forests and what we now see are mere vestigial remains. Following the settling of refugees during the 1950s, the Revenue Department of Odisha, and the Forest Department – which was its subordinate agency then – began efforts to protect the forests. A growing concern of the authorities was that grazing and extraction of forest resources by the locals was exerting a very high pressure on the forests and providing feeble chances for conserving what was left. Historical events had dealt a huge blow to the ecological integrity of the “Kujang estate”, but it was time to move on keeping the best interests of present and future generations in focus.

The regulation of forest use became a major preoccupation for forest authorities as it was felt to be the only way forward in protecting its natural regenerative capacity. The traditional rights of local communities to access forests and to collect minor forest produce remained undisputed, even as it was subordinated to layers of authority. A series of orders were passed under the Indian Forest Act, 1927. For instance, in 1954, the Anchal Adhikari, Kujang, based on the petition of Kumberos (potters) outside of Kujanga Anchal, recommended that “...it would be better if these outsiders pay Bonker<sup>33</sup> at double the rate i.e., Re. 0-8-0 per 100 maunds of fire wood until further orders”<sup>34</sup>. But in a mark of benevolence to these migrant potters, the Revenue Department in its order to the Anchal Adhikari on 6<sup>th</sup> February 1958<sup>35</sup> states that “.. after careful consideration, Government have been pleased to order that the supply of forest materials viz., timber and fuel etc., to the fishermen and potters of Kujang ex-estate both for agricultural and professional purposes should be made on payments of four annas per family as is being done in the case of the other tenants of Kujang.” This reveals the very high reliance on the forest by local communities to meet a variety of their needs.



*A street view of Gobindpur village*

The traditional use of the forests apart, new refugee communities intensified the extraction of forest resources as they had to find material for building houses and for agriculture. This affected the quality of the forest and consequently the Forest Department intensified its efforts to regulate forest use, and even of access to it. The Department was deeply concerned over the denudation of the forests due to intensive use and refused to divert forests to non-forest purposes. As an abundant precaution, Hota reports, the forests of Jagatsinghpur region “...were transferred to the Forests Department with effect from the 15<sup>th</sup> November 1957 for the purpose of better management vide orders of the Secretary Revenue Department”<sup>36</sup> (Emphasis added). A year earlier, forests of Hokitala, Batighar, Hetamundia, Jogidhankud and Bitarkharinasi had also been similarly declared as protected forests under Section 29 (3) of the Indian Forest Act<sup>37</sup>. Hota further reports that after “.. the declaration of forests as protected forest under the Indian Forest Act, the rules under said Act were followed and where there were no specific rules covering certain specific cases, the ex-Zamindari rules were followed or customary rule exercised.” (Emphasis added)

### **Rare official recognition of Forest Rights:**

These were times when there was a very strong hangover of administrative and regulatory tradition from the British Raj. If anything, the Forest Department was considered the most apt candidate, next only to the military, for living up to colonial traditions of centralised control, over forests in this case. Ostensibly, protecting forests by the department was essential as the locals were projected as illiterates out to plunder and destroy nature's bounty. It is no surprise

that the Forest Department in those times considered forests as State assets, even appropriated it as such and sought to strongly contest traditional and customary rights of communities to access forests, but with some rare exceptions.

One such exception is a path breaking notification issued by the Forest Department on 4<sup>th</sup> October 1961,<sup>38</sup> as it grudgingly acknowledged traditional and customary rights of access to forests. The problem of deforestation had already become a major concern, as was the fact that many forest areas had not been properly documented. In this backdrop, the Notification appreciated that the *“forest land and waste lands known as Kujang Forests in Tirtol, Mahdpara, Erasamma and Pinkura Police stations in Cuttack....have not been entered into nor recorded at a survey or settlement”* (Emphasis added). This Notification then justified the need to declare them legally protected forests and was thus issued *“..in supersession of all previous orders on the subject the State Government do hereby declare, pending such enquiry and record, the said forestlands and waste lands in the said Kujang, Kilpal,..... forest areas....are the property of Government to be protected forests”*. (Emphasis added.) The State Government was aware of the need for “enquiry and record.... of the said forest lands and waste lands” but was constrained by the fact that *“they will occupy such length of time as in the meantime endanger the rights of Government”* (emphasis added). Thus emphasising the importance of conserving forests without fencing off local community access to it. But aware of the widespread use of the forests by the local communities, the Notification categorically stated that the legal protection of the forest would not **“abridge or affect any existing rights of individuals and communities”**. (Emphasis added.)

### Evicting “encroachers” to “protect” Forests and Commons:

Strange at it may seem, a Notification that assumed control of forests as “property” of the State also recognised forest rights of local communities, for the very first time perhaps. Such, rather reserved, recognition of traditional rights of communities to 'protected forests' created another problem: corrupt demands by permit granting forest officials and the abuse of certifying powers forced communities to apply for a variety of access rights to the forests, and they simply did not like this situation. Several contentious struggles resulted in the subsequent decades between local communities and the Forest Department over who really owned and controlled the forests. Villagers did not accept the ownership of forests by the State and the subordination of their customary rights to policing by the Forest Department. They insisted on using forestlands to meet a variety of their daily needs and argued that their cultural norms had sufficient concern for nature built into it to prevent overexploitation of the resource.



*Grazing pastures along the beaches*

The Department officials however perceived local determination of forest rights as encroachment of their domain. Stuck in administrative mores moulded by colonial legislations and legacies, in particular honed by the extraordinary powers drawn from the Indian Forest Act, 1927, department officials began to take fairly strong action to regain control over the forests. Hota reports that such action involved “...large scale eviction of encroachments ....with the help of the Orissa Military Police in the years 1961 and 1962” in the Sendhakud forest block. The justification for engaging the Military Police was that “the problem of *encroachment* (was of) such magnitude that it was beyond the capacity of the Forest Department to cope with it”. But once the police moved out “taking advantage of the

withdrawal of police force from the spot some of the *encroachers* again came back and *unauthorisedly* occupied a portion of the forest block”. (Emphasis added.)

In the Nuagaon beat, which includes the Jatadhar and Jatadhartanda forests, areas directly affected by the POSCO project, Hota reports that upon the reorganisation of Tahasils on 1<sup>st</sup> January 1959, “..the lease and encroachment cases relating to Kujang forest block were divided between the two Tahasildars (Kujang and Marshaghai) accordingly. The cases relating to Dhobei jungle, Bhuyanpal, *Jatadhar, Jatadhartanda*, Barakud, Kankan, Kaudi, Boitarakud, Musadia jungle and Sendhakud were retained by the Tahasildar, Kujang and those relating to the remaining villages were transferred to Tahasildar, Marshaghai” (Emphasis added). Efforts were being made to resolve the disputes, yet the struggle between locals exercising their traditional rights to the forest and the efforts of the State to regulate and bar

access to the same forests, continued.

### **Locals want the forest protected, but now the State wants it destroyed:**

Fishing, grazing, agrarian and craft based communities all need access to these forests for different reasons. Those cultivating *paan kethis* have a specific interest in the coastal forests as, along with the sand dunes, it provides them the best habitat and the 'sweet sand'<sup>39</sup> for cultivating betel vines. The grassy zones alongside provide excellent grazing pastures. Additional income can be made from collecting *kewda* flowers (*Pandanus odorifer*)<sup>40</sup> that grow wild in this habitat. For local communities, these areas were and are forests and commons,<sup>41</sup> at once, and not in the sense that the Forest Department imagined or imagines still.

In an independent fact finding report on the impact of the POSCO project on local communities<sup>42</sup>, it is reported that “(i)n the late 1960s, Loknath Chaudhary, a local leader and MLA, led a struggle for transfer of much of the common land in the area, some of which was already under betel vine, from the revenue records to the forest department so that afforestation initiatives could be carried out to provide a natural barrier for protection of villages from impacts of cyclone and to provide for the basic needs of firewood and stalk for betel vine cultivation. Finally the land was transferred to the category of gramya jungle or community forests”. Such an arrangement of local communities managing forests jointly with the forest department could have been a progressive setting with great potential for new beginnings. However, such possibilities were short-lived as the State continued to exercise its power of eminent domain in defining the use of forests and consistently diverted forestland to other purposes, euphemistically referred to as “non-forest purpose”.



*Coastal forests near Gobindpur*

While the need to grow more food and settle refugees were compelling humanitarian circumstances necessitating diversion of forest in the decades of the 1960s, in subsequent decades there has been a steep increase in the diversion of forests for mining, dam building, industrialisation, urbanisation and infrastructure development. The highly centralised structures of power vested in authorities by colonial laws arrogated to the State the power of defining certain projects as being in the “public interest” without any subscription from local communities. Forests could be destroyed and the land so reclaimed diverted for other uses without any prior public consultation. In the political milieu of those times, such demands of forest land remained largely uncontested administratively and politically, and consequently, forests, wildlife and traditional rights of

local communities were easily subordinated to securing and promoting projects that the State claimed were in the wider public interest. There was little effort to rationalise the validity of the public interest at all as the all assuming 'goodness' of development was often used to override all other concerns.<sup>43</sup>

Clearly, the local forests play a very critical role in supporting the lives and livelihoods of agricultural and fishing communities. In addition they act as critical protective barriers against the fury of the cyclones. For the tens of families engaged in cultivating *paan kethis*, forests have for generations been a critical ecological and economic space. The protection of these forests is in the interest of the local communities. But, in a travesty of our times, it is the State which is now intent on destroying this beautiful and ecologically promising landscape to benefit POSCO. Local people resistant to the idea, and intent on continuing their life interdependent with nature and its bounty, are thus pitched in a long battle against the State and its hegemonic decisions.

This see-saw of contentions over who controls the forests continues to this day and the allotment of these very forest lands for the POSCO project brings a new dimension to this struggle. Ironically, the very power vested in the State to protect forestlands in order to conserve it for posterity, also permits it the power to divert it to non forest purposes, such as the POSCO project.

## Chapter 4: Living in Harmony with Nature, Truly

Walking out from Govindpur village towards the sea, one is confronted by a huge mountain of sand that blocks the view of the sea beyond. As one ascends over these massive sand dunes, the forests that stretch beyond and almost into the sea come into view. Local people are grateful to these sand dunes as it has sheltered them from cyclones. In addition they regard the sand dunes as producers of “sweet water” for these coastal villages, as they act as giant filters stripping away the salt from the seawater, and letting in a gentle ooze of mineral rich drinking water. The result is strikingly evident on the landward side of the dunes, where tens of ponds dot the landscape - each brimming with sweet water. Local villagers, therefore, do not at all have to struggle for drinking water—a common reality otherwise in India's villages. Come rain or shine, wells and bore wells are brimming with water at shallow depths and have never run dry in living memory.



*A typical sand dune that shelters inland areas from adverse impacts of extreme weather events*

The sand dunes have a special place in the lives of the villagers because of their amazing capacity to block the ferocious cyclonic storms as they touch land. The super-cyclone of 1999 tore through inland areas at a devastating speed of 259 kms. But houses in Govindpur, Dinkia/Patna, etc., were hardly affected as the sand dunes stood up as a mighty wall against the rage of the cyclone.<sup>44</sup> A survey of the topography of Odisha Coast reveals that the sand dunes range in height between 7-13 metres. What is interesting though is that this feature is not prevalent all over the coast and is largely limited to the interstitial spaces between the combined estuaries of Mahanadi and Brahmani rivers. The sand dunes are a predominant feature of the beaches around the Paradeep port, particularly to the south

near Jotadhar, Dinkia and Govindpur and in the north towards the Bittarkanika National Park area.<sup>45</sup>

Villagers say that the sand dunes, in addition to providing them with mineral rich sweet water, form an unique habitat for the cultivation of large complexes of betel vines (*paan kethi*) producing the ever popular “*Benarasi paan*”. Benares is over 1,000 kms. away and does not grow *paan* at all. But the name has stuck because the traders from Benares came to the port of Masagayi to buy large stocks of this *paan*. Grown extensively in a dozen or more villages of Jagatsinghpur, this *paan* is a mainstay of the economic independence of the people of these villages.

Interestingly, the Survey of India toposheets between 1922 all the way to 1972, document this region as extensively composed of forestland interspersed with *paan kethis*. This fact is critical to the current debate as the Odisha government sometimes claims that the *paan kethis* are an encroachment into the forests, and at other times that they are of recent origin. Both claims are indeed wrong as the *kethis* have always been essentially located in the sandy forest stretches along the coast, and that far from being recent there is historical evidence of their existence from before Mughal times.

### ***Paan kethis* contribute to a prosperous life based on agro-biodiversity:**

Valued at a rupee a leaf, a crop of *paan* is carefully cultivated in the sheltered zones of the sand dunes in structures called *bareja* or *baroj*. Everything about its cultivation is organic: the green house is made of bamboo, twigs, oak branches and coconut palms; sticks that let the creepers climb up seeking out the gentle filtered light are made of bamboo or casuarina; the threads to tie the creepers to the support sticks are drawn out of grass. Most importantly, the cultivation of *paan* is almost entirely without the use of any chemical pesticide or fertiliser. The healthy green leaves are a result of strenuous labour, constant watering and painstaking care that the farmer provides, which constantly involves the turning of sand and a steady supply of mustard powder and various other home-made nutrients. Shallow ponds dug out of the sand assure a year round supply of 'sweet water'.

The *barejas* are ingenious cultivation systems, that provide the most optimal conditions for the growth of the betel

vines across the contrasting and equally harsh summer and rainy seasons. N. Kumar, for instance, reports that such betel vine cultivation is an amazing indigenous practice and “an unique case of organic farming where almost all the nutritional requirements of (the) plant are met by organic additives such as oil cakes, FYM<sup>46</sup>, and a host of other (nutrients like wheat, barley, black gram flour and butter milk)”.<sup>47</sup> On how intelligent a micro-climatic zone absolutely suitable for the plant that the *bareja* creates, Kumar has this to say:

“The bareja system, though it evolved nearly two thousand years ago incorporates all the elements necessary for the plant's growth and survival. This underscores the ingenuity of people who were able to achieve such a remarkable feat of 'creating home' for betel vine. This system is highly flexible and puts very little burden on the environment. In contrast with our traditional humble barejas, our present-day sophisticated climatic chambers strike one as energy guzzling giants.”

Each betel vine field lasts about 30 years and is a source of assured income for the farmer. Because it is highly labour intensive, the fields generate large scale employment and a very good income. Even though prices have fallen of late, the income from sale of paan is enough to provide a family with an income ranging between Rs. 10 – 15,000/month<sup>48</sup>. Such highly valued 'Banarasi Paan' grows well and is most extensively cultivated in Govindpur, Dhinkia and Nuagaon and dozen more villages that are so sheltered by the sand dunes. Thus making a case right-away for protecting the paan as a biological heritage of this place under the Biological Diversity Act.

In a paper published in the Journal of Human Ecology, P. Guha argues that Betel vine is the neglected **green gold of India** and justifies his claim thus:<sup>49</sup>

“It is very interesting to note that in spite of such a high input requirement of the crop its cultivation is quite affordable even to the small farmers as because it can be successfully cultivated in a very small area, as small as three decimals<sup>50</sup>. Further, a small *Boroj* of even 10-15 decimals may provide considerable net profit for maintaining a small family of five members (Jana, 1995; SDAMM, 1996). Such a *Boroj* may be termed as a *household bank* since the leaves can be plucked and sold straight in the market as and when hard cash is required and this may continue for 10-30 years or more (Chattopadhyay, 1981; Jana, 1995). Further, since the leaves mature within 15-30 days (Jana, 1995) therefore, 1-4 harvestings are normally done every month (Guha and Jain, 1997). Thus, cultivation of betel vines provide a continuous source of income to the farming family unlike the major crops, which provide income only once in a year or so. That apart, most of the major crops require some sorts of post-harvest processing for making the produce marketable but the betel leaves do not require any such processing at all. Moreover, the leaves may also be retained on the vines for about six months without any visual signs and symptoms of deterioration (Bhowmick, 1997).”

According to a study<sup>51</sup> undertaken by the villagers of Govindpur, there are over 680 cultivators of betel vine in this village alone. The cumulative spread of the vine fields is over 138 acres. If combined with the ponds and sand filling areas, the total spread of betel vines is over 345 acres of land. The survey reveals that the average annual income per betel vine field is Rs. 1.2 lakh per field. Supplementing this assured income from betel vines are the rich pickings from cashew nut and *kewra* flowers, both very high yielding cash crops. The market for cashew nut is ever growing, and the income from this is valued anywhere between Rs. 200 – 300/kg. With the land perfectly suited for cashew cultivation, over 200 tonnes of cashews are exported annually from the project affected villages.

The seasonal *kewra* flower (*Pandanus odorifer*) is an incredibly valuable wild product of the region - each flower picked earning Rs. 10. The extract of *kewra* is an aromatic essence and widely used in a variety of food products: in supari, to flavour biriyani, zarda, mishti, etc. The *kewra* extract is also a highly valued perfume. Growing wild all over the sand dunes and beaches, the *kewra* is an interesting pioneer around ponds that fertilise the *paan* fields.

Drumstick is a major delicacy of this area, and along with a variety of other vegetables add immensely to the rich pickings from the garden. Fruits are also plenty in this region. Besides being important nutrient supplements, they add an additional dimension to the income spectrum of the families relying on this spectacular agro and aquatic biodiversity of the region. Guava, mango, papaya, jack, banana, orange and lemon are all abundantly found and complete a healthy nutrition basket without any dependence on outside markets. Villagers don't really need to depend on the market except, as they say, for salt and oil. Every family lives surrounded by paddies, the *paan kethis*, cashew crop plantations, kitchen gardens and aquaculture ponds.

With the amazing diversity and abundance of fish almost everyone knows fishing here. It is the fishermen, however, who thrive on the rich pickings of this estuarine delta. As they work their way through the sea during the dark hours of



the night, their hard and brave labour delivers fresh fish, crab and prawn to local homes and markets every morning. The Jatadhar area is known to support over 40,000 fishermen – mostly migrants, often travelling in from as far away as Andhra Pradesh and West Bengal. With prawns valued at Rs. 300 – 400/kilogram and crabs aplenty, the fisher families aren't complaining at all. When the rivers recede in the post monsoon season, the sea slowly works its way up the delta and renders it brackish for several miles flooding the lowlands. This makes for an excellent habitat for cultivation of prawn, a high yielding economic product of these wetlands that provide important supplementary income to farmers in addition to the paddies.

With large commons to forage along the beach, each family has anywhere between 5 and 10 cows and goats. The milk supplied is an important nutrition supplement and the excess is readily exported out for income. The sale of goats also bring in much added value to the sustenance of livelihoods of this region. There is a fantastic interdependence between the village commons, livestock and families, and this builds the economic security of the region. And then there is the fertile alluvial soil washed into wetlands by the meandering rivers and streams creating a fantastic habitat for paddy and other wetland crops, and for rearing prawns in aquaculture ponds.



*Jatadharmohan Creek supports over 40,000 fishermen*

An amazing interplay between the natural and human formed features of this landscape make it a region most suitable to support high density clusters of human settlements based on agricultural, fishing and forest based livelihoods support systems. People of the region are more than content with their lives and did not bargain to lose it after braving the elements over centuries for one of the most highly polluting industries. Based on a choice they did not make, rejected even, today the Odisha Government is intent on erasing this rich landscape from the cultural, ecological and geographical maps and render it as one more of India's messy industrial areas.

## Chapter 5: Undermining the Human cost of the POSCO project

It would take a terrible heart to destroy the what has been built here through painstaking and laborious efforts of the local communities. People who have withstood the ravages of natural disasters, each time rebuilding their lives, livelihoods and homes. Yet so deep are their bonds with this productive land that the sentiment is best expressed by Ranjan Swain, a leader of the Posco Pratirodh Sangram Samithi, who feels “Dispossession from this rich land is like chopping off one's hands and being left to fend for oneself”.

If the Memorandum of Understanding signed between POSCO and the Odisha Government were to be the basis of evaluating the extent of land required for the entire integrated project, then it is expected that all such land required for the port, steel plant, power plant, ancillary facilities, township, road, rail and water linkages and mining component are all factored in. However, POSCO and Odisha Government repeatedly state that the land needed is 4,004 acres, and thus deceptively hide the fact that the overall demand is likely to be in excess of 13,000 acres. Most of this land will be forested or under agriculture. By stating the land required now is only for the steel-power-port complex, POSCO is diverting attention from the widespread displacement this overall project will cause. This is because without the mining component being approved, POSCO is more than unlikely to move forward on other components of the project. It is one thing for proponents of a mega project to make demands of land incrementally, but it is an altogether different matter when regulatory agencies of the State and Centre support such dubious methods. This when communities likely to be affected by the sweep of acquisitions that would follow are kept in the dark of the potential massive displacement this mega project will cause.

Communities do not have the experience to realise that nothing will remain the same within the acquisition zone, around it and outside of it. Thousands of industrial areas across India bear out this truth. Those who live around such industrial facilities suffer forever – from pollution of air and water, dearth of safe drinking water, debilitating impacts on health, and lack of appropriate opportunities of employment, as their traditional livelihood support systems are completely destroyed. If there is still land around such a massive industrial complex, pollution will take care to



effectively destroy its fertility. Grazing pastures are likely to be encroached by a whole range of ancillary units, truck repair shops, *chai* shops and the like, and also additional acquisition for industrialisation. Fishing may still be possible, but only for the first few years; soon the fish diversity will dwindle and then fish stock too. This has been the scenario of greenfield industrial developments in India, and nothing in the manner in which the regulatory agencies have reviewed the POSCO project provides comfort to think anything otherwise will happen in Jagatsinghpur.

It is also to be expected that for thousands who are expected to work here, providing housing is a necessity. Since there is nothing within miles here that could even remotely be claimed to be a ready-to-occupy township for thousands of families, new townships would have to be built. Once families settle in, they would require schools, hospitals, recreation centres, community centres, markets, parking areas, roads, playgrounds, etc. Providing all these facilities would certainly fuel a huge urbanisation process associated with this massive integrated industrial development. India has coped poorly with greenfield urbanisation and the losers usually are rural communities. The messy processes of urban development degrade their lands, contaminate their watersheds, and encroach and pollute their commons. Agrarian and natural resource based livelihoods find no place in this new system. The only 'jobs' that are often available for rural communities are those that are considered menial and with low remuneration such as sweeping, security services, and perhaps tending to lawns in industrial areas which are passed off as green initiatives of corporates. The proud and dignified existence of rural and forest dependent communities that thrives without much dependence on urban services or the market, is thus destroyed by such callous review of regulatory agencies of greenfield industrial investments.

### How much land for POSCO

Total land sanctioned for the steel-power-port component of the POSCO project: is 4,004 acres

Of this the 3,566 acres is claimed to be 'Government land' and

438 acres is 'Private land'

Of the 'Government Land:

Extent of Forest land is 3004 acres and

Of other 'government land': 561 acres

Breakdown of families that would be displaced by the Steel plant acquisition:

Total families affected: 471 families

#### **Gadkujang Panchayat:**

Polang village - 62 families,

Bhuyalpal village - 12 families,

Nuliyasahi village - 135 families.

#### **Dhinkia Panchayat:**

Dhinkia village - 162 families,

Gobindapur village - 90 families.

#### **Nuagaon Panchayat:**

Nuagaon village - 10 families

Source: Kujang Tehsildhar and U. N. Behera, Principal Secretary, Government of Odisha.

#### **Additional land required:**

Mining project: 6,100 acres in Kandadhar Hills of Sundergarh District

Townships: 2,000 acres (1,500 acres at steel plant and 500 acres at mine)

Further demands of land that remain unquantified:

Land for the dedicated rail linkage from the mine to port not yet assessed

Land for rail, road linkages around the steel plant and port

Land for the dedicated water linkage from Jobra Barrage

Source: MOU between POSCO and Odisha Government

### With cultivable lands lost, what is a village?

Gobindpur with about 600 families will not lose many houses. But most of the cultivable *paan kethis* (betel vines) are proposed to be acquired as it is claimed to be on 'government land' – which is the forest. According to estimates by local communities<sup>52</sup>, 90 families in Gobindpur will be directly displaced, but 75% will lose their livelihoods as their cultivable lands will be acquired. Dhinkia will suffer total displacement – 162 families. In Nuliyasahi too all families will be displaced. It is in Nuagaon though that the starkness of dislocation of livelihoods will be felt most fundamentally. Only 10 of the 1100 families that live in this densely populated village will be directly displaced, but each and every family will lose their land.

Particularly affected are those with *betel vines* which when torn down will not be compensated fully because the government claims they have encroached "government land". Even though the official figures claim that displacement is really small for such a large project (471 families it is claimed, based on controversial assessments), the impact of the project is expected to have a debilitating impact on over 5000 families according to villagers. This is because the lands they are cultivating will be taken away on the claim that it is 'government land', leaving them with no livelihoods options. Since there has been no attempt to assess accurately the number of families that will be directly and indirectly affected by the project, the numbers now being bandied about are largely guess-estimates by the local Tehsil and other State functionaries. There is no mention whatsoever of the potential displacement of communities dependent on the commons such as fishing communities dependent on the coastal stretches and the estuaries and those dependent on cattle grazing in forests and grazing pastures. In whatever exercise POSCO and the Government claims to be the basis of their assessment of displacement, none of the affected families, or Panchayats even, have been taken into confidence.

