

Cividep-India

Workers' Rights and Corporate Accountability

A Manual on Corporate Accountability in India

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LIST OF ABBREVIATIONS

CA	Companies Act 1956
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
CLB	Company Law Board
EIA	Environment Impact Assessment
FEMA	Foreign Exchange Management Act 1999
FIR	First Information Report
FRA	Forest Rights Act 2006
FDI	Foreign Direct Investment
MCA	Ministry of Corporate Affairs
MoEF	Ministry of Environment and Forests
MNC	Multi-National Corporation
NGO	Non-Governmental Organisation
POSCO	Pohang Iron and Steel Company Ltd
PPSS	POSCO Pratirodh Sangram Samiti (Anti-POSCO Peoples Movement)
SEBI	Securities and Exchange Board of India Act 1992
SEZ	Special Economic Zone
RBI	Reserve Bank of India

INTRODUCTION

The purpose of this manual on Corporate Accountability in India is foremost to give an overview of case studies of different organisations such as CSOs, NGOs and Peoples (Mass) Movements that are active in campaigning against corporate-related human rights abuses by MNCs. The manual attempts to capture their particular strategies and campaigning methods whilst also highlighting their successes and failures.

The first part of the manual provides an introduction to Business and Human rights related regulations in India, looking at directors duties as well as reporting requirements for companies under Indian company law. It also presents CSR initiatives by the Indian government.

All in all, companies can be held accountable for certain labour and environmental rights violations although there are no reporting requirements on their social and environmental impacts and no duty on companies to consider the human rights related impacts of their subsidiaries. This demonstrates that the concept of Business and Human Rights is still evolving and effective legal provisions have yet to be implemented within Indian company law.

The second part of the manual comprises a case study on the resistance of the Anti-POSCO Peoples Movement against the fourth largest steel producer in the world, POSCO and its intention to set up a steel plant as well as a captive port in the state of Orissa. This industrial project is the biggest FDI project in India to date at a cost of US\$12 billion. The case study highlights the projects impacts on human rights and the environment as well as the governments negligence in implementing FRA as well as other important regulations. It also looks at the granting of clearances to the company without proper impact assessments. Finally, the case study looks at the formation of the Anti-POSCO People

Movement as well as its major campaigning strategies. Its successes and failures are portrayed and the relevant findings of the POSCO enquiry committee summarized.

This part of the manual is to be continued, with the addition of more case studies against MNCs from across other sectors and the campaigns around them. The aim is to make this a useful guide on campaigning strategies, methods and tools for social activists, NGOs and CSOs. Contributions from other organisations on their campaigning strategies are welcome and valuable in this regard.

PART I

THE LEGAL LANDSCAPE OF BUSINESS AND HUMAN RIGHTS IN INDIA

Business and Human Rights in India

According to a study by the law firm Amarchand Mangaldas (2009) the intersection between business law and human rights in India is still relatively narrow. The following section will summarize the most relevant Acts and regulations passed in India that seek to protect human and environmental rights.

India has a tradition of common law. Corporate law is regulated at a federal (Union) level through the MCA and the CLB. The MCA can investigate companies and penalize companies for any non-compliance of its regulations, the most relevant in this regard is the CA.

SEBI regulates businesses in the security markets and protects investor interests. FEMA and the RBI regulate all FDI in India. In the case of a violation of any of the provisions of FEMA, the RBI can impose a penalty of up to three times the amount of money involved.

Moreover, the Competition Commission of India has the power to penalize companies that enter into anti-competitive agreements.

India has ratified the following international conventions:

- Universal Declaration of Human rights 1948
- International Convention on elimination of all forms of racial discrimination 1965
- International Covenant on Economic, Social and Cultural rights 1966, and
- Convention on the elimination of all forms of discrimination against women 1979

The Indian Constitution grants fundamental rights to all citizens. This includes:

- Equality before law
- Freedom of Speech & Expression
- Right to Life, and
- Freedom to practice Religion

These fundamental rights are enforceable only against the State. Government companies are classified as the State and thus are liable to punishment for violation of any of these fundamental rights.