It is by painful conjecture, in fact, that local communities have pieced together the extensive impact the POSCO project would have on their lives, livelihoods and their rich land and the coast. But these efforts have been deliberately made difficult by local State agencies, who have frustrated efforts of affected communities to access their land records. As for the formal assessment of the human displacement cost, the only evidence available is a Socio Economic Survey Report that POSCO commissioned ERA Consultancy Pvt. Ltd. to undertake.<sup>53</sup> This report, in fact, is also passed off as a Social Impact Assessment of the project, and forms a major component of the Rapid Environment Impact Assessment Report based on which clearances were accorded by the OSPCB and MoEF. There is a very important admission in the 70 odd pages of this report, and it is a statement of what has not been assessed:

#### **"1.4.1 Exclusions:**

This report does not cover the Project Affected Families (PAFs) of the site to be acquired, which will be

separately covered under Relocation and Rehabilitation (**R&R package report prepared by others**).” (Emphasis added.)

No report prepared (or ostensibly prepared, or to be prepared) by “others” exists. The ERA survey report is but a broad survey of the demographics and socio-economic status of Jagatsinghpur district. It is written in a way that would be representative of an undergraduate student's hurried effort to submit a project report. It is descriptive, without being analytical at all. Most importantly it says nothing whatsoever about the social impact of the POSCO project on the Jagatsinghpur district.

An indication of the callous disregard of the project's impact on human settlements is in the recommendations section, relating to “People's participation and sustainability of the programme”. It is claimed here that “the most important requirement in any developmental programme is 'involvement' of the users from day one i.e. from the planning stage.... Experience has taught all of us that without the involvement of “users”, no programme/plan can taste success”. And speciously claims that “Local Panchayats have been involved right from the beginning of plan preparation and this will continue till its implementation”. And then suggests that the role of Panchayats would be in “repair and maintenance of assets in villages” for which “requisite training facilities (sic) made available to the nominees of the Panchayats in this regard”.



*Community forests provide a major part of the fuel-wood needs of surrounding villages*

This is not how social impact assessment reports are written. If there was honest review by regulatory agencies, this kind of a Social Impact Survey, a critical component of REIA, would have been outright rejected. The fact is that it is this 'study' that forms the basis of deciding the fate of project affected communities.

### **Securing tactical advantage for the project:**

Why would any government employ subterfuge in denying affected communities of their fundamental rights? The answer is quite simple. By covering up or not releasing land records, or contesting honest claims as forgery, the Odisha government gains the tactical upper hand. Such claims potentially remain uncontested and can only be overturned by extremely difficult and expensive litigation procedures. Most villagers lack the skill and resources required to fight protracted court battles to secure their rights and benefits, and thus end up losing their land and livelihoods in the process. Even when there is a legal challenge to such unjust acquisition, the widespread jurisprudence that normally supports the power of the State to acquire land based on the 'Principle of Eminent Domain' and on the argument that the project is in 'public interest', leaves communities with only the option of settling for marginally improved compensation. Such relief is secured only where there are land-losers. As for those who do not have land, or whose livelihoods are based on accessing the commons, such as forests and the sea, their displacement is brutal - where one loses all. Perhaps fully aware that it is such communities who are dependent on the commons that will be displaced, whose rights aren't sufficiently protected under law, and whose displacement can be covered up as non-existent, may have formed a major consideration in identifying the location for the POSCO project. In the case of the steel-power-port complex, a major portion of the land required constitutes forests, which, if one suppresses due forest rights, can be transferred by mere internal administrative paper work.

This kind of story has been played over and over across India, and has resulted in unjust displacement of over 100 million people in the post-independent period alone. Walter Fernandes in an article on “Land as livelihood vs land as commodity”<sup>54</sup> explains this phenomenon in the following manner:

“The 1994 rehabilitation policy draft of the Government of India begins by stating that, following

the 1991 economic policy, Indian as well as foreign private investment would require more land than in the past and that much of it would be in the resource-rich tribal areas. This statement has not been repeated in the policies of 2004 and 2007 but it has been put into practice in most states. Acquisition of land for development aggravates the problem of alienation of and encroachment on tribal and other community land that the land laws declare as State property. Individually owned land is under threat of alienation, but common property resources (CPR) are the most threatened because of the legal anomaly that causes much insecurity of tenure. For example, most dams being planned in northeast India are in tribal areas where land is managed according to community-based customary law, but the law treats CPRs as State property. This anomaly also makes encroachment by immigrants possible. One of its impacts is ethnic conflict."

The State's power per the Principle of Eminent Domain to unquestionably acquire land for "public purpose" has served well in energising and expanding mining, industrial and infrastructure sectors, particularly in the public sector over the decades. In the post-liberalisation phase it has served as the backbone for securing land to support investments from transnational private corporations. Because current law does not require integration of social and environmental externalities into such acquisition by the State, the growth of industrial and infrastructure sectors is often associated with debilitating impacts on project affected communities and their habitats. Providing empirical evidence of how liberalisation has adversely impacted livelihood security and the environment in many parts of India, Fernandes explains that:

"...West Bengal, which used 2 million hectares between 1947 and 2000, has committed 93,995 hectares to industry alone (over the past decade). Orissa used 40,000 hectares for industry between 1951 and 1995 but planned to acquire 40,000 hectares more in the succeeding decade. Between 1996 and 2000, Andhra Pradesh acquired half as much land for industry as it did in the preceding 45 years. Goa acquired 3.5% of its landmass between 1965 and 1995. If all its plans go through, it will acquire 7.2% of its landmass in this decade. Gujarat has promised land for 27 SEZs<sup>55</sup>, and around 200 SEZs are being planned all over India. That will result in massive land loss, food insecurity and unemployment. The private sector is eyeing mining land in Jharkhand, Orissa and Chhattisgarh. Thus, there will be even more displacement in the coming years than has been in the past 60 years, much of it of tribals, in order to facilitate mining in middle India and dams in the northeast."

The POSCO case clearly demonstrates this pattern in India and also of the active collusion of the State and its agencies in subverting laws that protect human rights and the environment. The script for playing out such an act in the POSCO case has been written into the MOU and some of the promises made by the Odisha Government are outrageous. The language used is very specific sometimes and at other times deliberately ambiguous. But all this is to benefit POSCO and the MOU is clear evidence of how the State assures the developer of securing land for the project:

#### "5. LAND :

- (i) The Company will establish their registered office and national headquarters in the State of Orissa, in the city of Bhubaneswar. The Government of Orissa will identify, acquire and transfer a suitable tract of land between 20 and 25 acres for this purpose, in accordance with the specifications provided by the Company.
- (ii) *The Company will require approximately 4,000 acres of land (hereinafter referred to as the "Land") for the purpose of setting up the Steel Project and associated facilities, including the port facilities and a storage yard for coking coal.*
- (iii) **In addition, the Company will require approximately 2,000 acres of land for township development, recreational activities and all related social infrastructure development (collectively, the "Integrated Township Development").** Out of this, approximately 1,500 acres would be identified adjacent/near to the Steel project and another 500 acres (approx.) near the Mining Project. **State Government will facilitate all clearances and approvals of the Central Government, if required.**
- (iv) *In addition to the land required for the core activities of the Overall Project, the Company may require additional land pockets for development of the "transportation project", the "water project" and any other project-related infrastructure facilities.*
- (v) **The Government of Orissa agrees to acquire and transfer all the above-mentioned land required for the Overall Project, free from all encumbrances through Orissa Industrial Infrastructure Development Corporation (IDCO) on payment of the cost of land.**
- (vi) The Company shall pay to the relevant authority (ies) the cost of such land. For private land, the Company

shall pay the cost as determined under the provisions of the Land Acquisition Act and incidental charges as mutually agreed upon. For Government land, the Company shall pay as per the rates determined by the prevailing Industrial Policy Resolution on this date. For forest land, the Company shall pay the rates determined under the applicable Rules.

(vii) On its part, the Government of Orissa will expeditiously and within a reasonable time frame, hand over to the Company non-forest Government land for which the Company has completed all formalities. Acquisition of private land will be taken up on priority.

(viii) For rehabilitation of displaced families, Rehabilitation and Resettlement Package would be implemented as per prevailing guidelines and practices.” (emphasis added)

According to legal scholar Usha Ramanathan, these sort of overtures that the Odisha Government, for instance, “... makes in contractual deeds .... may tempt the state to exercise its power over people to ensure that its obligations in the contract are met and to rework its priorities, including concerns like the protection of the interests of tribal communities, or the preservation of the habitat of endangered wildlife. The manner in which the notion of sovereignty is evolving would make this a distinct possibility. It is also disturbing that as a party to a contract, the state may be swayed to breach the laws it makes in its legislative capacity.”<sup>56</sup>

Such overtures by the State to so desperately secure a foreign investment comes at a very heavy price which is mainly paid by project affected communities. The tragic nature of the price they pay is that most aren't aware what awaits them, often till the time they are brutally evicted from their lands. Thus the fate of affected communities is no different from what was similarly suffered during colonial times. The irony is that the post-colonial industrialisation efforts under the neo-liberal paradigm of development are using legislations that were enacted during colonial times. The result is the same: no benefit for affected communities, trivial revenue generated for the State, and most profits are repatriated abroad.





## Chapter 6: How cyclones define life in Jagatsinghpur

The Jagatsinghpur region, where the mega POSCO steel-power-port-township project is proposed, is highly prone to cyclones and falls in the epicentre of cyclonic activity in Odisha state. Local people report from experience that a major cyclone hits the region every decade on an average. Historical accounts, as reported by Hota, speak of a “terrific cyclone” that hit the region in 1835 “which caused a great havoc (sic) in killa Kunjang.” So devastating was the impact that the “tenants could not pay their rent” forcing the then Sendh Raja “to borrow Rs. 1,700 from Babu Shodashib Jena, a Zamindar of Kendrapara, in order to pay off his revenue.”<sup>57</sup> Even as the region was limping back to a degree of economic stability, another cyclone hit the region on 23<sup>rd</sup> September 1885, which Hota records was then “the greatest natural calamity in the history of the forest block”. A “vivid description” of this natural disaster is recorded in the District Gazetteer<sup>58</sup>:

“The most terrible cyclone from which the district has ever suffered was the False Point cyclone of 1885, the memory of which still endures among the people. It presented two peculiar features, as it occurred during the monsoon months and was of very narrow area, though of unusual severity. The cyclone burst upon the coast in the early morning of the 22<sup>nd</sup> September 1885, the barometer falling to 27.1335” at False Point Light House, a reading unprecedented at the level of the sea. It was accompanied by a stormwave raising to a height of about 22 feet above mean sea-level, which at once submerged the village of Jambu at the terminus of the Kendrapara canal to the north-west of False Point, and then rolled on in a north-westerly direction till it lost itself in the Brahmani river. The storm was most keenly felt in the Jajpur and Kendrapara subdivisions. In the former subdivision no less than 2,447 villages were affected and nearly 50,000 houses were destroyed; about 300 human lives were lost by falling trees, walls and homesteads, and 2,973 cattle were killed.”

In a style of reporting in District Gazetteers characteristic of colonial times, the welfare of the Europeans was overwhelmingly addressed, evident in the extraordinary importance attached to the description of the devastation to the house of the Executive Engineer at Akhuapada which “was entirely wrecked, the roof bodily carried away, and some of the masonry (sic) pillars destroyed; *the Europeans (one lady), who were in the house at the time, were driven outside, and were for some hours exposed to the violence of wind and rain*” (emphasis added). In stark contrast is the reporting of the actual devastation suffered by local people, which is rather casually addressed as in the “Kendrapara subdivision about 5,000 persons were drowned and 10,000 cattle were lost. 7,000 of these belonging to the Kaldip and Karara parganas.... included 290 villages with a population of about 26,000 persons, and suffered more severely than any other parts of the district”, of which “a total area of about 250 square miles” was submerged.

The Gazette records the massive impact this cyclone had on the landform<sup>59</sup>:

“Eleven villages were completely swept away, every man, woman and child being drowned by the storm-wave, and all trace of the houses being washed away; while about 150 more villages were levelled to the ground, though a considerable part of the population managed to escape. The land lying between Rajnagar and the sea-face, which before the cyclone was perhaps the best rice-growing tracts of the Kanika estate, was converted into a brackish waste; and in Kaldip all and in Karara three-fourths of the crops, were completely destroyed. By far the greatest havoc, however, was caused on the sea-face; here the storm-wave, sweeping over the False Point Harbour, knocked down all the houses before it and completely submerged Jambu as it rolled on in an unbroken wave over Kaldip and Karara. The effect of this wave was suddenly to create a sufficient depth of water all over the harbour to float large steamers over shoals where ordinarily there is a depth of only a few feet of water. The sudden fall of the water landed the ships and steamers which had drifted from their moorings on the shoals; while the cargo barges were deposited in the midst of the jungles and in all the most extraordinary places, the boat-men having no command whatever over their boats and being unable to distinguish, amidst the wild waste of water, the creeks from the submerged land. At Jambu itself, out of a population of 130 souls in the villages, only about a dozen were save; the village site, when first visited, was covered with the corpses of men, women and children, while the dead bodies of cattle and deer were floating in great numbers in the creek before the village. Between Jambu and the Brahmani, all along the Hansua creek, the scene was one of perfect desolation, with trees uprooted and houses crushed into a confused mass and with hardly any sign of animal or human life whatsoever.”

The worst cyclonic storm in record history is the one that landed in Jagatsinghpur in 1999. Action Aid reports how severe the impact of this super cyclone was:

"14 Coastal districts on the state witnessed the horrifying death & devastation on October 29<sup>th</sup> 1999. It was century's worst natural disaster in India after great Bengal famine. The cyclone was compounded with 48 hours of rain. 25 feet high tidal wave through the area submerging 37-Gram Panchayat of Erasama, Balikuda and Kujanga blocks of Jagatsinghpur district and a velocity of 300kms of raced through the district. Official death toll is 9885 and unofficial estimate part is 30,000 lives, the casualty in Erasama & Balikuda blocks came to 8000+. The life & livelihood was almost paralyzed. About 8000 villagers were affected comprising 15 million people. More than 20 Lakh houses were partially or fully damaged, much of the land was recorded useless for cultivation because of salinity. About 3.7 Lakh cattle, 29,000 fishing boats were lost. Close to 52000-km road were severely damaged. It also left large number people disabled, orphans & destitute."<sup>60</sup>

A. D. Rao, Professor at the Centre for Atmospheric Sciences, Indian Institute of Technology, Delhi and his co-authors explain the meteorological significance of the Odisha Super-cyclone in a paper published in the Journal of Coastal Research as follows:

"This super cyclone, during 25–31 October 1999, became the most intense and the deadliest cyclone in the last hundred years in the state of Orissa. It started as a disturbance, and, by 26 October, it assumed the dimension of a cyclone. The system had been moving northwestward, and, by 27 October, it intensified to a severe cyclonic storm. It was further upgraded to the stage of very severe cyclonic storm by late 27 October and moved in a west-northwesterly direction. It attained peak intensity just before landfall, close to and south of Paradip on 29 October. The minimum central pressure at landfall was estimated to be 912 mbar with sustained winds of over 260 km per hour at the time landfall. It remained practically stationary over the same area for more than 24 h and weakened later (BHATIA *et al.*, 2000). The cyclone generated high storm surge over a long stretch (100–150 km) of the coastline (maximum of over 6 m) north of the landfall point (SIMON *et al.*, 2001)."<sup>61</sup>

#### **International Treaties demand that State must not dislocate communities ravaged by natural disasters:**

Clearly cyclones are events where affected communities lose everything. It is humane not to expect affected communities to provide written proof of their continuous existence or demand documentary evidence of their dependence on the local forests or other commons when compensating them for their losses. Most importantly, no project or scheme is to be proposed in such areas where such battered communities are regaining a semblance of normalcy in their lives. Whatever be the cause, displacement and dislocation tend to throw back affected families by at least a generation or two in terms of social development and economic progress. There is also the coping with psychological trauma and cultural disruption that they have to deal with, which takes time. It would seem humane, therefore, not to force communities ravaged by two cyclones in less than a generation (1972 and 1999 cyclones), to once more be disrupted by development induced displacement. But the Odisha Government seems to have been totally unaffected by the need for such humane considerations while responding to the concerns raised by POSCO affected communities not to dislocate them.

There are many international guidelines and principles of the United Nations that India has ratified which advocate a humane consideration of rights of people ravaged by natural disasters, particularly if this has occurring repeatedly to them. The project affected communities of Jagatsinghpur who are now also being forced to be dislocated by industrial development surely qualify for special protection under these international instruments.

The United Nations has developed **"Basic Principles and Guidelines on Development- based Displacement and Evictions"**, also known as the "Kothari Principles",<sup>62</sup> which reinforce the human right to adequate housing, which includes, among other things, "the right to protection against arbitrary or unlawful interference with privacy, family, home, and to legal security of tenure", as per Principle 13. In addition, Principle 22 argues that "States should refrain, to the maximum extent possible, from claiming or confiscating housing or land, and in particular when such action does not contribute to the enjoyment of human rights" and "must ensure that adequate and effective legal or other appropriate remedies are available to all those who undergo, remain vulnerable to, or defend against forced evictions." Principle 25 further articulates the need for sensitivity in handling human displacement by highlighting that: "States should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land." A sincere implementation of Forest Rights Act, amongst other laws, clearly, would fulfil the UN Principles so articulated.

In particular regard to communities that have been physically displaced by natural disasters, the **UN Guiding**



**Principles on Internal Displacement** is eminently applicable. Principle 6 of the Guiding Principles states that “[e]very human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.” Principle 21 states that no displaced person shall be arbitrarily deprived of property and possessions. Principle 28 imposes an obligation on government authorities to “establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.”<sup>63</sup>

No such humane appraisal as demanded by the two sets of UN Principles is at all evident in any of the Odisha Government's handling of the POSCO issue.

#### **Government authorities warn against reckless development of coastal areas:**

The Odisha State Disaster Management Authority has a record of all the cyclones that have hit the state since 1737. The 1885 cyclone is recorded as a super-cyclone, as is the one in 1999. Over the past sixty years, the authority has recorded over 7 cyclones, 3 being accounted as super-cyclone and 4 as “very severe cyclonic storm”.<sup>64</sup>



Source: Odisha State Disaster Management Authority

Flooding is another serious problem in Odisha, and the Authority describes its recurrence and impacts in the same report, as follows:

“The 482 km long of coastline of Orissa exposes the State to flood, cyclones and storm surges. Heavy rainfall during monsoon causes floods in the rivers. Flow of water from neighbouring States of Jharkhand and Chattisgarh also contributes to flooding. The flat coastal belts with poor drainage, high degree of siltation of the rivers, soil erosion, breaching of the embankments and spilling of floodwaters over them, cause severe floods in the river basin and delta areas. In Orissa, rivers such as the mahanadi, Subarnarekha, Brahmani, Baitarani, Rushikulya, Vansadhara and their many tributaries and branches flowing through the State expose vast areas to floods.

In Orissa, damages are caused due to floods mainly in the Mahanadi, the Brahmani, and the Baitarani. These rivers have a common delta where flood waters intermingle, and when in spate simultaneously, wreak considerable havoc. This problem becomes even more acute when floods coincide with high tide. The water level rises due to deposits of silt on the river-bed. Rivers often overflow their banks or water rushes through new channels causing heavy damages. Floods and drainage congestion also affect the lower reaches along the Subarnarekha. The rivers Rusikulya, Vansadhara and Budhabalanga also cause occasional floods.

The entire coastal belt is prone to storm surges. The storms that produce tidal surges are usually accompanied by heavy rain fall making the coastal belt vulnerable to both floods and storm surges. People die; livestock perish; houses are washed away; paddy and other crops are lost and roads and bridges are damaged. The floods of 1980, 1982, 2001 and 2003 in the State were particularly severe; property worth crores of rupees was destroyed in the floods.”<sup>65</sup>



Source: Odisha State Disaster Management Authority

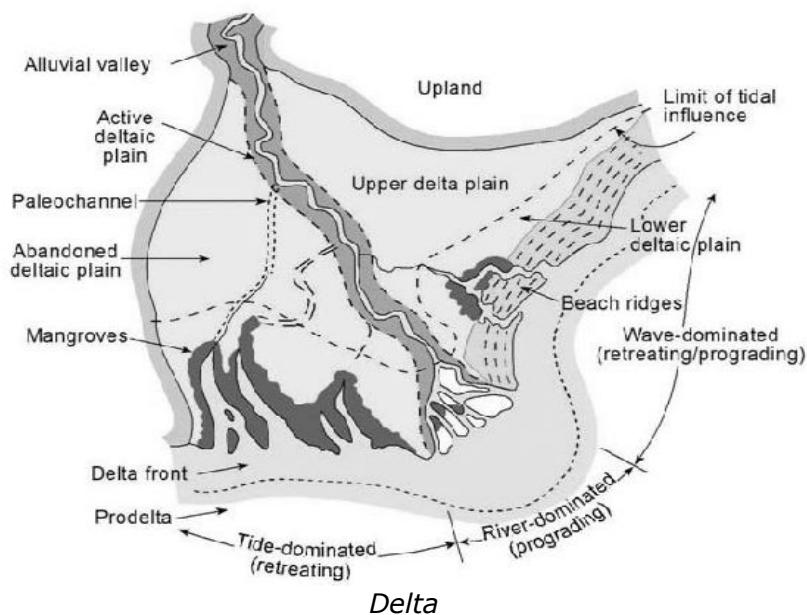
### The critical role Mangroves play in containing damage by cyclones and tsunamis:

It is evident that there is absolutely very little that we can do to protect ourselves from such a series of devastating natural disasters. What is important to acknowledge though is the importance of landforms and the role of natural defences in mitigating the damage to human settlements. It is in this context that the study of Saudamini Das on the role of mangroves in protecting human settlements during the Super-cyclone assumes a lot of importance.<sup>66</sup>

Based on extensive sampling of damage to property in the districts of Kendrapada and Jagatsinghpur, and an analysis of the extent of mangrove vegetation in both districts, historically as well, the question was raised by Das if mangroves sheltered human settlements and minimised damage to life and property. The conclusion was that "Mangrove protected areas witnessed fewer fully collapsed houses and more partially collapsed houses". An attempt to quantify the "... protection value per hectare of forest for the study area" revealed that it is "Rs.51,168/-." When Das compared the various alternate uses of the land, his analysis revealed that "the mangroves of Kendrapada provided storm protection worth Rs. 59,26,47,800/- by averting house damages to the district." In effect it was found that the "...storm protection value of mangroves (w)as equivalent to the construction of a sea wall at the coastline". In an overall sense, Das "...suggests that mangrove forests provided protection benefits to houses to the extent of Rs. 975, 800 (USD 23,233) per km width of forests or Rs. 51,168 (USD 1218) per hectare of forests". Thereby, it is necessary to take "...mangrove conservation and re-planting into account in planning for tropical storms, which are expected to increase with global warming."

In another study with Jeffrey Vincent<sup>67</sup>, Das discusses the utility of mangroves for Odisha as follows:

"Mangroves significantly reduced the number of deaths during the 1999 cyclone that struck the eastern coast of India. Statistical evidence of this lifesaving effect is robust, with the coefficient on 1999 mangrove width in our village-level regression analysis remaining highly significant after we controlled for a wide range of potentially confounding environmental and socioeconomic variables. By controlling for historical mangrove width, we revealed that the beneficial effect was mainly due to mangrove vegetation, not physical characteristics of mangrove habitat. Human impacts on the ecosystem (i.e., deforestation) thus affected the death toll. We emphasize that our findings refer only to deaths associated with tropical storms and might not apply to tsunamis, which we did not study. Although an early warning issued by the government evidently saved more lives than mangroves did, our simple comparison of costs and benefits indicates that protecting remaining mangroves in Orissa is economically justified. And our comparison likely understates the case for protecting remaining mangroves, for 2 reasons. First, it ignores the value of the many other goods and services that mangroves provide (1). Second, it also ignores lives saved by mangroves during future storms: severe cyclonic floods occur in Orissa every 10 years, and moderate floods occur every 4 years (27). The case for mangrove protection would be even stronger if we accounted for these additional benefits.



Source: Woodroffe, 2006

The Mahanadi-Brahmani delta is one of the mega-deltas of Asia. As a river-delta-coast ecosystem, it offers a range of ecological services.<sup>68</sup> The socio-economic benefits of this system are difficult to quantify but are easily appreciated in the abundance of agro-biodiversity, aquatic life and forests that this magnificent water regime supports. This delta is prone to frequent floods and cyclones. But in a region so vulnerable to cyclones and floods, the villages of Govindpur, Dinkia, Nuagaon, etc. which were in the direct pathway of the 1999 super cyclone suffered negligible loss of life and property compared to other affected areas inland. The mangrove belt along the coast along with the sand dunes acts as an amazing defence against such ravaging cyclones, and shelters the delta and all human activities from adverse impacts. This complex ecological system

and topography is now under the threat of total destruction due to a combination of reckless industrialisation, infrastructure development and urbanisation.

#### Impact of Shoreline Changes on Orissa Deltas

The Mahanadi deltaic region in Orissa is known for mangrove swamps, tidal flats, beaches, sand dunes and spits. The region is also subject to tropical cyclones, monsoons and floods. Studies using remote sensing and field data of shoreline changes along the Gahirmatha coast have indicated erosion and accretion in various places. It was observed that the shoreline retreated all along the coast between Ekakula (219 m) to Pentha (947 m) during 1972 to 1999 while Hansua river mouth had 470 m accretion. Since the sediment supply from the south is arrested by various breakwater structures that have been constructed, the morphology of the coast is controlled by the sediment brought by the rivers of that region and the reworking and redistribution of sediments available in this area. The changes in the orientation prevent continuity in the littoral drift after the Ekakula spit. Palmyra sandy shoal formations indicate that this region acts as a sink for the sediments brought from south. Considering that this coast is an important breeding ground for Olive Ridley turtles, shoreline changes have increased their vulnerability during cyclones and storm surges.

#### Protective natural eco systems

The relative vulnerability of 262 villages of the Mahanadi delta lying within a 10 km distance from the coast of the Kendrapada district, Orissa, were compared by estimating the village wise probability of facing human fatality due to severe storms. Probability estimates using a cyclone impact (human deaths) function which included a wide range of factors including the presence of mangrove forest were used to control for the exposure and adaptive capacity of the villages. Villages established after clearing the forest in mangrove habitat areas and those with more marginal workers were found to face a very high death risk and thus, need complete evacuation before a high intensity cyclone. In contrast, villages situated in the leeward side of existing mangrove forest or near a major river appear to be facing a much lower risk of deaths. The results have important implications for conservation of mangrove forests in cyclone prone areas and also in the design of development policies for villages established in the mangrove habitat. Since during cyclones, evacuation, rescue and rehabilitation works are undertaken at the village level, identification of the relative vulnerability of the villages helps the policy makers in prioritizing the rescue and relief works.

Excerpted from: DELTAS COASTAL VULNERABILITY AND MANAGEMENT, 2009

Scientific evidence clearly points to the fact that causing major changes to landforms in coastal areas prone to intense cyclonic activity makes communities within the impact area more vulnerable to loss of life, property and livelihoods. Amongst the key reasons that force such land-form changes are reckless industrialisation, infrastructure development and urbanisation. The proclaimed economic benefits from these activities clearly do not sustain themselves over time, and could well be washed away within a generation or two at best. Japan's recent terrible experience with the combined impacts of an earthquake, tsunami and nuclear disaster is a stark reminder of the uselessness of relying on technology's capacities in overcoming nature's ways. The way forward, therefore, is to work within the limits that nature imposes. Considering such risks when industrialising in areas vulnerable to natural disasters forms a critical determinant.

## Chapter 7: The Peculiar Case of POSCO's Environmental and Forest Clearances

The Environment Impact Assessment and Coastal Regulation Zone Notifications are key regulatory instruments that govern the statutory evaluation of the social and environmental impacts of industrial and infrastructure developments. Proper adherence to their provisions is most critical in ecologically and culturally sensitive areas. Environmental decisions taken under these subordinate legislations of the Environment Protection Act have to harmoniously work with provisions of other key special legislations such as the Wildlife Preservation Act (for protecting and conserving wildlife and their habitats), Forest Conservation Act (protecting forests and also authorising their diversion to non-forest purposes) and Forest Rights Act (securing customary and traditional rights of forest dependent communities). As an umbrella legislation the Environment Protection Act provides Ministry of Environment and Forests, State Pollution Control Boards, State Environment Departments and State Forest Departments enormous powers. Along with the specific laws the purpose is to ensure there is no conflict between perceived benefits of a project and its environmental and social impacts. Read together these legislations also demand that decisions must be taken based on a congruence of legal compliance and scientific validity. The comfort of the investor or regulator, or mere economic considerations, should not override or supersede the importance of protecting wildlife, environment and general human well-being.



*A 'sweet water' pond in the sand dunes supporting 'paan kethis'*

The Hon'ble Supreme Court of India has further interpreted these powers in its various landmark rulings mandating that environmental decisions must satisfy the requirements under Principle of Intergenerational Equity, Public Trust Doctrine, Precautionary Principle, Polluter Pays Principle and the Principle of Free and Prior Informed Consent, amongst others. This would imply that a massive integrated project such as the steel-power-mining-port-township complex that POSCO proposes must be evaluated comprehensively and not in parts. In blatant disregard of laws and judicial pronouncements, this is exactly the case with all the POSCO decisions.

The unseemly haste in pushing the POSCO project through is evident right from the level of the Tahsildhar, through all the line departments of the Odisha Government (Forest Department, Environment Department, Water Resources Department and Odisha State Pollution Control Board) and all the way to the Divisions of the Union Ministry of Environment and Forests attending to Forest Clearance, Environmental Clearance and Coastal Regulation Zone. An absolute lack of wholistic appraisal of this mega project's environmental and social impacts is compounded by complicity of all regulatory agencies willingly approving the project on the basis of sketchy, partial and fraudulent assessments of the project's impacts. The decisions so taken have also actively disregarded the concerns and views of local project affected communities, and of various informed constituencies in the wider society. The following is an analysis of how environmental decisions have flowed in favour of POSCO.

### **Has POSCO benefited from deliberately wrong interpretations of weakened EIA law?**

When the Ministry of Environment and Forests notified the comprehensively amended and weakened EIA Notification 2006 disregarding widespread criticisms, a peculiar, but not unexpected, problem came to light.<sup>69</sup> The new Notification required the creation of new regulatory institutions: State Environmental Appraisal Committee, State Environmental Impact Assessment Authority and similar apparatus at the Centre to review and clear project. None of these agencies were available to review applications for quite a while after the new EIA regime became effective, while the processes by which these agencies would formulate decisions was also far from clear. This amendment also delinked the role of the Pollution Control Board in the environmental clearance cycle and relegated this technically competent agency to an adjunct position to deal merely and exclusively with pollution control and a minor, largely logistical, role of being involved in organising Environmental Public Hearings. In contrast, the earlier EIA Notification 1994 had provided a central role for the Pollution Control Board, making it the agency that would call for Public Hearings in collaboration with local Panchayats, Nagarpalikas and the district administration. In addition, its regulatory

powers made it the first agency to process the project application for grant of Consent for Establishment (CFE, also known as No Objection Certificate - NOC) under the Water and Air (Prevention and Control of Pollution) Acts, a key clearance accorded on the basis of Environmental Public Hearings. Consequently, the Board's clearance was a necessary pre-condition for consideration of applications for final environmental, CRZ and forest diversion clearances from MoEF. The new procedure under the EIA Notification 2006 completely did away with this pre-requirement, thus allowing Pollution Control Boards to independently clear projects without assessing impacts as brought out during the Public Hearing process.

Interestingly, POSCO submitted its application for securing clearances for the Captive Port from the Pollution Control Board on 23 August 2006, at a time when it was not necessary under the then applicable EIA Notification 1994 to subject 'minor port' applications to review by conducting a Public Hearing. The application contained the Rapid EIA for the Port, minutes of the review by the Expert committee Meetings of the Odisha State Coastal Zone Management Authority (OSZM) held on 7<sup>th</sup> August 2006 and the report on the CRZ delineation of Jotadhar river creek prepared by National Institute of Oceanography in June 2006. Besides providing some sketchy details of the proposed port, such as details of land required for the port (114 acres), and the overall scale of its operations, the application audaciously claimed that there were no reserve forests in the impact zone and outrageously stated that there were no fisheries in the region as well!

Even as this application was under the consideration of the OSPCB, Odisha's Forest and Environment Department rushed its recommendations on 14<sup>th</sup> September 2006 to the MoEF for securing clearance for the port under the CRZ Notification.<sup>70</sup> Not unexpectedly, the Board accorded the NOC to the port on 09 November 2006, and without waiting for the Public Hearings to be held. It did acknowledge that the port is "an integral part of the proposed steel complex" but did not wait to once think that there was something wrong in clearing a port without at all assessing the overall project's impacts.<sup>71</sup> In fact, the Board's clearance certificate was accorded when the MoEF had not yet considered the application for clearance under the CRZ Notification. The Board met this concern by simply making it a condition in its CFE that POSCO "....shall obtain CRZ clearance from Ministry of Environment and Forests.. per the CRZ Notification".

Meanwhile, on the very date when the new diluted EIA Notification 2006 came into force, 14 September 2006, the company submitted its application for NOC from the Board for Phase I of the steel plant involving production of only 4 MTPA. By so doing, it could now secure the advantages of the diluted EIA Notification 2006. This meant seeking from the Board clearance for one small section of one component of the massive project, which could be extended without requiring it be reviewed first in a Statutory Environmental Public Hearing, a fundamental pre-condition in the earlier Notification that would have been applicable were the application made a day earlier.

On the basis of such clever submission of applications, and armed with a clearance for the captive 'minor' port from OSPCB, the Public Hearing for the steel project was ritually held on 15 April 2007. A month later, on 15<sup>th</sup> May 2007, the port was cleared by MoEF,<sup>72</sup> one day before then Environment Minister A. Raja handed over charge of this office to become Indian Telecom Minister. This decision was quickly followed on 12 June 2007 by OSPCB approving the pending application for NOC for the steel component of the project. This clearance was once more quickly supported by the MoEF which extended final environmental clearance for the Phase I part of the steel project on 19 July 2007.<sup>73</sup>



*Village Commons*

All along in this regulatory review process, the impacts and implications of only 4 MTPA production of steel, 400 MW power plant and the captive 'minor' port were considered. Not the full scale of the steel production (12 MTPA), the full scale of the coal fired power project (1100 MW), the township (involving an additional acquisition of 2000 acres),

the water, road and rail linkages (also requiring an un-estimated quantity of farm and forest land), and of course the other massive component of the investment – the mining project in Kandadhar involving irretrievable devastation of 2,500 hectares (approx. 6,100 acres) of mostly forest land. In effect the integrated POSCO mega venture was perhaps amongst the first to slip through India's weakened environmental regulatory systems and that too because it was considered in its parts, and not as a massive industrial, mining and shipping project. The messiness that the EIA Notification 2006 introduced into environmental decision making in India was clearly to the advantage of POSCO.

### **Lewd attacks on Free, Prior and Informed Consent**

With compartmentalised and independent applications for various components of the integrated industrial/mining venture supported by weakened environmental regulatory norms, review was a ritual exercise. For instance the statutory Environmental Public Hearing was held not in the project affected villages, but in Kujang – 20 kms away. A major lacunae in the EIA Notification 2006 which provided that the Environmental Public Hearing could be held “in close proximity” to the project site, leaving open to administrative discretion what “close” meant, was thus fully exploited to the benefit of the project proponent. For project affected communities this was a strong signal to warn them that whatever be their opinion, it simply did not matter to the final outcome which had been pre-decided. In fact the idea of holding the Hearing so far away from the proposed project site was to exclude the high possibility of large numbers of affected families participating and voicing their long held opposition to the project. In the Public Hearing held on 15<sup>th</sup> April 2007, the administration took full advantage of the diluted standards, ensured that no comprehensive information on the project's environmental and social impacts was made available priorly to affected communities, and even orchestrated a win-win situation for POSCO by ensuring the statutory forum was filled with police and goons who put fear into anyone critically analysing the project proposal, or contesting the need for such.

According to a report by Madhumita Ray of Action Aid, Bhubaneswar<sup>74</sup>, “since the day the advertisement for the public hearing was published in the two Indian newspapers on 15<sup>th</sup> March 2007, there have been written protests by the villagers, the Panchayat leaders, NGOs and social activists and the media” demanding that the hearing be held in the affected villages, yet “there was no change of venue. The State, instead of adhering to the law and changing the venue to its appropriate place responded by huge police deployment. 22 platoons were mobilized, in and around Kujanga, the locale of the public hearing. The Collector, Pramod Meherda, claims that this was due to the fact that re-elections (were) needed to be organized in Dinkia Panchayat. This proved to be a complete lie because the police deployment is spread over two blocks and more than 30 panchayats. So why did the police then not concentrate just on the Dinkia Panchayat? And where were the election officials who were supposed to conduct free and fair elections?”

The efforts of the administration to sabotage any possibility of affected communities participating in the Hearing went even further. Ray reports that “the attempt was to terrorise local NGOs ...who would speak out in favour of the people. Women, when they tried to present their memorandums and speak, were not allowed to do so hastily by the ADM (Additional District Magistrate) who tried to close the proceedings. When Jayanti Rout of Sneha Abhiyan thumped the table of the ADM and asked him that why she, who was an inhabitant of Gadharishpur Panchayat of Erasama block (closer to the vicinity of the public hearing than the affected area), was not being allowed to speak, the ADM's answer was silence. **The answer was given by thugs instead who surrounded her and tried to drown her voice with abuse and lewd gestures.** When Jayanti was joined by Premasi, Satyabhama and Jyotsna, all from Sneha Abhiyan, the state-hired goondas let pandemonium break loose. The police stood there and made no attempts to protect any of the women. The women, when Satyabhama Pradhan challenged the police and asked them as to why she was not receiving any police protection from anti-social elements, the police man leading the troops promptly replied that he had not invited her to speak and so he was not supposed to protect her!!!!”(emphasis added)

The nation invests heavily in the training of Indian Administrative Service officials to ensure they are made of such mettle that they can stand up for the cause of the lowest of the lowliest in a country ravaged by all kinds of social divisions, poverty and inequality. The least that the District Collector could have done in these circumstances was to ensure women felt comfortable and participated actively in the Public Hearing. Instead, it appears that he has tolerated much worse: abuse and lewd gestures from goons against women is clearly a despicable attack on womanhood, besides being a serious criminal offence. By tolerating and being a mute witness to such actions, the officer has not only legitimised these criminal acts, but seems to have encouraged them as well. All Statutory Environmental Hearings have to be video recorded per law. Surely a careful perusal of the video recordings of this Hearing will establish the veracity of this charge, and if true, could mean that the Hearing has to be annulled and criminal proceedings initiated against all violators, including the officer presiding over the process. None of these

violations seem to have affected the final decision to promote POSCO's interests.

### **Loosening the final knots, to set the ship afloat**

The CRZ clearance accorded is an interesting document. It directs POSCO to build the port without disturbing the sand dunes and the mangroves in any manner, without explaining how this can be achieved at all. The clearance also mandates that ongoing fishing activities should work alongside the massive tankers, when the port is admittedly captive, private and secure from any outside movement. An important revelation of the clearance is that the port is far from being a “minor” one as it involves building two massive breakwaters, one with a length of 1070 metres to the north of the port, and another of 1600 metres to the south, so as to provide tranquil conditions inside the port area. There is then the 12.98 kms long approach channel of minimum depth of 21 metre to accommodate passage and berthing of 170,000 DWT vessels. While the channel would be 250 metres wide all along, it would be 500 metres wide at its mouth “to counter complicated wave actions such as breaking, warping and amplification of wave”.

Such measures are adopted when there are real fears of protecting the port from cyclonic activities that frequently hit this region. The clearance conditions are absolutely silent on how to tackle this serious problem as it is also silent about what would happen to all the dredged sand to keep the channel open, month after month, year after year. There is also no mention about what precautions are to be adopted to protect the endangered Olive Ridley Turtles which are known to beach and nest along the Jatadharmohan creek.



*Fertile wetland systems support paddies and prawn cultivation*

As far as POSCO was concerned, the Port had been cleared, the conditions were weak, not difficult to meet and could be further diluted by happily not complying with clearance conditions, as characteristic weak monitoring of conditions by regulatory agencies would ensure that the company is never penalised.

### **What is the difference between “Minor” and “Major” ports:**

The EIA Notification 1994 categorically states in Schedule I that “Ports, Harbours, Airports (except minor ports and harbours) must comply with the full environmental clearance procedure. This would mean that even if the project was only a port development, then it would have to go through an Environmental Public Hearing prior to securing any clearance from the State Pollution Control Board or the Ministry of Environment and Forests. POSCO, subversively, and possibly fraudulently, sought consent to establish its port as a “Captive Minor Port” and as an unit independent of the Integrated Steel Complex in gross variance to the project as described in the MOU. The Odisha State Pollution Control Board received this application unquestioningly (which is surprising) on 23 August 2006 and proceeded to clear this as an independent project on 9<sup>th</sup> November 2006. Besides this fact, the port was also treated as a Minor Port, thus exempting any rigorous review of its massive environmental and social impacts by the MoEF.

From what is stated in POSCO's applications, the port proposed is for the berthing of 170,000 DWT ships. What does this mean? The Port of Port Talbot is amongst the deepest ports in England. It is also “one of only a few harbours in the UK capable of handling Capesize vessels of up to 170,000 metric tons deadweight (DWT)”<sup>75</sup>. Capesize vessels are so large that they find it difficult to transit through the Suez Canal, unless they meet the “draft restrictions”. In effect what it means is that 170,000 DWT ships are of “unlimited” size.<sup>76</sup> These are super big ships, each about a quarter kilometre in length, and are essentially cargo ships normally involved in transporting ore and steel. The question

looming large is if such super-large ships can at all berth in a “minor port”?

It therefore appears certain that everyone involved in the decision making process knew POSCO's port was no small affair. But in order that the small caveat offered in the EIA Notification was fully exploited to POSCO's advantage, that by terming it a minor port it need not have to go through a comprehensive environmental clearance review preceded by Environmental Public Hearings, everyone involved in the decision – applicant, regulator, decision maker – seems to have collaborated in such devious subversion of law. The intent, quite obviously, must have been to keep local communities in the dark about the massive scale of this component of the project, and the eventual massive destruction it would cause of the Jatadhar Mohan creek, beaches and the sand dunes. Local people, and anyone else concerned about this sort of development, were also not meant to know that building such a port would demand construction of massive breakwaters to the north and south of the port to ensure “complicated wave actions” did not occur with the potential of toppling such a large ship. Clearly, no one was supposed to know the potentially high risks involved in building such a port in a region known for rough weather and rough seas – which only a decade ago had experienced the worst cyclone in recorded history!

There is extensive analysis of the potential impacts of major land form changes in the coastal areas of Odisha in the public domain. It would be an obvious expectation for any researcher or regulator to study this material and enquire what would be the consequences of massive land form changes in a region frequented by cyclones. This particularly to review if the port project is designed to tolerate extreme weather impacts and thus prevent possibility of compounding the scale of potential disasters. Surprisingly, nothing of this sort is at all addressed in the REIA of POSCO, both for the Port and also the Steel/Power Plant. More alarmingly, the decisions taken by the OSPCB or MoEF fail to even acknowledge the intense cyclonic activity in the region as critical determinants in evaluating the impact of the massive steel-power-port-township complex of POSCO.

The Report on Landuse/Landcover<sup>77</sup> of the Jatadharmohan River Creek makes no mention of the existence of dense mangrove vegetation at all, and in passing refers to “stretches of forest, comprising primarily casuarina trees, artificially planted to stabilise the sand ridges.... classified as Protected Forests”. Considering that the mega nature of the port is hidden under the false claim of it being a “minor port”, none of the studies have considered various scenarios to appreciate the risks involved and the impact of the project on the affected area. It is only by painfully scouring through various details in the document that one has to appreciate the extensive impact this project will have on the natural environment and on human settlements.

#### **National Institute of Oceanography and its shocking recommendations:**

The Rapid EIA for the port prepared by National Institute of Oceanography (NIO) <sup>78</sup> reveals that “the dredged materials at this area are supposed to be mainly silty clay due to the fine sediment deposit. Therefore, it is planned that the whole dredged materials have to be disposed in deep water having depth beyond 22 m below CD<sup>79</sup>”. While this is the situation in the 12.98 kms approach channel, the dredging plan at the berths “to the extent possible, (is that) the dredged material will be used for reclaiming the marshy land required for the port and form a site for the steel plant”. Thereafter, the study admits the true problem: the site has to be prepared to tolerate a storm surge as suffered during the super-cyclone of 1999. The response to this substantial problem is simply unbelievable, which is **“considering the tidal range, wave height, storm surge, etc., the proposed level of the ground is (to be raised to) +6.5 m with respect to CD”** (emphasis added).

In simple language it means that the entire 4,000 acres of land proposed to be used for the steel-power-port components of the project is to be raised by 6 metres above sea level! Where does one get such massive amounts of soil? The answer lies in the phenomenal volume of salty dredged material which is estimated to be “18,903,000 m<sup>3</sup> for Phase I and 10,075,000 m<sup>3</sup> for Phase 2”. As for Phase III, we simply do not know, as NIO has not bothered to assess the project's full impacts. This will not be all. Dredging will continue for the life of the port as this region is known to have a very high rates of sediment deposit. But there is absolutely no plan about what would happen to this massive amount of sediment except to suggest that a “comprehensive dredge disposal plan may be formulated by POSCO – India during detailed engineering and the identified disposal location needs to be re-checked on the numerical model study”. In simple terms it means no one knows, no one cared to study this serious impact of the project, it is even admitted that the exact nature of the port is not yet fully known as detailed engineering is not available and yet the project was cleared.

NIO's port REIA does acknowledge the serious impact that dredging will have on the coastal and estuarine ecosystems.



It admits that the “**immediate consequences of dredging are the destruction of benthic communities and obliteration of spawning and nursery grounds for fish and shrimps**”. It confirms that it is “difficult to predict the duration of the effects” but rests in the hope that if the “sediments in the perturbed sites are physically and chemically similar before and after dredging, a rapid colonisation by the same type of benthic communities can occur”. What if the sediment types do not remain the same? There is no addressing this question at all.

This is not a trivial issue particularly considering that the breeding success of the highly endangered Horse Shoe Crabs



is directly dependent on the grain size of the sediment closer to the shore. Further evidence of such callous disregard for the project's serious impacts on the local environment is evident in the discussion on the mitigative measures relating to impact of fishing. The REIA admits that “most of the river mouth experience(s) fish migration during their spawning period” and so, it is suggested that “it is vital that dredging operations are undertaken well outside the periods of migration”. But is this at all possible, without jeopardising the approach channel, berthing facilities, the safety and the life of the port, not to speak of the economic implications of a blocked and unusable channel? (Emphasis added)

### Who cares for Olive Ridleys?

While there is general admission of the fact that “this part of the coast is famous for breeding/nesting grounds of endangered Olive Ridley Turtles”, it is speciously claimed that the “dredging operations *may not adversely affect migration* of these animals for breeding in these areas since the nesting ground is about 35 kms away” (emphasis added). This is not a statement of fact at all.

Rout and Behera in their 2001 study<sup>80</sup> discovered that “(a)ll the three rookeries (of Olive Ridley Turtles in Orissa) are located at river mouths with a common distribution of land use/land cover classes”. Typical nesting sites involve coastal tracts that are composed of “plantation, mangrove, sandy beach and agricultural land”, such as in the Jatadharmohan creek. The study revealed that “developmental activity close to the coast such as construction of roads, tourist resorts and aquaculture ponds results in the loss of nesting habitats” which is only to be expected. Most importantly, they discovered that a decade earlier “two more sites, Jatadhara river mouth and Hansua river mouth, have been identified as potential nesting sites”. Similarly, looking for a relationship between mangroves and olive ridley nesting sites, Kar discovered that “sporadic nesting in considerable number also takes place near Jatadhara muhan of Kujanga coast, at the spandspit of Hukitola Island (Agarnasi) in False point, in Chilika coast and at the sandspits of other river mouths in Orissa”. In case we are serious about saving the Olive Ridley species, it simply means that we need to protect the river mouths of Odisha from all infrastructure development. Absolutely the opposite is happening now, ironically with the active support of Environment Departments in the State and the Centre.

The REIA prepared by NIO is replete with many such gaps in appreciating the true impact of the project. Such weak reviewing of a mega project's impacts, particularly in an ecologically sensitive zone, can cause a situation where a variety of critical concerns are overlooked, and the consequences could be devastating. Present and future generations will be forced to suffer the terrible and irreversible impacts of such oversight. It is obvious that a serious review of the impacts of this mega project is clearly impossible without detailed studies and impact assessments which meet the highest scientific standards. The lack of such analysis must have been evident to any regulatory official reviewing the project. In that sense, not having demanded such a through impact assessment, exposes once more the fact that review by assessing and regulatory agencies has been ritualistic at best, and possibly complicit in overlooking relevant concerns to rush the project through to its implementation.