The following Acts and regulations are also relevant when looking at Business and Human Rights in India:

- Protection of Human Rights Act 1993
- Consumer Protection Act 1986
- Competition Act 2002
- Special Economic Zones Act 2005
- Labour legislation, for example Contract Labour (Regulation and Abolition) Act 1970, Minimum Wages Act 1948, Factories Act 1948, and
- Environmental protection laws, for example Environment (Protection) Act 1986, Forest Rights Act 2006

Incorporation and Listing

In her report 'Business Law and Human Rights in India' for Civil Initiative for Development and Peace (Cividep) the author Alice Gartland (2008) describes an incorporated entity as follows:

“An incorporated company is a distinct legal entity and generally has a persona distinct from its members. Indian law recognizes a number of incorporated organisations including: statutory corporations; trusts (charitable or private); and societies. Incorporated companies can have limited or unlimited liability.”

On incorporation a company acquires its own separate legal personality and can therefore be called to account by legal action. It is distinct from its shareholders and directors by what is referred to as the veil of incorporation. This veil of incorporation can impact upon corporate accountability in a number of ways, particularly because in reality a company's business is carried on by and for the benefit of some individuals. Therefore in certain circumstances it may not be appropriate to simply call into account the company as a separate entity and a court may ignore the corporate character and look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice to the parties concerned, a process known as 'piercing the corporate veil' (Gartland 2008).

The corporate veil can be lifted to hold parent company liable for its subsidiary but only in exceptional circumstances. Courts can lift the corporate veil in cases where the company is a mere sham, commits economic offences or tries to avoid welfare legislation. Moreover, the corporate veil can be pierced to prevent fraud or improper conduct and tax evasion. Finally, courts may pierce the corporate veil to determine whether the personalities of the subsidiary and the holding company are to be recognised as being separated.

Presently in India there are no statutory provisions for companies to respect human rights once incorporated, however companies should be set up for a lawful purpose.

The most common forms of companies are defined in the CA and can be divided into the following types:

a. Company limited by shares (private and public)

Companies limited by shares have their own legal identity. These companies are limited in that the liability of the shareholders to the creditors of the company is limited to the amount of capital remaining unpaid on the shares held by them.

b. Private companies

Private companies must have at least two members, cannot have more than 50 members and must have a minimum paid up capital of Rs.100,000. Private companies cannot offer shares or debentures to the public for subscription.

c. Public companies

Public companies must have at least seven members and must have a minimum paid up capital of Rs.500,000. They can be listed or unlisted.

d. Private companies that are subsidiaries of public companies

A private company that is a subsidiary of a public company is included under the definition of public company under the CA. Certain sections of the CA that only apply to public companies and not to pure private companies also extend to private companies that are subsidiaries of public companies.

e. Foreign companies

A foreign company can be registered in India if it has a branch office or a presence in India. A special disclosure and registration process is required.

f. Listed companies

The CA does not make a distinction between listed and unlisted public companies. Listed companies are public companies that are listed on the stock exchanges in India. The most popular stock exchanges in India are the National Stock Exchange and the Bombay Stock Exchange.

A listed company is required to comply with rules and regulations issued under SEBI as well as the Listing Agreement entered into with the relevant stock exchange(s) where its shares are listed, in addition to compliance with the CA. Eligibility criteria for listing do not include any social or environmental standards.

However, S&P ESG India index exists as a responsible investment index choosing from a pool of the top 500 companies listed on the National Stock Exchange.

Directors' Duties

Under the CA a director has a “fiduciary duty towards the company and must act in bona fide manner for its benefit.” These fiduciary duties include:

- To act in good faith and in the best interests of the company
- To exercise their powers for a proper purpose i.e. to act in a way that does not prevent the majority of shareholders from exercising their rights
- To avoid conflicts of interest i.e. the director must not put themselves in a position where there is an actual or potential conflict between their personal interest and those of the company, and
- To not make secret profit, i.e. they cannot use their position to make personal profit from the opportunities their professional position may present.