### Sediment transport rate at different locations

Location	Net transport (m <sup>3</sup> /yr)		Gross transport (m <sup>3</sup> /yr)
East coast of India			
Ovari	1,500	South	251,300
Tiruchendur	64,100	North 8	7,500
Kannirajapuram	117,447	North 1	45,979
Naripayur	36,600	South	122,500
Muthupettai	5,200	South	8,900
Pudhuvalasai	5,300	South	42,900
Vedaranivam	51,100	North	94,100
Nagore	96,000	South	433,000
Tarangampadi	200,600	North	369,400
Poompuhar	146,000	North	478,800
Pondichery	134,400	North	237,000
Periyakalpet	486,900	North	657,600
Tikkavanipalem	177,000	North	405,000
Gopalpur	830,046	North	949,520
Prayagi	887,528	North	997,594
Puri	735,436	North	926,637

Source: Current Science, VOL. 91, NO. 4, 25 AUGUST 2006

#### Review a mega project in its parts, and the environmental and social impacts disappear:

The 12 June 2007 NOC accorded by OSPCB for the 4 MTPA steel plant and 400 MW power plant, being Phase I of the project, is ample evidence of how reviewing parts of an integrated project fundamentally and seriously erodes our chances of assessing overall social and environmental impacts and thus protecting wider public interest. The conditions in this NOC are standard fare for such projects. Among the special conditions is tucked in one condition relating to the township, which seems more like an prompt for more land acquisition:

“The unit has not proposed any township of its own but industrial activity of this size will need substantial size civic facilities. So the unit shall submit a master plan for Paradeep and adjoining area taking into consideration the industrial development along with proposal for own township.”

What this seems to suggest is that since the project application has been made in an incomplete manner, i.e., without taking care of the basic need to provide housing and other facilities for thousands of workers and their families that will settle here if POSCO succeeds in establishing the steel plant, OSPCB is allowing POSCO to make good a critical lapse in its project review and application by merely submitting a 'master plan' to build its “own township”, thus obviating the need to secure clearances later from other statutory agencies dealing with the subject of urbanisation and town planning. By such decisions, OSPCB is encroaching into decision making terrain that it is not competent to deal with, but all this is to the advantage for POSCO. Such oversights are plenty, and begin to give force to the feeling that it may have been deliberate. This is evident in another alarming aspect of the clearance which hints at the possibility that POSCO will discharge its effluents into the sea without any safeguards:

“Major portion of the treated effluent will be used for dust suppression, green belt and part of treated effluent will be discharges to deep sea at a distance of 1.0 km from the shore area at a minimum depth of 20 meter for proper dilution.<sup>81</sup> .....The sea water cooling system adopted in power plant shall discharge the blow down water at a temperature not more than 5°C higher than the intake water temperature so that the impact of this water on sea will be minimum.”

Normally when discharge into the sea is involved, the condition is that the temperature of the effluent is set relative to the ambient temperature at the discharge point. This is not the case with the POSCO clearance, as the significant advantage accorded is to make the variation of temperature in the discharged effluent relative to temperature of water in the river, from where the water is sourced. Given that pipelines discharging into the sea will be laid on the bed, thus forcing discharge into much cooler waters at the benthic region, dependent of course on how deep the

pipeline goes out into the sea, the thermal shock suffered by aquatic life will be substantial and clearly destructive. In addition, the blow down water will contain a rich cocktail of minerals and heavy metals, which may seriously damage the ecological communities at the discharge point. The fact that POSCO is allowed to so discharge its trade effluent and blow down water, without any safeguards, is indicative of the absolute lack of sensitivity on the part of OSPCB to this ecologically sensitive marine zone – habitat for the endangered Olive Ridleys, Horse Shoe Crabs and other sensitive species.<sup>82</sup>

The 19<sup>th</sup> July 2007 final environmental clearance accorded by MoEF for Phase I of the Steel plant (4 MTPA) and captive power plant (4x100 MW) is similarly a weak approval of this highly polluting venture. Interestingly, the figures of private land to be acquired is 907 acres, and not 438 acres as claimed elsewhere, including in the MOU. The document confirms that the basis of this clearance is the Public Hearing held on 15<sup>th</sup> April 2007, CRZ clearance accorded on 15<sup>th</sup> May and the CFE from OSPCB extended on 12<sup>th</sup> June. It also indicates that waste water (47m<sup>3</sup>/hr) will be discharged into the deep sea, even as it mandates elsewhere that “industrial wastewater shall be properly collected, treated (and) shall be utilised for plantation purpose” only.

It is in the environmental clearance that there is admission of what will happen in the area acquired in Jagatsinghpur. Of the 4,004 acres required for the steel plant, 1/4<sup>th</sup> of the land, i.e. 900 acres will be allotted to dispose 10% of the solid waste generated. It is claimed that the rest of the fly ash would be reused and sold, but there is no plan for operationalising this condition. Considering the fact that there are no cement plants in the region to absorb such high volumes of ash, it is more than likely that the area for ash ponds will expand over time, or new acquisitions will be made to set up cement plants only to absorb the ash produced. Even in regard to the ash ponds proposed, there are no safeguards prescribed whatsoever to prevent toxic leaching into ground and surface water aquifers. There is also no requirement that fly ash should be disposed in silos – as a protective measure against dispersion of ash considering the high wind energies in the area.<sup>83</sup>

The only major stricture seems to be in curtailing the use of fresh water from the Jobra barrage to 10 MGD overruling the State Government's clearance to provide 16.5 MGD. But even here there is no qualification if this water use is for current production levels (4 MTPA) or the full level of production (12 MTPA). Clearly, all regulatory agencies seem to have worked well with each other in handing out to POSCO a very weak environmental clearance.

### **Logic as liability for decision making**

Administrative logic demands that when a proponent of an integrated project has made an application under an existing law, the procedures applicable at that time must hold good till the entire decision on the project is completed. For POSCO, however, this was not the case, and it was allowed to jump from one weakened regulatory prop to another, as and when it became applicable. Not surprisingly a circular was issued by the Ministry on 13 October 2006 addressing situations where request for clearance of projects have begun prior to the EIA Notification 2006.<sup>84</sup> This circular clarified that if the application for clearance from Pollution Control Board was made prior to 14 September, and a decision was pending, then the project would proceed for final environmental clearance as per the procedure in the EIA Notification 1994. Alternatively, if the project application was made after 14 September to the PCB, then the environmental clearance from the Ministry would be independent of the need for prior clearance based on Public Hearing by the Pollution Control Board. POSCO applied for clearance for some components under the old EIA regime, and for others on the date the new EIA regime kicked in, all along benefiting from grossly weakened standards and possibly illegal interpretations of applicable norms. This raises serious doubts about the integrity of the officers involved who processed the projects applications that eventually favoured POSCO.

### **One fraud, to cover another:**

Another possible fraud that has been played in the environmental decision making process of this project is in interpreting the the applicability of Schedule I of the EIA Notification 1994. It is clear in the Schedule that where an Industrial Estate is involved, which is the case with the POSCO project (Steel-power-port-township mix, not to speak of the water pipeline and transport linkages and the mining project), the total project would have to undergo a full cycle of review for environmental clearance. That would have meant the OSPCB and MoEF should have rejected separate applications for clearance of Steel/Power Plant, Port project, township, etc. and seek a proper and comprehensive application for the full project from POSCO. Not having taken this decision on the basis of a law that had been around for over 13 years raises suspicions if experienced officials in regulatory agencies, both at the State and the Centre, could make such poor judgements?

The Ministry is well aware of the need to apply best practices while evaluating risks involved in such mega projects. Since the enactment of the EIA Notification 2006, a peculiar problem has been to ask which decision should come first: the CFE from the Pollution Control Board or the environmental clearance from the Ministry. A survey of how various states have dealt with this legal glitch reveals that several PCBs do not extend clearances until and unless the project has gone through the Environmental Public Hearing process and secured Environmental and Forest Clearances from the Centre. This has become standard practice in almost all states even when the law is ambiguous on this aspect. Yet, for reasons best known to them, Ministry officials allowed this good practice to slip off their scanner when evaluating the POSCO proposal, allowing its clearance in its parts and under two separate legal regimes.



*Ranjan Swain, seen here with his child and family is a key leader of PPSS and has been falsely charged with over 40 criminal cases.*

This is absolutely the kind of situation that demands a comprehensive enquiry into the entire process of application seeking environmental and forest clearances, their review, and how exactly OSPCB and MoEF justified the clearances granted. Undoubtedly, if this turns out to be a fraud on the system involving collusion between the investor and regulators, no effort should be spared in punishing all involved in the strictest possible terms. Such action would include initiating criminal proceedings per the Water and Air (Prevention and Control of Pollution) Acts, EIA Notification, CRZ Notification and thus the Environment Protection Act. Also applicable will be Environment (Siting for Industrial Projects) Rules, 1999, Forest Conservation Act, Forest Rights Act and the

Wildlife Preservation Act, amongst others.

#### **A deliberate lack of holistic review promotes POSCO's interests:**

Clearly there has been a complete abandonment of the need to holistically appraise the POSCO project's environmental and social impacts. This is not unexpected considering that the process of approving POSCO began in MoEF when it was under the leadership of A. Raja, then Union Minister for Environment and Forests, and then Secretary, Pradipto Ghosh, IAS. Ghosh had publicly articulated, repeatedly even, that mega projects should not suffer because of environmental and forest review. He had in fact advocated that such statutory clearances formed bottlenecks to foreign direct investment in India, and must therefore be cleared out. In fact, it is for holding such beliefs that he was made Secretary of MoEF having served earlier as a member of the Govindarajan Committee on Investment Reforms<sup>85</sup> - a Committee which recommended that India's economic growth should not be subordinated to environmental and social concerns, if a high rate of economic growth per GDP terms was to be achieved.

By making clearance mechanisms between the Board and the Ministry independent and separate, Ghosh had ensured that the EIA Notification 2006 had created a situation where environmental decision making became in-congruent and violative of the basic purpose of the legislations which governed the procedures: to spare no effort to protect the environment, conserve natural resources and ensure fundamental human rights were not violated. The Notification also made a mockery of the well regarded Principle of Free and Prior Informed Consent, as it ensured that Public Hearings became merely a ritualistic precedence for securing environmental clearances from the Ministry. As a result now, projects could be cleared based merely on evaluation of pollution control techniques and technologies employed, and without paying any heed to ascertaining public opinion based on deliberate democratic processes for fully comprehending social and environmental impacts. The changes brought in the new Notification thus met with the key recommendations of Govindarajan Committee which was to promote quick environmental clearances for industrial and infrastructure developments even if their impacts were not sufficiently reviewed.

## Chapter 8: Independent Investigations Confirms Fraud in POSCO clearances

Two independent investigations authorised by Jairam Ramesh have established beyond any doubt that the POSCO project clearances have been secured fraudulently. The first investigative report was by a sub-committee of the N. C. Saxena Committee appointed jointly by the Ministry of Environment and Forests and Ministry of Tribal Affairs to review compliance with the implementation of Forest Rights Act in India. This Committee on review found that the Odisha Government had comprehensively failed in implementing the provisions of this Act in the POSCO affected villages and recommended the withdrawal of forest clearances that had then been granted.. To further verify these facts and to also review various other issues that have emerged based on complaints that the other statutory environmental clearances of POSCO were similarly secured fraudulently, Jairam Ramesh set up a Committee under the coordination of former MoEF Secretary Meena Gupta. This committee by a majority decision confirmed that fraud was the basis of securing environmental and CRZ clearances for the project, and further established that the Forest Rights Act had not at all been implemented in the project affected villages. The Committee recommended, therefore, that all clearances accorded to POSCO by MoEF must be revoked and a fresh review of environmental and social impacts must be undertaken by independent agencies and only on the basis of these findings could the project be reviewed once more for establishment.

The findings of these two committees and their outcomes are discussed here.

### Official obfuscation to deny Forest Rights confirmed by Saxena Committee

From records now publicly available, it appears that various divisions of the Odisha State Forest Department and also the Forest Advisory Committee (FAC) in the MoEF comprehensively failed in addressing the important question of compliance with the Forest Rights Act when granting forest clearance for the POSCO project in December 2009. It is understandable that the Odisha Government overlooked such serious violations, given its enthusiasm to begin the project. But it is an altogether different matter that the FAC also approved this massive diversion of forestland based merely on the claim of the Odisha State that rights of forest dependent communities were not involved in the POSCO affected villages. This raised an interesting contradiction as the Environment Ministry had come down heavily on the Vedanta project, also in Odisha, based on the findings of the N. C. Saxena Committee and cancelled all clearances granted for making similar false claims. The question looming large was why was POSCO being exempted from similar application of law?

There was widespread media coverage of peaceful and unrelenting protests of the denial of fundamental rights of local communities affected by the POSCO project. It was also highlighted that there were deliberate efforts by the Odisha State to frustrate and block villagers from obtaining documentation of their land titles and their traditional and customary rights. The intent seemed to be to prevent communities from securing their Rights under the procedures of the Forest Rights Act. Many petitions protesting such attacks on the lawful effort to correct historical injustices were filed with many of the local offices and also with the Ministry, but these were neither being acknowledged or processed appropriately.

About this time Jairam Ramesh had cancelled Vedanta's bauxite mining project in Niyamgiri based on the finding of the Saxena Committee that the investor and Odisha Government had comprehensively violated Forest Rights Act. As the demands to similarly investigate POSCO grew, Ramesh requested the same Committee to also investigate the compliance of POSCO approvals with the Forest Rights Act. On this direction, a sub-committee of the Saxena Committee was constituted, involving Arupjyoti Saikia, Ravi Rebbapragada and Ashish Kothari, to visit the proposed site of the POSCO project and report if the Forest Rights Act had been complied with.

The team visited POSCO affected villages on 23-24 July 2010 and filed in their 4<sup>th</sup> August 2010<sup>86</sup> report that there were gross violations of the Forest Rights Act while according forest clearance to the POSCO project. On the basis of such findings, they recommended withdrawal of forest clearance granted. The committee in fact concluded that “(n)ot doing the above would (be) **tantamount to not only ignoring the key objective of the FRA of redressing historical injustice, but also heaping new injustice on the residents of these villages.**” (Emphasis added)

Even as the committee submitted its report to the Minister, the Odisha Government in a brazen show of disregard to rule of law, initiated land acquisition for the project by tearing up *paan kethis* of many farmers who had been cultivating in the coastal forest land for generations. This action was based on the Odisha Government's claim that it had fully complied with the Forests Rights Act, and that MoEF had already approved diversion of 3,000 acres of forest

land to non-forest purpose in its approval of 29 December 2009. These claims were contested and exposed as false by PPSS which demonstrated with extensive evidence that far from compliance with the provisions of the Forest Right Act, the Odisha Government had done little or nothing at all to implement this historic legislation in villages affected by the POSCO project. It is in this light that the following findings of the sub-committee achieve a lot of importance, which are as follows:

**“1. There are Other Traditional Forest Dwellers (OTFDs) in the area,** contrary to what the district administration is saying. Both documentary and oral evidence exists to this effect. A sample of the documentary evidence has been attached with the letter sent by the Committee to the Minister for Environment and Forests, on 3 August 2010.

2. The FRA process has not been completed, in fact it has not proceeded beyond the initial stages, for various reasons. **It is therefore incorrect and misleading for the district administration to conclude that there are no OTFDs “in cultivating possession of the land since 3 generations” in the area.** Firstly, this cannot be concluded without having gone through the process of claims; secondly, the FRA provides for dependence on forest land also as a criteria for eligibility, not only “cultivation possession of land”.

3. Some palli sabhas have given **resolutions refusing to consent to diversion of forest land** on which they are dependent. These palli sabhas were convened by the district administration itself, after receiving instructions relating to the MoEF circular of July 2009, which indicates that the administration was aware of the possible presence of forest rights claimants in the area. (It is interesting that this was done *after* the District Collector had given the opinion that there are no STs and OTFDs in the project area). **To the best of our knowledge these palli sabha resolutions have not been sent by the state government to the MoEF, which is tantamount to deliberate withholding of relevant information/documents.** Only the palli sabha resolutions setting up FRCs in March 2008, have been sent to MoEF (which MoEF has asked the state government to translate, in April 2010).” (emphasis added)

This committee also observed that “(i)t appears from news reports, however, that the district administration is proceeding with land acquisition and demolition of the *paan* cultivation of people on forest land. Reportedly this is of families who have consented to such acquisition; however this does not alter the fact that such work is illegal”. And on such basis the team concluded that:

**“1. Any work related to the project in this area, such as what has been reportedly started on 27 July 2010, is a violation of the FRA, and of the conditionality laid down by the MoEF in its forest clearance of 29 December 2009.**

**2. The MoEF “final approval” of 29 December 2009 is itself a violation of its circular No. F. No. 11-9/1998-FC, of 30 July 2009, requiring FRA completion and gram sabha consent for forest diversion.** The fact that this was conditional to completion of the FRA procedures in the area, or that a subsequent (8 January 2010) clarification was issued reiterating this condition, does not change the improper nature of this as a “final approval”.” (emphasis added)

On these grounds the Committee urged MoEF to take the following steps:

**“1. Ask the Orissa government to stop all such work till the required processes under the FRA are completed, and till and if palli sabha consent is obtained.**

**2. Withdraw the forest clearance provided in December 2009.”** (emphasis added)

#### **Ramesh stays operation of Forest Clearances of POSCO:**

The reaction of the Ministry was swift and clearly demonstrative of the critical attention such matters had then gained under the leadership of Jairam Ramesh. On 5<sup>th</sup> August 2010, a day after receiving the report, a letter was issued to the Odisha Government by MoEF under the directions of Ramesh,<sup>87</sup> stating as follows:

**“(T)hat Government of Orissa shall take all necessary measure and ensure that work, if any, being undertaken**

on the said land, for the said project, including handing over of the forest and non-forest land to the said project, **shall be stopped forthwith** and report on the same, along with the details of work, if any already executed for the said project along with the details of the forest and non-forest land handed over to the said project shall be submitted to this Ministry through return fax.” (emphasis as in original)

### **Official diversion of forests to non-forest purposes key cause of environmental degradation**

Rigorous appraisal of applications seeking forest diversion is more important now than ever before, given the extensive and frequent diversions of forests to non-forest purposes (an euphemism officially employed for destroying forests). It is because of such decisions that most of the original growth forests in India have been lost in order to accommodate dams, mining, infrastructure development and industrial projects.

This is evident in response to a question in Parliament in 2002 when the then Union Environment Minister T. R. Baalu revealed the massive scale of forest felling that was undertaken over the decades. It was quantified that the “...rate of diversion of forest land was of the order of 1.5 lakh hectares per annum during the period 1950 to 1980, which became a cause for serious national concern”. In 1980, the Indian Parliament had reacted to this crisis by enacting the Forest Conservation Act, which besides bringing forests into the Concurrent List, also instituted what was claimed an additional safeguard where forest diversion to non-forest purposes required the additional approval of the Centre. Did this new legislation help protect forests? It did, but only to a certain extent. The much depleted forest cover demanded far more careful review. Yet, in the post 1980 period official diversion of forest to non-forest purposes continued at “.. about 25,000 hectares per year”. The cumulative impact of loss of forests even at this reduced rate has now resulted in forest cover in India being spread over less than 10% of the geographical area, down from about 50% at the turn of the 19<sup>th</sup> century.

The location of the POSCO project in Jagatsinghpur's villages needs to be seen in this context as the site selected constitutes predominantly forest lands. Given that the custody of these lands is with the Forest Department (and not ownership, as is often claimed), it appears that the Odisha Government zeroed in on this location largely because it was 'government land'.

The Odisha Government could not risk a second setback for its mega foreign direct investment ventures. It began a political project by claiming this decision was a witch hunt of non-Congress regional governments. Whatever be the politics of this decision, if any, the fact remains that it is such deliberate action as the one that Ramesh took in the Vedanta case that should be the minimum standard for the Ministry when dealing with diversion of forest land and dislocation of forest dependent communities. Any weaker action or inaction can only be construed as going soft on violators of environmental and forest conservation laws, which has been a pattern of the Ministry's functioning in over two decades of its existence.

The official contestation of the Ministry's decision by the Odisha Government's was in a letter submitted by U. N. Behera, IAS, Principal Secretary on 13 August 2010. Behera states in his letter that:

“...It is not correct to conclude that there are traditional forest dwellers in the project area. Documentary evidences, produced before the visiting committee, appear to have been manufactured by the anti-project agitators with ulterior motive. It may be seen that the district administration has taken all steps in the right earnest for implementation of the Forest Rights Act, and not suppressed any relevant information. Hence, it is requested that MoEF may review their decision and allow the land acquisition process to continue.”

No evidence is provided to back Behera's claims. Clearly the idea here is to manufacture a perception that the local communities are liars and cheats. Earlier in the letter Behera challenges villagers' contentions that their natural titles to their lands and traditional right have been disregarded by the Odisha State, as follows:

“(T)he records that are being produced now for the lands that have not been settled in their favour lack credibility for had they had such records, they would have got their rights settled then. These records (that the villagers presented to the committee) must have been subsequent creations. **Some such documents produced before the Revenue Divisional Commissioner on the 1<sup>st</sup> June 2010 were found to have been**

**forged.”** (emphasis added)

In what can be termed a dangerous assertion of the power of the State to assume absolute territorial control over forests and village commons, thus disregarding all traditional and customary rights protected by the Forest Rights Act, Mr. Behera also claims that “by operation of Section 5 (a) of the O.E.A (Orissa Estate Abolition Act, 1951) **all the communal lands, non-raiyat lands, waste lands, trees, orchards, pasture lands, forests, etc. absolutely vested in the State Government free from all encumbrances**”. (Emphasis added) He then takes to a partial reading of the settlement of rights in the post independent period by completely disregarding the fact that the 4<sup>th</sup> October 1961 Notification of the Development (Forest) Department had acknowledged traditional forest rights of local communities.

The desperation to ensure POSCO project did not meet the same fate as Vedanta was such that the Odisha Government even resorted to deliberate misrepresentation of the directions of the Supreme Court to suit its purpose. This is more than evident when Behera claims, based on an unqualified, subjective and a peculiar interpretation of the Supreme Court judgement in the Godavarman case,<sup>88</sup> when he states that “the Hon'ble Supreme Court cleared the project”!<sup>89</sup>

#### **Supreme Court directed comprehensive review of POSCO project:**

The actual fact is somewhat different. The Odisha Government's application for forest clearance favoring the POSCO project was made under Sec. 2 of the Forest Conservation Act on 26 June 2007. The application was to allow the diversion of 3096 acres of forest land to POSCO in Jagatsinghpur. Favourably considering the application on 9<sup>th</sup> August 2007, the Forest Advisory Committee of MOEF recommended in-principle approval for diverting the forest land. However, in compliance with a standing direction of the Supreme Court issued on 27 April 2007 in the Godavaraman case, that all decisions involving diversion of forest land must be approved by the Court, the matter was placed for approval of the Central Empowered Committee (CEC) constituted by the Court. The CEC subjected the forest clearance favouring POSCO to various conditions that were articulated in its report of 14 November 2007 to the Supreme Court, and this was ratified by the Court. The important conditions precedent to diversion as recommended by the CEC are as follows:

“7. The present proposal is diversion of 1,253.255 ha of forest land and will require felling of about 2.8. lakh trees. The present proposal covers forest land required for the integrated steel plan and captive minor port. The proposal for requirement of forest land for other linkages such as mines, railways, road, corridor etc are yet to be finalized.

8. The CEC is of the view that instead of piecemeal diversion of forest land for the project, it would be appropriate that the total forest land required for the project including for mining is assessed and a decision for diversion of forest land is taken for the entire forest land after considering the ecological importance of the area, number of trees required to be felled, adequacy and effectiveness of the R&R plan for the project affected persons and benefits accruing to the State. The diversion of forest land for the plant, without taking a decision for the linked uses particularly the mining project may not be in order.

9. Since the number of trees involved is about 2.8 lakhs, it would be in order that an independent expert committee including representatives of the NGOs should undertake a site visit in order to assess the impact of the cutting of such a large number of trees and suggest mitigative measures for the area, specially **since there is a large dependence of local population on these forests**. Subject to the compliance of the above observations the proposed diversion of forest land may be permitted.”

It is clear that the Supreme Court categorically sought a comprehensive review of the project based on detailed assessments of the project's overall impact. None of the directions of the Supreme Court have been complied with at all, even till date. Yet despite such blatant violations of Supreme Court directives staring in its face, MoEF granted in-principle clearance for diversion of forest land involved in the steel-power-port components of the POSCO project on 18<sup>th</sup> September 2008, and made this order final on 29<sup>th</sup> December 2009. The MoEF had also left unattended the crucial issue of the lack of compliance with the Forest Rights Act in the POSCO affected villages which has been amongst the most contentious issues in the appraisal of this project. It was the 5<sup>th</sup> August 2010 decision of Jairam Ramesh to stay the diversion of forest land for POSCO project that rekindled hopes in project affected communities that justice would finally be theirs to secure.

#### **A comprehensive independent review of POSCO clearances ordered:**

In what seemed then to be Jairam Ramesh's keenness to prove beyond doubt that the overall nature of approving



POSCO was scientifically valid and legal as well, he ordered a more comprehensive investigation on 28 July 2010 into the POSCO project with Meena Gupta, former Secretary of MoEF as Chair along with V. Suresh, Lawyer, Urmila Pingle, an expert on tribal issues and Devendra Pandey (IFS, Retd.), Former Director, Forest Survey of India and also co-chair of the Saxena Committee, as members.<sup>90</sup> With the members bringing with them substantive competence of an interdisciplinary nature involving law, policy, anthropology and environmental science, the Committee was asked to ascertain the extent of implementation of the Forest Rights Act in the proposed POSCO project area and also the status of implementation of resettlement and rehabilitation measures. While the Committee headed by Meena Gupta began to make preparations for its investigation, there was widespread criticism over the narrow scope of the investigative brief. Ramesh responded to these contentions and expanded the terms of references to include any statutory violation related to human rights, environmental and social implications of the POSCO project as part of the investigative brief.<sup>91</sup>

Following weeks of review, tens of meetings, site visits and after poring over hundreds of pages of documentation relating to the project, the Committee by a majority decision concluded, in its report submitted to Jairam Ramesh on 18 October 2010, that the project was cleared in comprehensive and patent violation of fundamental provisions of the Forest Rights Act, Forest Conservation Act, Environment Protection Act (particularly procedures laid down in its subordinate legislations such as the Environment Impact Assessment Notification and Coastal Regulation Zone Notification), and many other statutes. The Committee, therefore, recommended that the forest, environmental and coastal regulation zone clearances accorded to POSCO must therefore be immediately revoked. The lone dissenting voice was that of Ms. Meena Gupta who opined that the violations could be rectified – not surprising considering that the clearances were accorded to POSCO when she was the Secretary of MOEF in 2007.<sup>92</sup>

### **The Meena Gupta Argument:**

Meena Gupta's report is quite opinionated and thin on documentation. A summary of her dissenting findings are discussed here.

Admits to failure in implementation of Forest Rights Act: On the implementation of the Forest Rights Act, Meena Gupta concludes that “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**”. She then proposes that the entire exercise of filing of forest rights claims has to be repeated and that “*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.*” Gupta categorically asserts that 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.” She recommends thereafter, that if “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”. And concludes that this “*fresh exercise proposed may delay the diversion of the 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*”. Clearly, therefore, she broadly agrees with the long held assertion of the affected communities that their forest rights have been generally denied by the Odisha Government. (Emphasis added)

Weak criticism of Rehabilitation Failures: On the issue of Rehabilitation and Resettlement, Gupta suggests that since the project is still in a very early stage, with no ground broken and “resettlement and rehabilitation have not yet started”, and the fact that “it appears that a large number of fishermen who may have rights in the areas have got left out” and also admitting the fact that “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)” and further “since landless workers are people at the bottom of the heap, it is not enough to relocate them”. She then recommends that “they need to be compensated for their loss of livelihood.” But rather than make a clear and firm recommendation to address this serious malady, she concludes more with an expression of hope that “the State Govt (must bear all 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”. Thus, clearly sidestepping the fundamental issue of ensuring that the Right to Life and Livelihood of directly and indirectly affected communities is not left to chance, or hope, but resolved by legitimate expectations and rational decision making.



*fisherfolk are not considered impacted communities according to the POSCO REIA*

**Sustains Environmental and CRZ Clearances:** This trend of weakly assessing regulatory failures in decision making continues in her analysis of the environmental and CRZ clearances accorded, the former having been secured by POSCO when Meena Gupta was the Secretary of MoEF. About these decisions which have massive repercussions for present and future generations and also for the sustenance of the quality of local ecology, Gupta rhetorically suggests that “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 (Environmental Clearance) granted on this basis”. There was no bar on such a possibility being insisted upon when she headed the Ministry, and it is interesting that Gupta only now raises this concern. In what appears to be a vain defence of her critical lapse while at the helm of affairs of the Ministry, Gupta claims, without citing any evidence, that “it is understood that POSCO has, in the meanwhile prepared a comprehensive EIA” and that it would be now “worthwhile for the EAC to examine this comprehensive EIA to see whether any new and important aspects have emerged”. But does not recommend that pending these studies, the clearances accorded must be kept in abeyance, if not revoked.

### **The Majority Findings demand revocation of all clearances granted:**

In contrast to Meena Gupta's weak analysis of the POSCO project's impacts and the true nature of violations of environmental, forest rights and forest conservation laws, the majority findings unanimously concurred by Devendra Pandey, V. Suresh and Urmila Pingle, is at once exhaustive, well documented and carefully argued. Following is a summary of their key findings and recommendations.

**Land tenure and recording of rights:** The majority findings begin by reviewing the problematic land tenure history of the region and how this has severely handicapped the confirmation of due rights of local communities, especially of those claimed to be “encroachers” of the forest. The three members confirm that when the forests were declared “protected” by the Forest Department in 1961, this was done “despite the lack of any recording of rights”. Reviewing the ecological history of the region, the three members cite Derry's reporting to demonstrate that the region constituted dense forests and that “after 1930, these physical features have changed to the extent that thousands of acres of forest land have been converted to paddy lands”, without explaining the causative factors for such land use transformations as were reported by Hota later.

**Productive Agriculture and High Nutrition zone:** The members then thoroughly document the traditional system of agriculture that is practised in the region, particularly that of Betel vine cultivation that forms an important component of agro-biodiversity and the livelihood support systems of POSCO affected villages. The positive impact of such vibrant agricultural systems is highlighted in their observation that the local ecology supports a wide diversity of food sources and the “contribution of abundance of high protein fish to their diet (which) has definitely provided the people a balanced diet and kept their degree of malnutrition levels low as compared to inland areas”. The members also explain the critical importance of the cash crops to the local economy due to cultivation of cashew and betel vine and also from *kewra*. They explain the importance of retaining the sand dunes to these crops, particularly due to its role in providing sweet water at shallow depths within metres of the sea and sheltering inland agricultural and prawn cultivation areas, and villages, from certain devastation due to extreme weather events.

**Wholistic appreciation of project's environmental impacts:** A careful analysis is made of the potential impact of the project on the coastal land use pattern, ecology of the river and sea marine life systems, and also on economy and livelihoods, by exhaustively referring to a variety of published reports and verifiable evidence. Many serious concerns raised are over the selection of this region for siting such an highly polluting and massive industrial project. A critical concern raised is the the irreversible impact the project would have on the Olive Ridley Turtles known to mass nest in the project affected region, the impact of pollution on fresh water aquifers and also the potential loss of agricultural biodiversity due to drying up of the wetland ecosystems as a certain consequence of the project. These members

express the high risk to natural disasters that the project will expose the region to as the “development of the steel plant, port and other infrastructure will flatten out the (sand) dunes and create negative impact on both fresh water aquifer and biodiversity and increase the vulnerability to tidal surges of sea water inland”.

Risks from cyclones threaten project's viability: They record with concern that “the frequency and intensity of the cyclones hitting the Orissa coast in the past century have gone up”, which is known consequence of climate change, and that “massive deforestation of coastal mangroves for development of ports (such as Paradeep port in the 1960s) and conversion to other commercial activities has made the coast vulnerable to the effect of cyclones and tidal surges”. The tragic consequences of so destroying coastal and mangrove forests is highlighted by citing the “destruction of mangroves in Ersamma (in the project area) (as) one of the main reasons that this area experienced more damage to crops and people at the time of super cyclone in 1999, as compared to other areas of the coast having extensive mangrove forests. Ersamma block reported 8000 deaths and the tidal waves entered 10 kms into the land. However, Kendrapara which is just north west of Jagatsinghpur which had a fair mangrove forest suffered less damage”. Thereby concluding that such reckless land transformations could have devastating long term consequences while observing that “the economic losses to the state in 30 years have gone up 27 times” as a consequence of such natural disasters. Similarly, the members highlight the grave danger to the coastal areas due to the “cumulative effect of development of multiple ports on the east coast (which) are likely to have a long term damaging effect on coastal ecosystems as well as a spread effect on inland ecology and way of life”.

Project's impact on Lives and Livelihoods: Evaluating the POSCO project's impact on the livelihood of the people, which the members find to be predominantly composed of rural agricultural community, with one third of the directly affected population being from Schedule Caste, the picture that emerges is that “40% of families have less than one hectare of land, 30% have 1-2 ha, 8% have 2-4 ha and 3% have more than 4 ha land”. Citing these figures from the Rapid EIA of POSCO, the members also observe that “the number of landless families is 19%.” However, the lacunae in these findings are immediately highlighted for they do not reflect the actual high levels of productivity from agriculture and thus the local economy, especially considering that “betel vine contributes significantly to the cash economy of the area and is an important source of employment for agricultural labourers, especially women from within the area”. These members find that “in spite of the frequency of cyclones and tidal surges damaging their crops and plantations the people of this coastal area have been able to recover and continue getting a sustainable production from the diversity of production systems that they put their land under”. Observing that there indeed is a massive displacement from land and of livelihoods caused by the project, the members find that the socio-economic study of the project impact done by Xavier Institute of Management, Bhubaneswar in January 2008 for POSCO is of very deficient quality. As a result, the members state that it is “very difficult to rely on the data in this 'socio-economic study'” which has formed the basis of clearance decisions.

Forest Rights Act violated: The members confirm that a “major point of contestation in this area has been the question whether any persons (are) eligible for rights under the Forest Rights Act”. Analysing the implications of the implementation of this law to the region, and the project therefore, and after going into various submissions made by the State government, local communities and others, including closely examining issues relating to prior settlements, especially that of primary residence of persons for three generations as required per the Act, the members conclude that **“there are other traditional forest dwellers, in the sense of Forest Rights Act, residing in the project area and/or dependent on the project area”**. Thus stating, with categorical certainty that they “see no merit in the Odisha Government's contentions” that it has implemented truthfully the Forest Rights Act and that there are no claimants at all to be worried about. Even as they make an important finding that there “are also Scheduled Tribes within the project area”. (Emphasis added)

Evidence of implementation of Forest Rights Act contested: In a critical assessment of the implementation of the Forest Rights Act in the project area, the members note with serious concern the nature of evidence submitted. They state that “neither the State Government nor those disputing its claims have been able to produce the **panchayat** and **palli sabha** registers for this period<sup>93</sup> of 2009. The documents produced by the State government are not copies of the register but typed and cyclostyled formats which then appear to bear signatures of government officials, the sarpanch and various others on them. The government has said that these formats were used throughout the State”. And then record that “*none of these documents is in fact a legally valid **palli sabha** resolution*” and clarify that a “*valid resolution .. is that transcribed in the **palli sabha** register or the panchayat register*”. It is also clarified that those documents “produced by the State government would acquire validity only if they were transcribed in or otherwise entered in the register” even as they clarified that “scanned versions and photocopies produced by various other parties cannot be

accepted as evidence unless the original is made available". (Emphasis added)

Jagatsinghpur Collector confirms Forest Right Act not implemented: The members were absolutely aware of how critical the proper implementation of the Forest Rights Act was to this case. As a measure of abundant caution so as not to trample on any or anyone's rights, the members clarify that during "the second visit to Orissa in September 2010, the Committee met with the new Principal Secretary of the Forests and Environment. The Committee requested him to verify from the Collector, Jagatsinghpur about the existence of the Panchayat registers containing **Palli Sabha** resolutions.... The Secretary telephonically contacted the District Collector and was informed that there were no such written resolutions in the registers but only those filled in government formats. The Collector denied the existence of the Palli Sabha resolution written in the Panchayat register of Nuagaon village which was shown to the Committee members during their visit to that village". Such a basis cannot be sufficient to "verify" any of the claims, the Members conclude.

Forest Rights Committees not constituted in POSCO affected villages: The Members however confirm that "there is no dispute regarding the fact that a palli sabha meeting took place in the village of Dhinkia on March 23<sup>rd</sup>, 2008" though the dispute arises over what exactly was the resolution passed therein. The members highlight that Sisir Mahapatra, Sarpanch of Dhinkia contests the validity of the resolution of this meeting as presented by the State, and has instead presented another resolution that "asserted that **the people of the area have been residing there for more than 300 years, that they have individual and community forest rights, and that the palli sabha decide(d) under section 5 of the Forest Rights Act to protect the forests and the lands of the area**". This resolution also demonstrated that a Forest Rights Committee was elected during that meeting. The members also report that according to Mahapatra "no government officials were present at the meeting" and since "elections had not been held in the **gram panchayat** of Dhinkia as a result of the conflict over the project, .. Mahapatra presided not in the capacity of sarpanch but merely as president of the *palli sabha*". The committee further records that Mahapatra has submitted an affidavit to the Committee stating that "when he attempted to submit this resolution at the panchayat office, the secretary refused to accept it, instead insisting that this resolution had no value as it was not in the State government's format for electing a Forest Rights Committee". The members go on to describe that Mahapatra therefore "filled out the format with the names and signed it as well" even as he accepted that this did not fulfil the demands of being a **palli sabha** resolution. But in order to ensure that decision of the villagers was made known to the Odisha Government, the original resolution was submitted by registered post to the Collector, Sub-Collector, BDO Ersama and the Chief Secretary of the Odisha Government. The members explain their predicament in resolving this dispute, even when admitting that the village resolution has been relied upon by D. Raja, Member of Parliament, to highlight the validity of applicability of Forest Rights Act to the area. They, however, found it "impossible to conclusively verify either the State government's claim or the claim that a different resolution is passed". On the basis of all these evidences, or the lack thereof, the members conclude that "**the election of Forest Rights Committees – the first step in the forest rights recognition process as per the Forest Rights Rules – cannot be said to have taken place satisfactorily in the project area**". (Emphasis added)

Difficulty in establishing Forest Rights in a climate of fear: Going into substantial depths of the processes and procedures involved in recognising and establishing forest rights, the members note with concern that "*the heavy presence of police and security forces in the area was repeatedly cited by villagers as a deterrent to filing of claims. Such persons said they feared arrest due to omnibus FIRs being file in the area, and hence could not be expected to procure evidence or obtain information in order to file claims*". This situation obviously encroached on the three month deadline that the Forest Rights Act provides for making of claims. About this peculiar situation in the project affected area, keeping in view especially the climate of fear that was induced by the State through intimidating presence of police given in to file false criminal complaints against ordinary villagers, these members express the critical importance of correcting the historical injustices against forest dependent communities. In so doing they state that "**the Committee does not regard the failure to file claims within the three months deadline as particularly material to the validity of future claims**". It is also made explicit that as per the Rules "**no deadline is specified for community claims**". This proviso of the Act supporting the due and inalienable right to secure forest rights is highlighted by citing a letter of S. C. Mohanty, Principal Chief Conservator of Forests, Odisha, dated 25<sup>th</sup> February 2010, which clarifies that even when claims cannot be entertained under the Forest Rights Act, they may instead be considered under the Forest Conservation Act which allows for the "regularisation of pre-1980 eligible category of forest encroachments". Thus, under any one of these Central Acts, the inalienable forest rights of the local communities in the POSCO project affected areas should have been recognised by the Odisha Government. (Emphasis added)

Diversion of Forest land illegal: The members clarify that “mere completion of recognition of rights is not sufficient” for deciding whether the forests involved can be diverted to non-forest purposes. They clarify that “consent of palli sabha must also be taken” by the project proponent which is a clear “requirement under the Forest Conservation Act”. On this finding, the members conclude that the **29<sup>th</sup> December 2009 final order of the MoEF allowing diversion of forest land to POSCO is invalid** as it is not based on “any certificate from any Palli Sabha in the area regarding either completion of implementation of the Forest Rights Act or consent to the proposed diversion”. The members report that when this invalidity was raised, the Ministry had accepted the argument and categorically stated that the “project cannot go ahead” based on a clarification issued on 8<sup>th</sup> January 2010, but the clearance itself was not withdrawn. Which position the members find is a “legally and administratively ambiguous” and observe with serious concern that this has “continued till date, with the project having received final forest clearance, but simultaneously ....being 'conditional' on compliance”. The members therefore point out that “the basis of granting the original clearance itself remains unclear” and that **“the grant of forest clearance in this manner was grossly illegal and in direct violation of both the Forest Rights Act and the Forest (Conservation) Act”**. (Emphasis added)

Forest rights recognition process to be re-initiated: It is categorically stated thereafter that “the subsequent 'clarification' has not remedied this illegality, instead producing a situation of ambiguity” summarily concluding that the **“said final clearance, being illegal, should be withdrawn”**. On the basis of this analysis, the members further state that the forcible take over of forest land by Odisha Government on 27 July 2010, damaging the *paan kethis* of 96 farmers cultivating in the forest was patently “illegal and in violation of the Forest Rights Act and Forest (Conservation) Act”. Based on this exhaustive analysis the Committee recommends unequivocally that fundamental rights to forests under the Forest Rights Act must first and foremost be fully secured. And that this can only be achieved by “*the process of (Forest Rights Act) ...be(ing) re-initiated in a genuine and transparent manner*” and “*those ineligible under the (Forest Rights) Act should .. have their claims considered under the pre-1980 regularisation process*”. (Emphasis added)

#### Odisha's Rehabilitation and Resettlement policy defective:

On the issue of Rehabilitation and Resettlement, the majority finding of the Committee is that there is an acutely limited definition of 'displaced family' as the “Orissa Resettlement and Rehabilitation Policy (ORRP), 2006 focuses almost entirely on families 'displaced' by acquisition of land and very little on families 'affected' by acquisition of land”. A fundamental anomaly of this policy is explained by the Committee as “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”, the members note with serious concern. On this basis a variety of lacunae in the Rehabilitation and Resettlement package proposed by the Odisha Government is exposed. Sharing their deep anguish over the possibility that “people are displaced in a hurry even before the resettlement or rehabilitation process is in place” and that “many times the promises to the people are not kept and displaced people live in greater destitution than before displacement”, the members insist *that communities must only be displaced “if the project is found suitable to proceed with on other environmental aspects”*. (Emphasis added)



*An uncertain future for the next generation*

Project site highly vulnerable to cyclones: In reviewing the environmental clearance issued to the project, the Members have gone into a variety of aspects that have to be considered. In particular they base their assessment on a “detailed and thorough analysis of the compliance of POSCO to the requirements of the EIA Notification (based on) two considerations: (I) the scale of the project, which stands out in comparison with other steel projects in India; and

(ii) the problems associated with the location of the plant along harbour in an area (a) prone to cyclones and natural disasters, (b) which has been described as an 'area having ecological significance for the productivity of the estuarine system' and (iii) located just about 12 km south of Paradeep port area in a region described in the Orissa Coastal Zone Management Plan for Orissa prepared in October, 1995 by the Department of Forest and Environment, Government of Orissa, as 'fast deteriorating coastal environment', noting also that such an assessment is already over a dozen years old and the "degradation of the coast had only worsened".

Comprehensive EIA did not back Environmental and CRZ clearances: These three members have comprehensively reviewed various factors that should have a bearing on granting of environmental and coastal regulation zone clearances for such a massive project. A critical concern that is raised is that the POSCO project is proposed in the immediate vicinity of Paradeep port area which is already critically polluted with an index of 70 on the rationally evolved Comprehensive Pollution Index of MoEF. They highlight that siting more polluting industries in such highly polluted zones is in itself a violation of the EIA Manual issued under the Environment Impact Assessment Notification. Based on such findings, the Committee recommends that given the massive "scale of the project and the ecological sensitivity of the proposed site, it would have been more appropriate to locate the project elsewhere". The conclusion is that considering all these factors **"there was a critical necessity of having a comprehensive EIA and the necessity of the Decision making /Reviewing authorities under taking a site visit for assessing the project"**. None of which, of course, has preceded the decision to clear the project. (Emphasis added)

Weak compliance with clearance conditions: On the basis of careful examination of project files, the Committee notes that even after three years after POSCO secured environmental clearance to Phase I (4MTPA) of the steel plant including a 400 MW captive coal fired thermal power project, and the CRZ clearance for the captive port, very little or nothing at all has been done to comply with clearance conditions.<sup>94</sup> The members highlight that the cursory nature of the review of the environmental and social impacts of the project are evident in the fact that "POSCO has prepared an REIA and not a comprehensive EIA for both the steel plant and the captive port... It is evident (thus) that considering the scale of the project, the ecologically sensitive area in which it is sited, the disaster prone nature of the location all warranted a comprehensive EIA. Apart from this, various agencies at different points in time have also pointed out to the inadequacies of data and studies on which the REIA relied in many aspects. In this context it is ..pertinent to point out that in the proceedings of the OSCZMA<sup>95</sup> dated 7.8.2006 there was an assurance by the Company representative that the comprehensive EIA was under preparation which would cover many of the issues raised by the authorities at the meeting in respect tot he minor port". However, through the entire process of review by the Committee, POSCO did not furnish the Comprehensive EIA, and submitted the same only on 11 October 2010, just days before the final report of the committee was released on 18 October 2010. The Members observe that submitting such important assessments on the environmental and social impacts of the mega project **"long after the clearances have been given is an empty formality"**. (Emphasis in original)

POSCO REIA deficient and does not consider impacts of the total project: These three Committee members concur that the REIA on the basis of which the clearances were accorded is wholly deficient. They highlight that the document even fails to provide accurate description of even the basic geography of the impact zone, such as the location of wetlands, and that there is a mismatch between the ultimate capacity as claimed in the application for clearances and that assessed in the REIA for the actual scale of the project. As an example the Members state that "the captive power plant will have to be expanded from 400 MW to 1300 MW by the end of the third phase to meet the requirements of a plant with 12 MTPA capacities" adding that "there will be corresponding increase in all other support infrastructure".

POSCO feels part clearance sufficient for entire mega project: The Members share an experience with the POSCO officials which reveals how they have trivialised the importance of carefully considering impacts of the project on the environment and communities, and of complying with environmental laws. The members share that the POSCO officials "seemed to be under the impression that once clearances for the first phase was obtained the clearances for the next two phases (would) automatically follow". Clarifying that "as the law stands today, extension of production capacities is not automatic and each expansion proposal will have to get prior EC requiring the project proponent to go through the EIA process again". When this aspect of law was discussed, the POSCO officials clarified to the Committee that their intent was to begin construction of the full scale of the total plant (12 MTPA) in "their presentation on 22.9.2010" as "the project is profitable only for 12 million tonnes capacity integrated steel plant", that "if they were restricted only to 4 MTPY capacity plant then (they) would have to reconsider options" including even the possibility of setting up the "plant in other locations closer to the source of iron ore".

MoEF's incompetence exposed in clearing parts of a mega project: About this kind of a roving expedition in securing

ritual clearances that impact seriously the lives and livelihoods of thousands and cause widespread destruction of the local and regional environment, the Committee members opine that “since the land and other infrastructure has been planned for a 12 MTPY capacity integrated steel plant, the project proponent ought to have applied for clearance in respect of the total capacity and not for part of the capacity”. Concluding, therefore, that they are “of the strong view that MoEF should not have given EC for part of the project when all other components /infrastructure of the project such as land, displacement of people, ecological destruction, port construction etc have aimed for full project”. Pungently observing thereafter that such callous regulatory approach “puts a question mark on the scientific prudence of the MoEF”!



*A betel leaf sells at a Rupee when plucked*

#### Odisha Pollution Control Board's complicity exposed:

Similar strong observations have been made about the approach adopted earlier by the Odisha State Pollution Control Board (OSPCB) in extending key statutory clearances under the provisions of the Water and Air (Prevention and Control of Pollution) Acts. The committee discovered that the Board too failed in rigorously reviewing environmental and social impacts of the overall project comprehensively, and also of its legal compliance. A grave anomaly in the decisions of the Board is highlighted by the fact that its Technical Committee during review had raised a variety of questions of “substantial importance” about the potential environmental impacts of the project”. But “the records supplied” to the committee “do not reveal that these issues were ever addressed before the clearances were given”. In fact the members

record with shock that “even before these queries ha(d) been satisfactorily answered by the project proponent, the company ha(d) been recommended for clearances and issu(al) of Consent to Establish” the project.

MoEF Regional Office warned of widespread environmental consequences, but was ignored by Delhi: Interestingly, the Committee records that the Regional Office of the MoEF at Bhubaneswar had strongly criticised such callous approach adopted in reviewing the mega project's environmental and social impacts. Raising the need for appraising the cumulative impact of the project, the Regional Office had urged the Impact Assessment division of the Ministry (which monitors the functions of the Environmental Appraisal Committee and Coastal Regulation Zone clearance divisions) not to approve the project till all the details relating to the overall project were furnished comprehensively and competently by POSCO. The Regional Office had specifically requested the Ministry to ensure that a variety of assessments had to be carried out before deciding on the issue of according clearance, and in particular highlighted the need for the following:

- a) “initiating studies on ecological implications of development;
- b) Long term study on the impacts due to erosion of creeks/banks, deepening of the creek and widening of the river mouth;
- c) study of the population and community ecology of phytoplanktons and zoo plankton and impact of increase of oil and grease concentration in the sea water on these organisms;.....
- d) continuous monitoring on ecology of Olive Ridley turtles”, etc.

The Members then report that “though these comments were sent (by the Regional Office) much prior to the clearances, none of them seem to have been seriously considered by the EAC”. They proceed to record that “it is evident that at least three committees – Technical Committee, Iron and Steel Sector, State Pollution Control Board, Orissa with respect to REIA of Steel Plant and the Orissa State Coastal Zone Management Authority on Captive Minor Port have raised important queries calling for further information and comprehensive EIA from the Project proponents both on the steel plant and the port. However on a perusal of the minutes of the EAC in respect of the port and the steel plant (the minutes) reveal that these queries have been completely ignored”. Recording their strong displeasure at such an abysmal state of environmental review, the Committee asserts that **“a mere assertion by the project proponent and a meek acceptance of the same by the EAC is not at all a satisfactory approach”**. Commenting later about the manner in which the critical environmental clearances of such massive projects are reviewed in general, the Members observe that “we were informed that the EAC usually takes up the applications seeking environmental clearance in bulk and several projects are given clearance in one day”! And caustically comment that “this comes across as an unsatisfactory state of affairs”.

Did Chidambaram pressurise Raja to clear POSCO? Having so thoroughly investigated the process of clearances accorded to the POSCO project, the members query if such callousness was a result of “interference by the Ministry of Finance?” This conjecture is raised because the Committee found on a “perusal of the files of the MoEF.. that there is a file noting on 8.5.2007 that an update on POSCO was sought by the Ministry of Finance. There was a letter dated 09.05.2007 from the Director, Department of Disinvestment, Ministry of Finance requesting that the status of the POSCO proposal on the integrated steel plant be provided to the Ministry by 18.05.2007 as the Finance Minister was meeting the members of the Investment Commission on 24.05.2007”. Thereafter they observe that the “clearance for the port was granted on 15.05.2007”. Such plausible interference did not end there, the Members report. In fact “there was another letter dated 4.06.2007 once again from the Ministry of Finance seeking the status of the Application for the clearance by 11.06.2007 as a high level review meeting regarding progress of POSCO was slated for 16.6.2007. The EAC hastily cleared the steel plant at its meeting on 20.06.2007”. Based on this expose' the Members state that **“the committee is constrained to comment that the proximity of the dates between the letters from the Finance Ministry and the hasty processing of the approvals by the MoEF and the EAC despite the serious shortcoming and illegalities is more than a mere coincidence. It is very clear that not all is well with the functioning of the MoEF”**. In a strongly worded conclusion, the members state that they “are also constrained to observe that **the brazen interference of the Ministry of Finance into functioning of another Ministry is most unfortunate, highly improper and against public interest”**. (Emphasis added)

It is important to note here that on 17 May 2007, Mr. A. Raja, now in Tihar Jail on charges of corruption in the Spectrum Allotment Scandal (2G Scam), handed over the Environment Ministry portfolio to become India's Telecom Minister. Two days prior to this transition, he accorded the CRZ clearance for the POSCO port. Normally, no senior politician takes such major decision on the verge of such a major transition, essentially to avoid accusations of corruption. During this period the Finance Minister was Mr. P. Chidambaram (now Union Home Minister). Once Raja took over the Telecom Ministry, MoEF was directly under the control of Prime Minister Manmohan Singh. During this period all affairs of the Ministry were almost entirely managed by Ms. Meena Gupta in her position as then Secretary – the top most executive post.

Committee recommends revocation of all clearances granted to POSCO: On the basis of this exhaustive and systematic review of project documentation, project clearance files of the OSPCB, Orissa government, MoEF, and submissions by POSCO, project affected communities, PPSS and others, and on the basis of numerous meetings with many parties involved and affected by the decisions, Devendra Pandey, V. Suresh and Urmila Pingle constituting an absolute majority of the Committee headed by Meena Gupta, recommended unanimously that:

1. “In view of the glaring illegalities which render the clearances granted illegal, the EIA and CRZ clearances dated 15.5.2007 for the port and the EIA clearance dated 19.7.2007 for the steel plant should be revoked after following the due process of law.
1. The project proponent if it so desires may prepare a comprehensive EIA for both the port and the steel plant in accordance with the notifications now in force including all the various components of the project such as rail and road transportation, pipe line, township, mining, etc. for the full capacity of the plant and its components.
2. If the project proponent applies, a fresh public hearing may be conducted on the basis of the new comprehensive EIA to be prepared by the company.
3. In the meantime no body should be dispossessed of their land and since all clearances are ..prior to the commencement of construction no alterations of any nature should be permitted on ground.”



## Chapter 9: The making of a 'Rightless People' by Jairam Ramesh

The damning indictment by two independent review and investigation committees appointed by Jairam Ramesh, exposing gross inefficiency and complicity of key environmental decision making bodies in subverting the rule of law on the basis of fraudulent submissions of information did not go well with the Odisha or Indian Governments keen on ensuring the POSCO venture succeeded. Ramesh needed to act with extraordinary responsibility and prudence as his decision would have a telling effect on the lives of thousands of affected families and sensitive ecosystems. In the end, the onerous role of faithfully implementing India's environmental, forest protection and the historic forest rights laws was with the Minister for Environment and Forests.

For weeks after the Meena Gupta headed Independent Committees had submitted their findings, Jairam Ramesh said very little about POSCO. The capacity to react and act immediately, that had become his *forte*, was somehow missing now. A month later, newspapers reported Jairam Ramesh saying that “(i)t is a complex issue and facts are being considered. We will take an integrated call and final view on it, which will be fair and balanced”. Adding further that “(i)t is clear that we will not take months to decide. The decision will be taken within a couple of weeks”.<sup>96</sup> This was said in the context Government of India's efforts to play down the possibility of the Committees' findings adversely affecting the POSCO project and the success of the Prime Minister's visit to South Korea to attend the G20 summit. In fact the Indian Indian Ambassador to South Korea, S. R. Tayal, expressed enormous confidence that the beleaguered project would be cleared when he shared that “(t)here is no signal from the South Korean government that there is any effort to drop the Posco project. There is a common desire on both sides to see the project through. Every effort is being made by all stakeholders.”<sup>97</sup>

Quite obviously, there was enormous pressure on Jairam Ramesh from various political quarters and business interests to clear the POSCO project. Local project affected communities were meanwhile confident that a final decision would be in their favour, given the widespread evidence of fraud in decisions taken favouring POSCO. There was a widespread agreement that revocation of clearances granted would now be the correct and legal step forward. Hope rested heavily on the fact that Ramesh had not wilted under pressure in rejecting the Vedanta project on the basis of the Saxena Committees findings, which had similarly exposed grave illegalities in clearance decisions. Ramesh even fuelled this hope when he made several statements to the effect that the findings of Investigative Committees were being carefully reviewed by various statutory review mechanism of the MoEF, in particular the Environmental Appraisal Committee (EAC), the Coastal Regulation Zone Committee (CRZ committee) and the Forest Appraisal Committee (FAC).

### **Jairam supports environmental fraud, as he claims POSCO is of “strategic significance”:**

Jairam Ramesh finally decided on 31 January 2011 and approved the environmental and CRZ clearances granted with additional conditions. But he kept the decision relating to diversion of forest land conditional to Odisha Government providing “a categorical assurance” that it had not violated the Forest Rights Act when seeking diversion of 1253 hectares (approx. 3,000 acres) of forest land . When so deciding Ramesh claimed, rather preposterously, that his intention was to ensure “laws on environment and forests must be implemented seriously”. He argued that the additional conditions would satisfy all serious concerns raised on the project's environmental and social impacts, but such claims proved vacuous as most of these conditions required that more studies need to be done to assess the project's impacts.

A peculiar situation had emerged as protecting the fundamental rights of project affected people was sought to be resolved merely on the opinion of the Odisha Government and not on fact. Even as Jairam Ramesh did not find anything amiss in sustaining the POSCO clearances that were admittedly, as the findings of the investigative committees revealed (as also the need to impose additional conditions proved), extended without reliable evidence of the potential impacts of the mega venture. Such argumentation is clearly illogical, and illegal even. The success of public administration is predicated on ensuring decisions are rigorously compliant with the rule of law, for which decision takers must not spare any effort to source accurate information. That should especially be the case when the decision risks the futures of thousands of people and of the use of India's natural resources. Clearly, no decision can be based merely on conjecture or “assurance”, be they categorical or otherwise.

Many have found this decision of Ramesh shocking as he was perceived as one of the few Ministers in the Union Government who had repeatedly asserted and demonstrated by the importance of implementing the Rule of Law. He had demonstrated a fairly independent streak in his decision taking of this critical Ministry and rejected several big ticket projects. For instance, he had cancelled clearances granted to the massive Vedanta Bauxite Mining project in Niyamgiri Hills in Odisha on the basis of the findings of the N. C. Saxena Committee that reported comprehensive violation of Forest Rights Act, amongst other statutory violations. In another decision that had major ramifications on the role of biotechnology in growing food, Jairam Ramesh ordered a moratorium on the commercial release of India's first genetically modified food – Bt Brinjal. This was based on unprecedented public consultations that he personally held nation-wide. In this decision he argued that it was prudent to override official approvals accorded by the Genetic Engineering Approval Committee, as the scientific review body had not sufficiently validated the claims of GMO developers that all is well with the product. Ramesh had also relied substantially on legal principles, particularly the Precautionary Principle, in support of his decision.<sup>98</sup>



*Four generations in a family lead a life of contentment supported by Paan Kethis, paddies and fishing*

The answer to why Ramesh approved POSCO is provided in January 2011 “speaking order”, under a section ominously titled “A Final Word”. Here Ramesh claims that “(u)oubtedly, projects such as that of POSCO have considerable economic, technological and **strategic significance for the country**”.

Therefore, it must be inferred, that clearances accorded to such a project must be sustained regardless of the fraud on which they had been secured. Without doubt, the entire exercise of reviewing the project, its decisions, its clearance and its impacts by two Independent Committees, members of which Jairam Ramesh had hand-picked, and also all the public resources that had been invested in these investigative exercises, had come to naught.

### **Snuffing out of Forest Rights in any manner possible:**

Despite the 31 January decision approving environmental and coastal regulation zone clearances accorded to POSCO with additional conditions, the need for “categorical assurances” from the Odisha Government that it had complied with Forest Rights Act in the project affected areas remained a major bottleneck. The Odisha Government was once more being tested to prove its credentials in being supportive of agrarian and forest dwelling communities. On the one hand was the importance of implementing a legislation to set right historical injustices and on the other was the need to secure the State's, and the country's, biggest industrial investment ever.

In the months following Ramesh's 31 January decision, both the Odisha Government and Panchayats of project affected villages repeated the exercise of determining forest rights. Wholly contradicting submissions were made; the State claiming the Forest Rights Act did not apply to the region, while the Panchayats proving that it did. For Jairam Ramesh this was a problematic situation, and he wanted this resolved without affecting his credentials or that of the Union Government.

Towards the end of April 2011, there was a flurry of communications on this subject between three levels of the Odisha government and the Government of India claiming the non-applicability of Forest Rights Act. All this was undertaken over exactly three days in clearly unprecedented haste. It is on this trail of concurring reports that Jairam Ramesh relied upon finally for his 2<sup>nd</sup> May 2011 decision approving diversion of forest land for the POSCO project. A careful examination of the core arguments that Ramesh proposes are essential because it prepares grounds for the subversion of one of India's most progressive legislations in recent times, even as the decision now paves the way for the displacement of thousands of natural resource dependent families in POSCO project affected villages.

The core arguments supporting the Odisha Government's stand that Forest Rights Act does not apply in the project affected area is presented in an official report dated 27 April 2011<sup>99</sup> submitted by Narayan Jena, IAS, Collector and

District Magistrate of Jagatsinghpur to Mr. Santosh Sarangi, IAS, Commissioner-cum-Secretary of the SC and ST Development Department of the Government of Odisha. Jena in his letter is extremely wordy, argumentative and also levels various accusations against the Gram Panchayats (*Palli Sabha* as they are known in Odisha) of Dhinkia and Gobindpur, including that they have committed fraud in demanding the implementation of the Forest Rights Act. The effort essentially is of promoting the picture that there are no legitimate forest rights that the local communities can claim, and thus all the resolutions passed by the *Palli Sabhas* are not merely illegitimate but also based on fraudulent documentation. He makes hair-splitting arguments alleging that the Sarpanch Shishir Mohapatra of Dhinkia Panchayat, who is also a key leader of PPSS, is the architect of this fraud and has violated various provisions of the Odisha Grama Panchayat Act, 1964. On this basis he threatens criminal action against the Sarpanch.

According to Jena on “4<sup>th</sup> October, 1961, the Government of Orissa in Development (Forest) Department published a Notification u/s 29 of the Indian Forest Act 1927 declaring the forest lands and waste lands of Kujang forest areas as protected forest”. He claims thereafter that “(n)o land of Nuagaon and Dhinkia G.Ps. (Gram Panchayats) was covered under such notification.” This even as he submits in an immediately earlier paragraph that “(f)or some time, after vesting, all forest of Kujang area remained under management of Tahasildar, Kujang. Subsequently, such management was transferred to Forest Department with effect from 15<sup>th</sup> Nov, 1957 and the Tahasildar Kujanga transferred, inter alia, the management of all the unsurveyed forest blocks thirty in number which he got from the Burdhaman Raj Estate to the D.F.O. , Athagarh vide letter No. 57 dated 23.11.1957. None of the villages in Nuagaon & Dhinkia G.Ps was un-surveyed forest block and none of them was transferred to the DFO, Athagarh for management of any forest land therein.” But he offers no verifiable documentation in making this proposition. (Emphasis added)

The Collector then proceeds to admit that by law there was restriction imposed “....on alienation of communal and forest land by the ex-intermediates without permission of the Collector. In the year 1950 Shri M. N. Guha, the Collector, Cuttack permitted the Maharaja of Burdhaman to lease out thousands of acres of forestland for agricultural purpose. The Collector, granted such a permission on receipt of an enquiry report from the Chief Conservator of Forest, Orissa, Cuttack.” On the basis of these submissions he claims that: “*Surprisingly in his report dated 7<sup>th</sup> January, 1950 the Chief Conservator of Forest has not mentioned about the forest of Nuagaon and Dhinkia though he has devoted an entire chapter on encroachment of forest land in the village Bhuyanpal.*” And merely because the names of these POSCO project affected villages are “not mentioned” in the 1950 report of the Chief Conservator of Forests, Jena proceeds to conclude without any evidence or rationale that “(i)t is, therefore, **not justified to say that there were any traditional forest dwellers dependant on such forest for their bonafide livelihood needs**”. And soon thereafter he damningly sentences against the Forests Rights of communities by stating, “**(h)ence there was no traditional forest dweller linked to the above area.**”

Despite Jena's convoluted efforts to obfuscate facts and even misrepresent them to disadvantage communities of their due Forest Rights, he ends up admitting in his rather long report that:

- a) the region was largely forest land and thousands of acres were leased out for agriculture in the post independent period,
- b) the land use was changed but without alienating their legal status, especially if they were “communal and forest land”, and
- c) there have been many official reports of the continuous dependence on forests by local communities.

Such mischievous, deliberately false reporting by a District Collector cannot and should not be taken lightly at all. In fact it is grounds for serious litigation, and also for investigation into the basis and the motivation by which the officer made such wrong assumptions. Particularly considering that such shocking arguments have formed the basis for sidestepping completely the legitimate applicability of the Forest Rights Act and thus questionably advancing the displacement of thousands and devastation of forests. It is exactly this kind of logic and argument that should be treated with severity in the review by a senior officer, in this case none less than the Commissioner-cum-Secretary of the SC and ST Development Department whose job it is to protect the Fundamental Rights of SCs and STs against any abuse and violation. None of which has happened, of course.

SC/ST Commissioner-cum-Secretary Sarangi supported Jena's arguments and forwarded the report to the Forest and Environment Department on 28 April 2011.<sup>100</sup> He further claimed that “(t)here are no Tribals within the project area and no other person has established his/her claim regarding residing in the forest area for 75 years prior to 13.12.2005 or having credible dependence on the forest land for bonafide livelihood needs for 75 years”. This argument was in turn supported by Mr. B. P. Singh, IFS, Spl. Secretary of the Odisha Environment Department who in his submission on 29 April 2011 to the Ministry of Environment and Forests claimed that “....the process of implementation of Forest

Rights Act, 2006 has been completed in POSCO project area”.

### Who takes the blame for non-implementation of Forest Rights

Despite all such hyper-technical arguments by the State Government, the question of applicability of Forest Rights Act had to be overcome. The substantial proof of gross violation of statutory norms exposed by Committees had to be overcome. One way to do that would be to prove that the evidence presented by the independent fact finding Committees were wrong. That Ramesh did not do, or simply could not. So instead of taking responsibility for this colossal failure of his Ministry in fully and rightfully securing the Forest rights of local project affected communities, Jairam Ramesh preferred to pass the onus of proving these findings wrong onto the Odisha Government. This he had already done in his January decision when he had sought a “categorical assurance” from the Odisha Government that

the Forest Rights Act had not been violated. Simply stated, this amounted to asking a project proponent to find or create evidence in order to continue to benefit from the approvals granted. This was the kind of opportunity the Odisha Government would not lose.



*Shishir Mahapatra, Sarpanch of Dhinkia Panchayat (second from right) is now targeted for demanding forest rights. Seen here with his family*

Even as the Odisha Government was busy on developing the basis of its “categorical assurance”, during end April 2011 Jairam Ramesh visited Odisha. When media persons questioned him on this position on the then pending POSCO decision, he claimed the ball is in Odisha Government's court. But within days of returning to Delhi he approved the diversion of forest land for the POSCO project in yet another of his “speaking orders” issued on 2<sup>nd</sup> May 2011. In this decision, he leaned rather heavily on the claims of the Odisha Government

that Shishir Mahapatra, Sarpanch of the Dhinkia Gram Panchayat has violated the Odisha Gram Panchayat Act, 1964 because he overstepped his “jurisdiction” and convened the *Palli Sabhas* illegally. Thus these resolutions claiming forest rights and rejecting POSCO were invalid. The mighty Minister had found a fall guy, and who better than the humble Sarpanch of a Gram Panchayat?

To blame a Sarpanch too, there have to be some legal arguments thrown in. The allegations of Odisha Government against Mahapatra, which Ramesh accepted, included claims that the resolutions submitted by the Dhinkia *palli sabha* were fraudulent and that they lacked sufficient quorum. These were claims made by Jagatsinghpur Collector Jena, in his 27 April 2011 report. Ramesh hung on to this dearly and argued that “proceedings of the *palli sabha* should be recorded in a book specially maintained for this purpose” but the Collector reports “the resolutions under question are not available in that book”. Therefore, as Indian Minister for Environment and Forests, he had “no option but to come to the conclusion that there have been no legally valid resolution of the Gram Sabha claiming recognition of forests rights as required under section 6(1) of the Forests Rights Act, 2006”. So straining is the effort to make this charge, that Ramesh invests several paragraphs of his 5 page order to make this peculiar argument against Shishir Mahapatra. But not to be caught on the wrong side, were the Odisha Government's “assurance” found to be false later, he covers himself with a caveat. This is stated as follows:

**“I also expect that the state government would immediately pursue action, under the Orissa Grama Panchayat Act, 1964, against the Sarpanch, Dhinkia for what it has categorically said are 'fraudulent' acts. If no action is taken forthwith, I believe that the state government's arguments will be called into serious question”.** (Emphasis in original)

Clearly, therefore, Ramesh admits, rather unequivocally, that he is simply not sure about the facts on a matter as

critical as determining forest rights. He overlooked the possibility that when operating under the climate of fear imposed by Odisha Government's action of deploying a large police force and wrongly accusing most adults in the POSCO affected villages of false criminal cases, there could be very little possibility of the independent functioning of the Gram Panchayat. Whatever the Panchayat stated or resolved, if found to be opposed to the interest that the State Government was pursuing, would be attacked and discredited by the latter. Jairam Ramesh also overlooked a critical admission by the Odisha Government that the resolutions of the Forest Rights Committees were generally being recorded in formats supplied by the government, and not in registers. Such registers did not exist for all Forest Rights Committees in the entire State, but were now invented to cheat people of their legitimate forest rights in the POSCO project affected areas.

#### **Ramesh's flip flops on Forest Rights, and reduces its implementation to mere options:**

In stark contrast, only two weeks earlier, Jairam Ramesh had stated in his 14 April 2011 "speaking order" that "the state government had earlier categorically denied the authenticity of documentation<sup>101</sup> submitted by the POSCO Pratirodh Sangram Committee, (but) I do believe that these two Resolutions have to be disposed off by the appropriate authority in accordance with the Forest Rights Act, 2006". This had then given room to a growing perception that Ramesh attached absolute importance to the genuine implementation of the Forest Rights Act and that he would not compromise on this aspect. The perception was also buttressed by his clarification in this order that Odisha Government must provide its "categorical assurance" that the Forest Rights Act does not apply to the POSCO affected project "...especially keeping in mind the provisions of Section 4 (5) of the Act which states: Save as otherwise provided, no member of a forest dwelling Schedule Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed." Ramesh had additionally issued what then seemed to be a clear warning to the Odisha Government against short-changing due forest rights when he concluded this communication thus: "Ignoring these two Palli Sabha Resolutions and not allowing them to be subjected to a due process of law as enshrined in the Forest Rights Act, 2006 would be tantamount, in my considered opinion, to violating the very essence of this legislation passed unanimously and with acclaim by Parliament." (Emphasis added)

Switch forward by two weeks to the 2<sup>nd</sup> May 2011 "speaking order" of Jairam Ramesh, and what we discover is that he has reduced the question of deciding fundamental rights enshrined in claims of forest rights to mere opinions and options before him, not facts. As he says "I now have three options available to me.

- ⤴ Seek further legal opinion on what the state government has stated.
- ⤴ Institute an independent inquiry into the claims and counter-claims being made by the state government and the PPSS.
- ⤴ Repose trust in what the state government has so categorically asserted".

Ramesh quickly rejects the first two options by stating that "I have already examined the legal issues.. and therefore there is nothing to be gained by seeking further legal opinion", without, of course, sharing the rationale for his legal argument to overrule the first and the second option. In justification of the adoption of the third he states that "...the fact of the case, in particular the lack of signatures of two-thirds of the village adult population on the resolution passed by the Sarpanch, are too obvious to require any further enquiry or verification". Further stating that "I must respect the reports from the SDO<sup>102</sup> and the Collector. **Their views and also of the state government must prevail unless there is overwhelming and clinching evidence to the contrary.**" (Emphasis added) Even as he makes an important observation in a footnote that such reliance on the state government's position is despite "...the fact that the state government has been actively canvassing for the project..", in a sense admitting to pressure. In another important footnote, Ramesh says this: "Just as I am releasing this decision, PPSS has sent me another representation which, in the interests of full transparency, is at Annexure IV". There is no clarification whatsoever if he went through this representation, and whether he should have held his decision pending what was stated in the representation, given the possibility that it would expose the hollowness of his decision.

This is what PPSS states in the representation dated 2<sup>nd</sup> May 2011:

- ⤴ "As per the Ministry's order of July 30, 2009 and clarification on the POSCO final clearance (8.1.2010), certificates from the palli sabha consenting to the diversion of forest land, and stating that the FRA has been implemented, are required. The state government has not supplied these. **Without certificates from the palli sabhas the project cannot go ahead and the Ministry cannot permit it to do so, except by violating the law and its own orders.** (Emphasis in original)

- ✧ The (Odisha) government has simply lied about the palli sabha resolutions. It claims there were only 69 and 64 signatures on the resolutions, but the hard copies of the full resolution – with more than 70% quorum in both Dhinkia and Gobindpur villages – were sent by registered post A/D to all Odisha government authorities and to the Ministry. **We believe that the Odisha government has deliberately used the scanned electronic copies sent to you, whose covering letter explicitly stated that only the first page of signatures was being included. The hard copies are already with you, and the veracity of their statements can easily be checked.** We have already established that these are valid. (Emphasis added)
- ✧ Besides, while accusing the villagers of having not met quorum, the government cites a “resolution” signed by 34 people (in a village of 1907 people) as proof of implementing the Forest Rights Act. Does quorum only apply to resolutions sent by us and not to ones sent by them? Can there be any better proof that they have not implemented the Act, and therefore that diversion would be illegal, as correctly stated in the April 14<sup>th</sup> letter?”

The representation then adds:

“It is remarkable that the Ministry continues to take no action when the Odisha government and POSCO have broken clearance conditions, violated the Forest Rights Act and the EIA/CRZ notifications, challenged the Ministry's authority and, finally, lied to the Ministry's face. If this is not sufficient to require withdrawal of the clearances, we fail to understand what would be.”

#### A “faith and trust” decision to overcome incontrovertible legal evidence:

Confronted by what clearly are two independent and contesting claims on the applicability of the Forest Rights Act, and also the fact that the Investigation Committees have found that there is more than ample evidence that the Odisha Government has not implemented the Forest Right Act in the project affected areas, and given the fact that there are other traditional forest dwellers and tribals in the POSCO affected villages, it would be imperative for India's Environment and Forests Minister not to abdicate his responsibility of protecting the rights of the weakest. Ramesh, though, is untroubled by all these justice considerations. In what is an unprecedented leap of faith, he claims in his final decision in May that **“Faith and trust in what the state government says is an essential pillar of cooperative federalism which is why I rejected the second option.** Beyond a point, the bona fides of a democratically elected state government cannot always be questioned by the Centre”. (Emphasis in original)



*Villagers are rebuilding temples in the faith that their struggles against displacement will succeed*

By implication, therefore, he questions the bonafides of the claims of the communities to their forest rights, and also that of the constitutionally independent Gram Sabha and its resolutions. In addition, he has discarded without any rationale whatsoever, the findings of two committees that he appointed, both arriving at the same conclusion: that there are people in the POSCO affected areas who have legitimate claims under the Forest Rights Act, that the Odisha Government has not at all implemented this Act in these villages and thus violated their claims, and, consequently, that this constitutes a fundamental violation of their Fundamental Rights. Overall, by so arguing his case, Jairam Ramesh admits that he is really not sure about the facts of this critical matter involving forest rights, but his articulation gives the impression that he really does not care to

know either.

In a federal structure of governance of India, local elected governments are in no way inferior to the elected bodies at the State level. Ensuring such separation of powers and autonomy in functioning in each of the three tiers of governance is the whole purpose of the Panchayati Raj Act, the Forest Rights Act and such other such provisions in the Constitution. When such is the law of the land, a Minister simply does not enjoy privileges of rating the State's position

over that of a Panchayat based merely on his understanding of “cooperative federalism”, or for that matter his “faith and trust” in a state government.

Despite all his “trust and faith” in the Odisha Government's claims, Ramesh does express some serious doubts about the capacity of Odisha Government to protect the interest of the State of Odisha and the people of India when he says that the POSCO “MOU had provisions for the export of iron ore which **made me deeply uncomfortable with this project**” (emphasis added). He also admits that he “could well have waited for the MOU to be renewed and for a final decision of the Supreme Court” which is hearing an appeal on the decision of the Odisha High Court cancelling the out of turn allotment of Kandadhar mines benefiting POSCO, while ignoring over 200 applicants who had been waiting for long. But he dismisses the possibility peculiarly claiming that it “would have smacked of filibustering”!<sup>103</sup>

Despite all these defences, the plain and simple question that cries out for an answer is why Jairam Ramesh did not wait for these critical decisions of the Supreme Court when they are critical to the viability of the project? This especially considering the fact that the mining component of the project is an integral part of the overall scheme of POSCO, and the company officials are on record that were the mines not approved, they would look for alternative locations to establish the integrated project. Having expressed serious doubts over the nature of the MOU, and dismissing them as irrelevant to the context, raises serious worries over what compelling need there was to rush to clear a project that has failed to comply with any of the environmental clearance conditions imposed way back in 2007? And this when the project is without sufficient legal support as the MOU of 2005, based on which most clearances are being secured, has lapsed and has not been renewed yet.

By such arguments, the Minister has exposed his prejudice against claims of forest dwelling and dependent communities who are unable to secure their rights because of the oppressive climate of fear imposed by the Odisha Government. In addition, he exposes as hollow his claim to rigorously enforce India's environmental and forest laws. Surely, Jairam Ramesh is aware that the environmental laws of India are based on the criminal procedure code, and that he is duty bound to spare no effort in ensuring that material submitted in seeking clearances are valid in law. In case there was false, misleading or fraudulent information submitted there is remedy under law to criminally charge those involved. When such options exist, they must be fully seized, so that fundamental rights are not compromised due to the mistakes or fraud by anyone. If there is a dispute on facts in deciding on such critical matters, the required scientific and legal evidence must be ascertained, and no action initiated merely on the basis of the opinion of the Minister.

By not prudently exploring these available options, Jairam Ramesh has directly and irreversibly affected the livelihoods of hundreds of farming and fishing families who have a very weak possibility of restarting their lives. His decision fundamentally decides the fate of sensitive ecosystems and of critically endangered species.

### Creating a “rightless” people:

Perhaps Jairam Ramesh does not realise that by his confounding decision, he has now made the communities affected by the POSCO project into a ‘rightless people’, to use an expression that philosopher Hannah Arendt, a Jewish victim of the Nazi oppression, used to describe people denied fundamental rights by hegemonic systems of operation. Comparing the shocking Jewish experience during the World Wars to the current situation of the POSCO affected communities may seem rather severe and inappropriate, but not when we closely observe what she says is the nature of a ‘rightless people’ in her seminal contribution “*The Origins of Totalitarianism*”<sup>104</sup>:

“The first loss which the rightless suffered was the loss of their homes, and this meant the loss of the entire social texture into which they were born and in which they established for themselves a distinct place in the world. This calamity is far from unprecedented; in the long memory of history, forced migrations of individuals or whole groups of people for political or economic reasons look like everyday occurrences. What is unprecedented is not the loss of a home but the impossibility of finding a new one.”

For the POSCO affected communities, the denial of their forest rights by Jairam Ramesh's decision, has the exact same effect as what Arendt describes as “..the loss of the entire social texture into which they were born..”. Without community land and forest, what use is the livelihood of so much evidence crying out for attention establishing the due forests rights of the communities, and that too after playing with their emotions after giving them hopes of justice over several months. The process by which he formulated his decision, therefore, assumes the character of a situation that Arendt describes as “(e)very event had the finality of a last judgment, a judgment that was passed neither by God

nor by the devil, but looked rather like the expression of some unredeemably stupid fatality.”

Noted jurist Upendra Baxi critiques the Indian experience with the Rule of Law and concurs that “...the pathologies of governance are indeed normalizing modes of governance as a means of controlling (to evoke Hannah Arendt’s favourite phrase) “rightless” peoples. The jurispathic attributes of the Indian Rule of Law at work can be described best in terms of social reproduction of rightlessness.”<sup>105</sup>



## Chapter 10: Not a Final Word

Following the controversial and highly questionable 2<sup>nd</sup> May 2011 decision of Indian Environment and Forests Minister Jairam Ramesh to finally approve diversion of forest land for the POSCO India project, there is now an ominous threat of employing brute force in acquiring lands of the resisting communities. In so approving such fundamental violation of human rights and damage to the environment Ramesh has comprehensively sidestepped, and discarded even, the findings of two independent POSCO project review committees that he constituted during 2010. The stated intention of these independent reviews was to assess the extent to which POSCO project complied with forest, environmental, coastal regulation and other statutory requirements. By implication, therefore, it meant that the report would have a binding effect on the decision of MoEF with regard to POSCO. Why else would a Minister find it fit to invest so much effort and resources in this exercise?

The manner in which Jairam Ramesh has dissembled has disappointed communities affected by POSCO. They had rested their hopes on his ability to stand up for their just cause. Despite all the transparency that Jairam Ramesh has demonstrated in sharing the documentation that formed the basis of his decisions, affected communities are painfully aware of the fact that their Forest Rights, which is in an integral part of their Fundamental Rights, have been snatched by subterfuge. Narayan Jena, the District Collector of Jagatsinghpur lied on record when he said historically the dependence on forests by the villagers affected by POSCO could not be established. As shown in this study, this is simply not true. From the writings of Andrew Sterling to Derry, and the more recent documentation of Hota and others, it is clear that there has been an intricate dependence on forests for a variety of livelihood needs over centuries. It is also an uncontestable fact that these traditional rights to the forest and village commons have been recognised by the Odisha Government as recently as in 1961. Had Jairam Ramesh invested his efforts in seeking out the truth, if he did not sufficiently trust the competence of two independent investigation committees that he constituted, and which exposed the fraud involved in clearing the POSCO project, he could have at least reviewed the historical evidence that supports the long held demands of local communities to forest rights. Instead in a stunning display of farcical reasoning, which simply has no place in law, he decided to invest his “faith and trust” in the blatant lies of the Odisha Government that claimed the the Forest Rights Act did not apply to the project affected villages.

The criminality of such denial of Fundamental Rights should shock the conscience of our society, but perhaps because they have become so commonplace none in the corridors of power seem affected. From his several 'speaking orders' Jairam Ramesh makes it amply clear that he is not certain if the 'facts' as proposed by the Odisha Government are reliable. But instead of establishing facts beyond any doubt, as should be the effort of a Union Minister, he has joined the Odisha Government in a highly questionable project of targeting Sarpanch Shishir Mohapatra of Dhinkia with criminal fraud. Allegedly the Sarpanch did not conduct the *Palli Sabha* meetings in strict compliance of law. But this cannot be the reason for denying Fundamental Rights of communities who have lived in these villages for generations, and have no need or intention to leave them for anything else.

Despite this situation, villagers of Dhinkia, Gobindpur, Nuagaon, Noliasahi, Polanga, Bayanalkandha, Bhuyanpal and Jatadhar villages are clear in their pursuit of protecting their fundamental rights. A predominant number of these villagers are also absolutely clear that it is for sustaining POSCO's interests that the Odisha and Indian Governments have and will attack their struggles for Fundamental Rights. They have experienced for long and are aware that illogical, irrational, inhuman and illegal means will be employed against them for opposing the POSCO project. Their struggles, therefore, are not merely about whether the POSCO kind of venture should be supported, or even where it should be located. They are reminding the nation as a whole that the POSCO project is a test case of how rigorously we will protect traditional forest rights, and resist acts of wrongful dispossession of land, property and the very Right to Life, Livelihood and a Clean Environment. Following Jairam Ramesh's controversial “faith and trust” decision, the affected communities in Jagatsinghpur are bracing up for a major battle against the Odisha state intent to displace them by snuffing out their rights.

In the most potent demonstration of their intent not to give up their Fundamental Rights, these communities have actively and peacefully resisted, for six years now, various attempts to acquire their lands and dispossess them of their forests and coastal areas. This has meant standing up to the tremendous violence and a climate of fear that has been unleashed over the years by the Odisha police: frequent custodial tortures, public shaming by police, arrests on false cases, vicious attacks, repeated framing of movement leaders with false cases to cause their arrests, and so on have all been part of this experience. Other consequences, such as not receiving development assistance from a variety of government projects, has also been employed to punish these villages for resisting what the Odisha Government claims is in the interest of the state and the country.

The affected communities have also had to recover from the harsh sufferings imposed by the unforgiving cyclones that repeatedly batter this region. Surely it is not in their experience to expect the Government to gently assist them to bounce back to normal life and routine. They are not complaining. Instead they are moving on with their lives, evident especially in several of them rebuilding their homes, or constructing new ones.

The affected communities are also barricading their villages to prevent any entry by POSCO officials or those from the Odisha Government. They are opposing the State which is intent on making them a “rightless people”.

#### **POSCO project is designed to loot our natural resources:**

A POSCO type deal should be a matter of grave concern to our polity. But in an era where spectacular scales of scandals and scams compete with each other for attention, the outrageous nature of the loot of our iron ore that the POSCO type of project symbolises, seems to have slipped through the cracks of our political landscape. This question, however, has been raised in a Public Interest Litigation filed by Arun Agrawal in the High Court of Karnataka and is pending final adjudication.<sup>106</sup> Agrawal's PIL raises fundamental questions about the penchant of various State Governments to conclude MOUs with foreign investors on the claim that it will benefit the people of India. This claim is attacked by Agrawal as nothing short of using the process of law to accommodate the loot of India's natural wealth – iron ore in this case, and to benefit large transnational corporations and their Indian political-bureaucratic supporters who gain immensely from the unbelievably stupendous profits that are made.

Agarwal's PIL in particular attacks Karnataka Government's approval of massive steel production and mining proposals of the giant corporation Arcelor Mittal of UK and the South Korean POSCO. He bases his arguments on the fact that these MOUs are modelled on the one between Odisha Government and POSCO and argues that:

“The in principle clearance by High Level Committee headed by the Chief Minister to 6 million tonnes per annum steel plant each of foreign steel producers Arcelor Mittal of UK and Posco of Korea (which have) in principle agreed to invest approximately Rs 30,000 crores each (on the basis of) iron ore mines for the production of 6 million tonnes of steel (that) are allotted to them....is in the process of gifting natural resources worth billions of dollars under the old and discredited excuse of attracting foreign capital and not making any effort to obtain reasonable and market related value for the iron ore. The amount of investment brought in by these so called investors is a fraction of the value of the mines and minerals being handed to them at a token royalty of 10%. The investment that they are making to exploit the mineral wealth is for their personal profits. The earlier economics of allotting captive iron ore mines to private steel producers is no more valid as the price of iron ore has shot up from Rs 300 tonne to over Rs 5000 per tonne in the last seven years. The State is duty bound to negotiate terms that maximizes the benefit of the natural mineral resources for the benefit of the people of the State...(and must) ensur(e) that the people of the State get a fair deal for their natural resources and the same is used for the benefit of the people of the State in a manner envisages under Article 39(b) of the Constitution. The amount involved is over 50 billion dollars at current prices for the two projects alone and is likely to be much more as the global economy recovers, resource gets scarcer and the ore becomes more expensive. It is an amount that the poor people of the State cannot afford to forgo and is in violation of their rights under Article 14 and 21 of the Constitution.”

In the case of the POSCO project in Odisha, the mining permit promised as per the MOU is for 600 million tonnes over 30 years and spread over 6,100 acres of Kandadhar hills – known for some of the best iron ore found in India. 60% of the ore mined can be exported by POSCO without any processing and value addition in India. Given the very high cost of such fine ore in the international market, stupendous profits will be made by such exports, which will all be expatriated at a tremendous loss to the Indian exchequer with legal support from the Indian and Odisha governments. If the value addition that will likely take place when this exported ore is processed in POSCO's South Korean steel plants is factored in, it becomes evident that the loot of India's natural resources will benefit their economy, not ours. Further, were the project to succeed in establishing itself in Jagatsinghpur despite staunch resistance from the local communities, what it will leave for Odisha is literally massive amounts of fly ash, highly degraded coastal ecosystems and forests, and thousands of dislocated families whose futures will be irreparably destroyed.

The benefits accruing from such loot and destruction will not be of South Koreans alone, but of several international companies, mainly American. This is because POSCO is now an internationally held group with its major shareholders being large U.S. banks such as Citibank and JP MorganChase, each of which own 5-10% of POSCO's equity, and one of

the richest individuals in the world, Warren Buffett, who owns approximately 4 million shares of POSCO's stock.<sup>107</sup> So much misery is heaped on project affected communities today and the irreversible loot of our natural resources that truly belong to future generations is being justified on the claim of supporting the progress and development of India, when, evidently, such projects only assist the ravenous profiteering of large transnational corporations.

For our aggressive decision makers who care not to take cognisance of such fundamental concerns, lost as they are in their reckless game of holding on to power by increasingly corrupt means, they only need to consider carefully the analysis of Joseph Stiglitz, former Chief Economist of the World Bank, who also served as Economic Advisor to former US President Bill Clinton and is the winner of Nobel Prize for Economics- 2001. In his seminal contribution *"Globalisation and its Discontents"*<sup>108</sup> Joseph Stiglitz analyses what foreign direct investment by transnational corporations does to developing economies:

"There is more to the list of legitimate complaints against foreign direct investment. Such investment often flourished only because of special privileges extracted from the government. While standard economics focuses on the *distortions* of incentives that result from such privileges, there is a far more insidious aspect: often those privileges are the result of corruption, the bribery of government officials. The foreign direct investment comes only at the price of undermining democratic processes. This is particularly true for investments in mining, oil, and other natural resources, where foreigners have a real incentive to obtain the concessions at low prices. Moreover, such investments have other adverse effects – and often do not promote growth. The income that mining concessions brings can be invaluable but development is a transformation of society. An investment in a mine – say in a remote region of a country – does little to assist the development transformation, beyond the resources it generates. It can help create a dual economy, an economy in which there are pockets of wealth. But a dual economy is not a developed economy."

These cautionary notes are often lost on our politicians and senior bureaucrats who in their fervour of securing big projects shut their doors to every voice of reason. There could be many reasons why they so choose to ignore such critical concerns, and one could well be the possibility of making large volumes of money based on their corrupt practices. This, perhaps, was the case with scam tainted A. Raja who accorded the first major statutory clearance for POSCO. But what about Jairam Ramesh and the role he has now played in promoting POSCO? Especially when he seems to be well aware that this project is about the irreversible loot and plunder of India's natural resources which concern he expresses in his final pro-POSCO decision when he states that the "MOU had provisions for the export of iron ore which **made me deeply uncomfortable with this project**" (emphasis added). Ramesh also admits that he "could well have waited for the MOU to be renewed and for a final decision of the Supreme Court", which is hearing Odisha Government's appeal against the decision of the Odisha High Court that cancelled official out of turn allotments of mining permits for POSCO ignoring applications of over 200 applicants who were waiting for long. But justifies not waiting for these crucial decisions for he claims it would have amounted to "filibustering"!

It is not filibustering to protect the rights of forest dependent communities, or to implement effectively India's environmental and forest protection laws, and protect India's natural resources for the benefit of current and future generations. It is in fact the sworn duty and obligation of every official and Minister, not merely of those who are officially meant to protect the environment, forests and just socio-economic development. Implementing the law is not a balancing act, but the very basis of the business of public administration. Two investigative reports established beyond any doubt that the POSCO project was cleared on the basis of fraud and misrepresentation. The right action to follow would have been to cancel the clearances granted, initiate criminal proceedings against all those involved in these illegal decisions and subject the project to a fresh review. But Jairam Ramesh decided that it was not in India's "strategic" interest to do this. By his 2<sup>nd</sup> May decision he has thus supported all that is wrong with the environmental decision making system that he officiates, and also everything that is wrong with the POSCO kind of project.

### **Did A. Raja dubiously usher POSCO through?**

The role that A. Raja played in promoting POSCO cannot be overlooked at all. There is a strong likelihood that the corrupt practices allegedly engaged in by Raja as Telecom Minister, may well have begun in his earlier dispensation as Union Environment and Forests Minister (2004-07). POSCO may well have been a major beneficiary of a combination of factors that possibly involved Raja's corrupt ways and gross dilution of environmental regulatory norms that happened under his watch.

Just a day before Jairam Ramesh decided to finally approve the POSCO project, there was an important development in the ongoing investigation by Central Bureau of Investigation (CBI) into Raja's murky dealings as Telecom Minister in the Spectrum allotment scandal (2G Scam). The CBI decided to expand the scope of its investigation against Raja to include those decisions that he made when he was Environment Minister. This was because they suspected something was grossly wrong with the rash of environmental clearances accorded to 2,016 projects in a little over two years! A key link was their ongoing investigation against DB Realty involved in the 2G scam, and that the company's projects had benefited from corrupt environmental clearances for their project when Raja headed the Ministry. The front man for Raja in his alleged corrupt operations while in Environment Ministry is said to be R. K. Chandolia, then director of planning and coordination in the environment ministry, and who followed Raja as his Economic Advisor in the Telecom Ministry, and then again into Tihar Jail on charges of corruption in the 2G scam.

POSCO was one of the mega projects that Raja cleared, beginning with its captive port component. This decision was taken on 15<sup>th</sup> of May 2007, exactly a month after the controversial statutory Environmental Public Hearing on the project was held. Reports of this tainted Hearing were rushed to Delhi to fulfil a legal requirement and the port was cleared by Raja in the final hours before he transitioned from the Environment Ministry to his new role as Telecom Minister. Normally when such big decisions have to be taken on mega projects, no Minister risks approving them on the eve of his transition, largely to avoid accusations of corruption. But Raja was made of a different mettle, clearly.

The unseemly haste by which Raja cleared the port component of the massive POSCO project was a strong indicator of favourable decisions that were meant to follow. Meena Gupta, who took charge as Secretary of Environment Ministry on 1st June 2007 from Pradipto Ghosh, ensured that the environmental clearance to the steel plant was accorded on 19th July 2007 without much ado. On 9<sup>th</sup> August 2007 the in-principle forest clearance was also accorded to POSCO. At that time the Environment Ministry was without a Minister and was directly under the supervision of the Prime Minister of India – thus with little possibility of a close watch over executive decisions and accountability to the public. Despite all this evidence, or possibly because of which, Ramesh appointed Meena Gupta to officiate over the Investigation Committee into POSCO that he instituted, resulting, not surprisingly, in her single dissenting note which favoured the pro-POSCO decisions that had issued by MoEF when she headed the Ministry.

Just as it would be specious to believe now that Raja and Chandolia began their corruption racket only in the Telecom Ministry, it would also be naïve to think that their alleged corrupt ways in the Environment Ministry took place without anyone else's knowledge. The CBI's investigative guns are now trained on the long and corrupt alliance of this politician-bureaucrat nexus. These guns should not be limited to only investigating possible corrupt practices involved in clearing DB Realty projects, but must also include POSCO or any other project that has been so advanced illegally. Everyone involved in the cover-up must be exposed.

### **Did Prime Minister and Finance Ministry pressurise Raja to clear POSCO?**

There is now documentary evidence that suggests that Prime Minister Dr. Manmohan Singh demonstrated an uncharacteristic interest in ensuring POSCO project was cleared in a hurry. In a meeting chaired by the Prime Minister, and attended by Odisha Chief Minister Naveen Patnaik, then Indian Finance Minister P. Chidambaram, Deputy Chairman of Planning Commission Montek Singh Ahluwalia and range of senior officers including then MoEF Secretary Pradipto Ghosh, a review was undertaken of the progress of projects in Odisha state. The minutes of this meeting<sup>109</sup> reveal that the status of clearance secured by POSCO assumed pre-eminent importance in the discussions.

It is reported that the “Chief Minister of Orissa drew the attention of the Prime Minister and the Finance Minister to the issues related to the Pohang Steel Company (POSCO) and Kudremukh Iron Ore Company Limited (KIOCL)” and in particular sought clarification with respect to the policy applicable to Special Export Zones (SEZs) and whether the Government of Orissa could acquire land for POSCO which had requested that the project complex area be treated as an SEZ, or whether POSCO would need to acquire land by itself”. It is plausible that the Chief Minister was sharing his concern over KIOCL contesting the out of turn allotment of mining rights to POSCO, and strongly urging the PM to step in and ensure the investor got what was being demanded – land to begin with, hopefully with the assistance of the State and the Centre.

The minutes acknowledge that “Ministry of Mines informed that out of 41 applications for mining lease and 210 applications for prospecting license, the Government of Orissa had disposed off only 47 applications”. But the dispute remained over interpretation of the Mines and Mineral (Development and Regulation) Act with the Central Mines Ministry being opposed to out of turn allotment of mining permits and that it “would be the best route for the State

Government and the Government of India” as “several Court rulings .. support this”. The Finance Minister is stated to have said that “the issue of applicability and appropriateness of (relevant provisions of the law) will be examined by the Ministry of Mines, but State Government of Orissa should consider the alternate possibility of following Sections 11 (2) and 11 (3) of the Act”, which does not support State Government's contention of out of turn allotments of mining permits.

What followed thereafter appears to be a discussion on the status of clearances relating to the POSCO steel plant, and the minutes reveal that “it was decided that the issues relating to land for the POSCO project should be addressed. While land for SEZ's could not be compulsorily acquired by State Governments, land can be acquired by agreement with land owners and the State Government could appropriately advise POSCO. **The proposal of forest land conversion should be prepared and submitted for approval within a month. Similarly, environmental clearance should be obtained soon**”. (Emphasis in original.)

This meeting seems to have set the tone for what followed. On 8<sup>th</sup> May 2007, T. Thiagarajan of the Department of Disinvestment of Ministry of Finance wrote a letter<sup>110</sup> to MoEF requesting “an update on POSCO project concerning various environmental/forest aspects” and that this **“may please be sent to this Department urgently so that the matter could be put up to the higher authorities by 8<sup>th</sup> May 2007”**! (Emphasis added) The very next day in another letter<sup>111</sup> to the same officers of MoEF, Suchindra Mishra of the Ministry of Finance states that “the Finance Minister is scheduled to meet the members of the Investment Commission on 24<sup>th</sup> May 2007 to discuss the recommendations made by the Investment Commission. It is therefore requested that the present status of grant of environmental clearance for the project cited above may be intimated to the undersigned by 18<sup>th</sup> May 2007”.

The pressure from the Ministry of Finance to push MoEF to clear POSCO did not end there. On 4<sup>th</sup> June 2007 S. K. Nag, Deputy Secretary of the same Department wrote<sup>112</sup> to the same officials of MOEF stating that “a high level review regarding progress of POSCO India Project is slated for 15<sup>th</sup> June 2007. It is therefore requested that the present status of grant of environmental clearance for the project cited above may be intimated to the undersigned by 11<sup>th</sup> June 2007. Whether clearance for integrated steel plant for which meeting was scheduled in May 2007 has progressed may inter alia kindly be intimated”. (Emphasis added.) And then on 7<sup>th</sup> June Saurabh Chandra, Joint Secretary of the same Department of the Ministry of Finance wrote<sup>113</sup> to Ms. Meena Gupta, Secretary of MoEF enquiring if the Prime Minister's April review meeting directive had been complied with and “action taken on the decision ... is intimated at the earliest, so that an Action Taken Report can be submitted in the forthcoming review meeting”. (Emphasis added)

Several letters are exchanged thereafter, wherein MoEF officials share that the project clearances are under review still. But this does not seem to satisfy the Ministry of Finance, which now seems certain to push MOEF to clear POSCO. S. K. Nag is once more on record in a letter of 19<sup>th</sup> June 2007 where he states that “a high level review regarding progress of POSCO India Project, which was scheduled to be held on 15<sup>th</sup> June 2006, has been re-scheduled and **will be held on 27<sup>th</sup> June 2007**. It is therefore requested that the present status of grant of environmental clearance for the project cited above may be intimated to the undersigned by **22<sup>nd</sup> June 2007**”. (Emphasis in original)

Is it any wonder that in the face of such intense pressure from then Indian Finance Minister P. Chidambaram, to get POSCO approved, that A. Raja cleared the port on 15 May 2007, and Meena Gupta accorded environmental clearance for the steel-power components on 19<sup>th</sup> July 2007?

The question that begs answers is why the Prime Minister and Finance Minister were so keen on ensuring the POSCO project was cleared, in such a tearing hurry, and when almost all the review processes of its impacts were far from over.

## ENDNOTES

- <sup>1</sup> Orissa was officially renamed Odisha by the Parliament of India on 9<sup>th</sup> November 2010. The official language Oriya was also renamed Odiya on that day.
- <sup>2</sup> Karnataka Government in its 2010 Global Investor's Meet concluded an MOU with POSCO to establish a massive steel plant in Gadag district. Acquisition of 3,500 acres of land for this venture has now been initiated.
- <sup>3</sup> A copy of the MOU may be accessed at the official site of the Odisha Government at: <http://www.orissa.gov.in/posco/POSCO-MoU.htm>
- <sup>4</sup> This policy was commonly employed in the early days of liberalisation of the Indian economy to lure foreign direct investment. It was extended to foreign direct investors wary of investing in India, and the guarantee essentially covered all political and business risk. In the event a project failed, the Indian State absorbed all the costs and the investor virtually walked away without any liabilities. Such a policy was criticised for allowing inherently unviable investments to masquerade as sound investments, resulted in a major drain on the exchequer and was eventually withdrawn based on a directive from the Reserve Bank of India.
- <sup>5</sup> Mines and Minerals (Development and Regulation) Act, 1957 and Mineral Concession Rules, 1960, respectively.
- <sup>6</sup> The Press Release prepared by Central Statistical Organisation, dated 31 August 2009, is accessible at: [http://www.mospi.nic.in/PRESS\\_NOTE\\_Q1\\_31aug09.pdf](http://www.mospi.nic.in/PRESS_NOTE_Q1_31aug09.pdf)
- <sup>7</sup> Gram Panchayat is the Village Council, the basic unit of directly elected local government and is the third tier of governance per the Panchayat Raj Act, 1992.
- <sup>8</sup> MTPA: Million tonnes per annum, also referred to as MTPY: Million tonnes per Year
- <sup>9</sup> "Forced clearance of Posco: Scam Larger Than Spectrum In The Making", Sam Rajappa, The Statesman, 06 May 2011, accessible at: [http://thestatesman.net/index.php?option=com\\_content&view=article&id=368498&catid=38](http://thestatesman.net/index.php?option=com_content&view=article&id=368498&catid=38)
- <sup>10</sup> DTW: Dead Tonne Weightage
- <sup>11</sup> Source: Kujang Tehsildhar and U. N. Behera, Principal Secretary, Government of Odisha.
- <sup>12</sup> In a peculiar anomaly of the Indian Environment Impact Assessment Notification, a subordinate legislation enacted under the Environment Protection Act, massive projects are cleared on the basis of what are termed Rapid EIAs that essentially assess project impacts on the basis of data gathered during one (non-monsoon) season. The intent is to develop a comprehensive EIA if the regulatory agencies so feel, and if sought is a mere ritual with no importance being attached to its contents. Often, the EIA's are never completed. In general, most EIAs are of extremely deficient quality, comprise little or no information of value, and are often based on fraudulent data. There is simply not one instance where consultants hired by investing companies to produce such reports are punished for so submitting fraudulent information to secure statutory environmental clearances.
- <sup>13</sup> More information on the Olive Ridley Turtle can be accessed at: [http://en.wikipedia.org/wiki/Olive\\_ridley\\_sea\\_turtle](http://en.wikipedia.org/wiki/Olive_ridley_sea_turtle) and <http://world-turtle-trust.org/project07.html>, amongst other resources.
- <sup>14</sup> India's Odisha coast is the home of one of the four remaining horseshoe crab species in the world and the species is in serious decline today. According to Wikipedia, "Horseshoe crabs resemble crustaceans, but belong to a separate subphylum, Chelicerata, and are therefore more closely related to spiders and scorpions. The earliest horseshoe crab fossils are found in strata from the late Ordovician period, roughly 450 million years ago. Unlike most species which go extinct after approximately 10 million years on average, the horseshoe crab has changed remarkably little in the last 250 million years." More information can be accessed at: [http://en.wikipedia.org/wiki/Horseshoe\\_crab](http://en.wikipedia.org/wiki/Horseshoe_crab)
- <sup>15</sup> Letter of approval issued by Mr. C. D. Singh, Sr. Asst. Inspector General of Forests, MoEF, No. F. No. 8-63/2007-FC, dated 29 December 2009 addressed to Principal Secretary (Forests), Government of Odisha.
- <sup>16</sup> This Saxena Committee report based on which Minister Jairam Ramesh cancelled the mining leases at Niyamgiri Hills of Odisha can be accessed at: [http://moef.nic.in/downloads/public-information/Saxena\\_Vedanta.pdf](http://moef.nic.in/downloads/public-information/Saxena_Vedanta.pdf). In an unprecedented move, all related documentation pertaining to follow up action is also available in a special focus section on the Ministry's website.
- <sup>17</sup> The Indian Republic Day is on 26<sup>th</sup> January every year.
- <sup>18</sup> Indian Government for close to two decades now has been governed by a coalition of parties, usually dominated by a the party with the largest number of Members of Parliament. The current dispensation is the United Progressive Alliance dominated by the Congress I and headed by Prime Minister Dr. Manmohan Singh. At present UPA is midway through its second 5 year term.
- <sup>19</sup> Inspection note of R. L. Derry, District Forest Officer, Puri Division, Puri on Kujang Estate, Forest, Cuttack, dated 2<sup>nd</sup> January 1930.
- <sup>20</sup> Stirling, Andrew, Esq., "Orissa: Its Geography, Statistics, History, Religion and Antiquities", published along with "A History of the General Baptist Mission" by James Pegg, published by John Snow, London, 1846 and accessible at: [http://books.google.co.in/books?hl=en&lr=&id=vywEAAAQAAJ&oi=fnd&pg=PR8&dq=andrew+stirling+orissa&ots=MSUwRi\\_K\\_F&sig=LuQo2tKjEV6sPXrfHkAk7Y1N6kk](http://books.google.co.in/books?hl=en&lr=&id=vywEAAAQAAJ&oi=fnd&pg=PR8&dq=andrew+stirling+orissa&ots=MSUwRi_K_F&sig=LuQo2tKjEV6sPXrfHkAk7Y1N6kk)
- <sup>21</sup> Sterling makes repeated references to alligators, thus, wrongly, describing the Indian crocodile, more likely the marsh crocodile.
- <sup>22</sup> The current Jagatsinghpur district was then under the control of the Raja of Kanka and Kujang.
- <sup>23</sup> Archaic abbreviation of *et cetera*.
- <sup>24</sup> Cucurbitaceae is a plant family commonly known as melons, gourds or cucurbits and includes crops like cucumbers, squashes (including pumpkins), luffas, melons (including watermelons). Source: <http://en.wikipedia.org/wiki/Cucurbitaceae>
- <sup>25</sup> The Betel (Piper betle) is the leaf of a vine belonging to the Piperaceae family, which includes pepper and Kava, and is credited with a variety of medicinal properties. This is an important cash crop in the region affected by the proposed POSCO project. More information can be sourced at: <http://en.wikipedia.org/wiki/Betel>
- <sup>26</sup> *Final Report on Settlement of Kujang Forest Block 1959-66*, N. R. Hota, I.A.S., Settlement Officer, Cuttack Major Settlement, Cuttack submitted to Government of Orissa vide Director of Land Records and Surveys, Orissa, vide letter No. 4589-III-24/67-L.R.S. Dated 7<sup>th</sup> May 1968.
- <sup>27</sup> *Ibid*, Hota, 1966.
- <sup>28</sup> *Ibid*, Hota, 1966.
- <sup>29</sup> *Ibid*, Hota, 1966.
- <sup>30</sup> A form of premium payment.
- <sup>31</sup> Order of M. N. Guha, Collector, Cuttack, Case Record No. 399 of 1949-50, dated 10<sup>th</sup> May 1950.
- <sup>32</sup> Report of G. N. Das, Asst. Conservator of Forests, dated 17<sup>th</sup> January 1950 to The Chief Conservator of Forests, Orissa, Cuttack
- <sup>33</sup> *Bonker* is an annual fee paid by each tenant in Killa Kujang at Re. 0-4-0 per family for the removal of forests materials from Kujang forest to meet the annual requirements of the tenant for domestic and agricultural purpose. The Naib-Tahasildars of Killa Kujang were the persons authorised to collect the Bonker from tenants and provide a permit pass. Once the permit was obtained, the Bonker had to be paid by the tenant whether

or not the forest produce was recovered.

Order of Anchal Adhikari, Kujang dated 30<sup>th</sup> December 1954.

Order of Shri. B. Das, Deputy Secretary, Revenue Department, Government of Orissa, to The Anchal Adhikari, Kujang, dated 6<sup>th</sup> February 1958, No. 658.E.A

Order of Secretary to the Revenue Department, Govt. of Orissa, dated 31<sup>st</sup> October 1957, No. 18636 E.A. XI-5/57-R.

Order of the Revenue Department No. 1630-IX-52/55-E.A, dated 6<sup>th</sup> March 1956.

Notification of Development (Forest) Department, Government of Orissa dated 4<sup>th</sup> October 1961

Locals say that the sand dunes are so effective in filtering out the salt that the sand on the landward side is low in salt, and thus 'sweet'.

More details about the botanical, cultural and economic importance of this flower can be accessed at:

<http://www.flowersofindia.net/catalog/slides/Kewda.html>

Personal conversations with village elders reveal that these areas were undoubtedly perceived as 'forests' but more in the sense of their biodiversity and not as legally protected forests out of bounds for locals. More appropriately, they thought of this land as belonging to all: traditional village forests and commons.

*Report by the Independent Fact Finding Team on issues related to the proposed POSCO project in Jagatsinghpur (Orissa)*, 19th to 22nd April 2007, involving a team of independent observers comprising Sumit Chakravarty, Editor Mainstream Weekly, New Delhi; Sridevi Panikkar, Delhi Solidarity Group; Bijulal M V, Indian Social Institute, New Delhi; Manshi Asher, National Centre for Advocacy Studies, Pune.

Some years ago MoEF set up a committee to revise the Net Present Value of forests and focussed the exercise on increasing the monetary value of the loss of forests – essentially about trees. The question of loss of soil, water, biodiversity and livelihoods was ignored and remains absent in subsequent discussions.

See for instance details of the 1999 Odisha Cyclone accessible at: [http://en.wikipedia.org/wiki/1999\\_Odisha\\_cyclone](http://en.wikipedia.org/wiki/1999_Odisha_cyclone) (accessed on 15 September 2010)

For a deeper understanding of the critical importance of sand dunes in coastal ecology, refer to Namboothri, N., et. al. 2008. *Policy Brief: Sand Dunes*. UNDP/UNTRIS, Chennai and ATREE, Bangalore, India, 12 p.

FYM = farm yard manure

Kumar, N., "Betelvine (*Piper betle*, L.) Cultivation: A Unique case of Plant Establishment under Anthropogenically regulated microclimatic conditions", Indian Journal of History of Science, 34 (1), 1999.

Personal communication.

Guha, P., "Betel Leaf: The Neglected Green Gold of India", J. Hum. Ecol., 19(2): 87-93 (2006)

A decimal (also spelled decimel) is an obsolete unit of area in India and Bangladesh approximately equal to 1/100 acre (40.46 m<sup>2</sup>). After metrication in the mid-20th century by both countries, the unit became obsolete. Source: [http://en.wikipedia.org/wiki/Decimal\\_\(unit\)](http://en.wikipedia.org/wiki/Decimal_(unit))

Survey of Betelvines – Govindpur village, unpublished, undated.

These assessments are based on interviews with local affected communities conducted by the first author of this report during September 2010.

Report on Socio-economic Survey of POSCO-India Steel Project at Paradeep, Orissa, prepared by Envirocheck in association with ERA Consultancy Pvt. Ltd., undated.

"Land as Livelihood vs Land as Commodity", Walter Fernandes, accessible at: <http://infochangeindia.org/200804167047/Agenda/Battles-Over-Land/Land-as-livelihood-vs-land-as-commodity.html>

SEZ: Special Economic Zones constituted by the Special Economic Zones Act, 2006

Ramanathan, Usha, "Eminent Domain and Sovereignty", Seminar India, Issue 613, accessible at: [http://www.india-seminar.com/2010/613/613\\_usha\\_ramanathan.htm](http://www.india-seminar.com/2010/613/613_usha_ramanathan.htm)

Hota, *op cit*.

As was customary, the Commissioner of the district recorded the events in the Gazette. Access to these records is available at the online archives of National Library of New Zealand, and in particular this link: <http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&d=TT18860217.2.34&l=mi&e=-----10--1---0-all>

Ibid.

Livelihood Security in Emergencies: Learning from Orissa Super Cyclone, Actionaid, India, accessible at:

[http://www.sphereproject.org/dmdocuments/Orissa/Case%20Study\\_Actionaid.pdf](http://www.sphereproject.org/dmdocuments/Orissa/Case%20Study_Actionaid.pdf).

Rao, A. D. et. al., "Numerical Modeling of Cyclone's Impact on the Ocean— A Case Study of the Odisha Super Cyclone", Journal of Coastal Research, September 2007.

The United Nations "Basic Principles and Guidelines on Development- based Displacement and Evictions" are accessible at:

[www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf)

The United Nations Guiding Principles on Internal Displacement are accessible at: [http://www.reliefweb.int/ocha\\_ol/pub/idp\\_gp/idp.html](http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html)

These records are accessible on the Authority's website at this link: <http://www.osdma.org/ViewDetails.aspx?vchlinkid=GL002&vchplinkid=PL005>

<http://www.osdma.org/ViewDetails.aspx?vchlinkid=GL002&vchplinkid=PL006>

This description of flood prone zones, and the extent of the problem, is accessible at: <http://www.osdma.org/ViewDetails.aspx?vchlinkid=GL002&vchplinkid=PL006>

Das, Saudamini, "Can Mangroves Minimize Property Loss during Big Storms? An Analysis of House Damage due to the Super Cyclone in Orissa", South Asian Network for Development and Environmental Economics (SANDEE) Working Paper No. 42-09, July 2009.

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71 Consent to Establish Jatadhar Port on North Western Bank of Jatadhar Mohan river creek (an integral part of the proposed steel complex) by M/s POSCO India (P) Ltd., vide Office Memorandum dated 08 November 2006, No. 27466/IIInd-II-NOC-4447.

72 Environmental Clearance for construction of Captive Minor Port by M/s POSCO-India Pvt. Ltd. at Jatadharmohan Creek confluence near Paradeep, issued by Ministry of Environment and Forests (IA-III division) on 15 May 2007, vide order no. 10-9/2006-IA-III.

73 Environmental Clearance for Integrated Iron and Steel Plant (4.0 MTPA) with Captive Power Plant (4x100 MW) by M/s POSCO-India Pvt Ltd, issued by the Ministry of Environment and Forests on 19<sup>th</sup> July 2007, vide order No. J-11011/285/2007-IA(I)

74 Report of the “POSCO Public Hearing” by Madhumita Ray, undated. Also see the Press Release of Action Aid on this Hearing at: [http://www.actionaidindia.org/Declare\\_Posco\\_public\\_hearing\\_press\\_release.htm](http://www.actionaidindia.org/Declare_Posco_public_hearing_press_release.htm)

75 Details of Port of Port Talbot may be accessed at: [http://en.wikipedia.org/wiki/Port\\_of\\_Port\\_Talbot](http://en.wikipedia.org/wiki/Port_of_Port_Talbot)

76 A good description of “Capesize” vessels is accessible at: <http://en.wikipedia.org/wiki/Capesize>

77 Report on Landuse/Landcover of about 10 Km aerial coverage of the Proposed Project site of POSCO India on the Western Bank of Jatadharmohan River Creek near Paradip in Jagatsinghpur District of Odisha, Centre for Study of Man and Environment, Kolkata on behalf of M. N. Dastur & Company (P) Ltd., Kolkata, August 2006.

78 Rapid Marine Environmental Impact Assessment for Setting up of a Captive Minor Port at Jatadharmohan Creek near Paradeep in Orissa, National Institute of Oceanography, under assignment by M/s M. N. Dastur & Co., March 2006.

79 CD = Chart Datum or Mean Sea Level

80 ROUT, D. K. & G. BEHERA. (2001). Characterization of olive ridley nesting beaches in Orissa using remote sensing. In: Shanker, K. & B. C. Choudhury (eds.), Marine Turtles of the Indian Subcontinent. Universities Press, Hyderabad, India, pp. 380-392.

81 Contrast this with a condition imposed on the Mangalore Refineries and Petrochemicals Ltd. in 1995, where the discharge point was to be 5 kms. into the sea, and not 1 km. as is the case in the POSCO project. A clear case of diluted standards being applied to the benefit of the investor.

82 For a discussion on the implications discharging blow down water from cooling towers of power plant into the sea, see: Chandy, J., et. al., *Effect of Brine Blowdown Discharge from a Desal/Power Plant on Marine Life*, Technical Report No. SWCC (RDC) -16 in December, 1991. Also refer to a discussion on Blow Down Water at: [http://www.allianceforwaterefficiency.org/blow\\_down\\_water\\_introduction.aspx](http://www.allianceforwaterefficiency.org/blow_down_water_introduction.aspx)

83 Ministry of Environment and Forests has insisted in many earlier decisions relating to ash dumps, some over a decade old, that such facilities must be designed with a minimum of 50 cms impermeable concrete lining to protect ground water and surface water aquifers from serious pollution. The Hazardous Waste Rules also require such high standards must be maintained where heavy metals are involved, which fly ash and bottom ash do contain.

84 Circular No J-11013/41/2006-IA.II (I) of the Ministry of Environment and Forests, (IA Division) , dated 13th October 2006 regarding “EIA Notification 14 September 2006 – Interim Operational Guidelines till 13 September 2007 in respect of applications made under EIA 1994”.

85 This report is so described because former Commerce Secretary V. Govindarajan headed a Committee of Secretaries and Consultants reporting directly to then Ministry of Disinvestment and the Prime Minister's office, and was endowed with the task of prepping a “Report on Reforming Investment Appraisals and Implementation Procedures”, essentially a blue print to clear what were perceived as bottlenecks to securing foreign direct investment and identify. The final report was submitted to the Prime Minister in 2002, accepted *in toto* and has since been faithfully followed in clearing the bottlenecks – mainly identified as clearances under environmental and forest laws of India. The report can be accessed at: <http://dipp.nic.in/implrepo1.pdf> Dr. Pradipto Ghosh was a member of this Committee and as Secretary of MoEF sought to implement comprehensively the Govindarajan Committee recommendations.

86 This report is accessible at: <http://www.forestrightsact.com/corporate-projects/item/download/43>

87 Letter of Asst. Inspector General of Forests, Ministry of Environment and Forests (F. C. Division), to the Principal Secretary (Forests), Government of Orissa, dated 5<sup>th</sup> August 2010, No. F. No. 8-63/2007-FC.

88 Writ Petition (C) No. 202 of 1995, T. N. Godavarman Thirumalpad vs. Union of India and ors. Pending adjudication before the Hon'ble Supreme Court of India.

89 The only case that exists in the Supreme Court now on the POSCO project is an appeal of the Odisha Government against the 14<sup>th</sup> July 2010 decision of the Odisha High Court cancelling out of turn mining permits accorded to POSCO to access 2,500 hectares of forest land in Kandadhar region of Sundergarh district. The environmental, social and other impacts of this component of the project has never been considered for clearance, yet, by any statutory authority at the State and the Centre.

90 Vide MoEF (F.C. Division) Order dated 28<sup>th</sup> July 2010, Ref. F. No. 8-63/2007-FC.

91 Vide MoEF (F.C. Division) Order dated 27<sup>th</sup> August 2010, Ref. F.No. 8-63-FC.

92 This report along with all other decisions taken by MoEF on the POSCO issue is accessible at: <http://moef.nic.in/modules/others/?f=Posco>

93 That is when *palli sabha* meetings were held state wide between March 16<sup>th</sup> and March 23<sup>rd</sup> of 2008 as a critical determinant of implementing the Forest Right Act.

94 The proponent is required to file a six monthly compliance report, and failure to meet the conditions imposed warrants withdrawal of clearances granted.

95 OSCZMA: Odisha State Coastal Zone Management Authority

96 “Decision on Posco Orissa plant in a couple of weeks: Jairam”, Hindu Business Line, 20 November 2010, accessible at: <http://www.thehindubusinessline.com/todays-paper/article1009828.ece?ref=archive>

97 “Posco to maintain steely resolve, says Indian envoy”, Sify Finance, 12 November 2010, accessible at: <http://www.sify.com/finance/posco-to-maintain-steely-resolve-says-indian-envoy-news-equity-klmbOOgehgi.html>

98 The Minister's report ordering moratorium on release of Bt Brinjal may be accessed at: [http://moef.nic.in/downloads/public-information/minister\\_REPORT.pdf](http://moef.nic.in/downloads/public-information/minister_REPORT.pdf) and the report of the Consultations that he held in formulating the decision is accessible at: [http://www.cceindia.org/cee/pdf\\_files/bt\\_brinjal\\_report.pdf](http://www.cceindia.org/cee/pdf_files/bt_brinjal_report.pdf)

99 Communication from the Office of the Collector and District Magistrate, Jagatsinghpur, No. 940 dt. 27 April 2011 to the Commissioner-cum-Secretary, ST & SC Development Department, Government of Odisha, Bhubaneswar

100 Communication from Commissioner-cum-Secretary, SC & ST Development Department, Government of Odisha, No. 13745/SSD, dt. 28 April 2011

101 Referring to the same Palli Sabha resolutions, the authenticity of which the Odisha Government has contested.

- <sup>102</sup> SDO refers to Social Development Officer or Senior Divisional Officer, as appropriate, possibly the latter in this case referring to the Commissioner-cum-Secretary of SC/ST Development Department.
- <sup>103</sup> “A filibuster is a type of [parliamentary procedure](http://en.wikipedia.org/wiki/Filibuster). Specifically, it is the right of an individual to extend debate, allowing a lone member to delay or entirely prevent a vote on a given proposal.” More about this can be accessed at: <http://en.wikipedia.org/wiki/Filibuster>
- <sup>104</sup> “The Origins of Totalitarianism”, by Hannah Arendt, Meridian Books, The World Publishing Company, 1951. The text of this book is accessible online at: [http://www.archive.org/stream/originsoftotalit00aren/originsoftotalit00aren\\_djvu.txt](http://www.archive.org/stream/originsoftotalit00aren/originsoftotalit00aren_djvu.txt)
- <sup>105</sup> “The Rule of Law in India”, by Upendra Baxi, Sur vol.3 no.3 São Paulo 2007, accessible at: [http://socialsciences.scielo.org/pdf/s\\_sur/v3n3se/scs\\_a01.pdf](http://socialsciences.scielo.org/pdf/s_sur/v3n3se/scs_a01.pdf)
- <sup>106</sup> High Court of Karnataka, Writ Petition 1475/2010 (PIL), between Arun Kumar Agrawal and State of Karnataka.
- <sup>107</sup> For a comprehensive review of the economic fallout of the project, please review “*Iron and Steel*” referred to before and also “Buffett wants to Raise Posco Holdings, Company Says” January 19, 2010, Bloomberg accessible at: <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a.ueBzbdab2E>
- <sup>108</sup> “Globalisation and its Discontents”, Joseph E. Stiglitz, Penguin Books, 2002.
- <sup>109</sup> Minutes of the Meeting chaired by Prime Minister to review the progress of projects in Orissa pertaining to infrastructure sectors held on April 19, 2007 in Room No. 155, South Block.
- <sup>110</sup> Letter of T. Thiagarajan, Under Secretary to the Govt of India, Department of Disinvestment, Ministry of Finance, to Dr. G. V. Subrahmaniam, Director, MoEF and Anwar Ahmed, IGF, MoEF, dated 8<sup>th</sup> May 2007, F. No. 4/1/2005-DOD.
- <sup>111</sup> Letter of Suchindra Mishra, Director, Department of Disinvestment, Ministry of Finance to MoEF, dated 9<sup>th</sup> May 2007, No. 2/8/2007/DD-II
- <sup>112</sup> Letter of S. K. Nag, Deputy Secretary of Department of Disinvestment, Ministry of Finance to MoEF, dated 4<sup>th</sup> June 2007, No. 4/1/2005/DOD
- <sup>113</sup> Letter of Surabh Chandra, Joint Secretary, Department of Disinvestment, Ministry of Finance to Ms. Meena Gupta, Secretary, MoEF, dated 7<sup>th</sup> June 2007, No. 2/11/2007/DD-II