The legal consequences for failing to fulfill any of these duties include the possibility of filing a complaint with the CLB for oppression or mismanagement. Directors can also be held liable for breach of trust and criminal breach of trust under the Indian Penal Code.

However, Indian courts can relieve directors from their liability under the CA where they have “acted honestly and reasonably despite having been found guilty of negligence/breach of duty/trust” (Amarchand Mangaldas 2009).

Directors not only owe a duty to their company but are also liable to shareholders and may face unlimited pecuniary liability and imprisonment if they defraud creditors. However, there is:

- No general duty of directors to their employees
- No specific duty to avoid legal risks and damage to the company's reputation
- No duty to consider non-business related impact (to non-shareholders), and
- No duty towards subsidiaries, partners whether in or outside of India: "A director of a parent company is not required to consider human rights related impacts of its subsidiaries unless these would be relevant to the best interest of the parent company" (Amarchand Mangaldas 2009)

Only environmental and labour legislation impose obligations to consider the impacts to non-shareholders. The Environment (Protection) Act 1986 makes failure to comply with provision a punishable offence and directors liable. According to Amarchand Mangaldas 2009: "Breach of any of the provisions of the environmental legislations and labour legislations by companies will result in fine and imprisonment being imposed on its officers who are directly in-charge of and responsible for the conduct of the business of the company".

The Public Insurance Liability Act 1991 imposes a no-fault liability on owners of hazardous substances and requires the owner to compensate victims irrespective of any neglect or default on the owners part (Amarchand Mangaldas 2009).

Labour legislation addresses issues such as payment of minimum wage, health and safety, working hours and leave. Some of the above stated Acts impose liability on the person in-charge of the operation of the company. Breach of any of these legislations can result in either a fine or imprisonment. Directors then have to prove that they acted with due diligence.

Reporting

The CA asks for several reporting requirements. Companies are supposed to file annual returns, provide a balance sheet and profit/loss account of every financial year, publish a board report that includes energy conservation measures and reduction of energy consumption. However, the CA does not mandate companies to disclose their social responsibilities or impacts on non-shareholders. The MCA only recommends companies to disclose their CSR initiatives to the public. Furthermore, the CA does not permit non-shareholders to address companies in general meetings. There are also no requirements on institutional investors to consider human rights impacts in their investment decisions, but also no bar for doing so.

Company reports are verified by independent auditors and can be accessed by shareholders. Consequences for failing to report include a Rs.500 fine for each day that the default continues and up to two years imprisonment for misrepresentation (Amarchand Mangaldas 2009). Nowadays more and more Indian companies do publish sustainability reports even though it is not mandatory under company law.

The Environment Impact Assessment (EIA) Regulations 1994 makes it mandatory for every person undertaking a project anywhere in India to submit an application along with an environmental impact assessment report followed by public hearings. However, further amendments made to the EIA regulations have resulted in the dilution of environmental impact assessments laws. For example, it is now left to the discretion of the MoEF to make half-yearly compliance reports available to the public.

Corporate Social Responsibility Initiatives

The MCA set up the Indian Institute of Corporate Affairs (ICA) as a think tank in 2008 and published a set of Corporate Social Responsibility Voluntary Guidelines in 2009.

CSR Guidelines by the Ministry of Corporate Affairs

- Every business entity should formulate a CSR policy and provide a roadmap for CSR initiatives
- Care for all stakeholders including project affected people
- Ethical functioning, transparency and accountability
- Respect workers' rights and welfare
- Respect human rights and avoid complicity in human rights abuses
- Respect the environment
- Lead activities for social and inclusive development (particularly in area of operation targeting disadvantaged sections of society)

The very fact that these guidelines are voluntary means that there is no duty on companies to comply with them. Moreover, the MCA remains rather vague in terms of guidance on the implementation of its guidelines. Companies are advised to "provide an implementation strategy". Under the strategy they:

- may partner with local authorities, business associations and NGOs
- may evolve a system of need assessment and impact assessment while undertaking CSR activities
- should allocate specific amounts in their budget towards CSR initiatives
- should engage in CSR platforms/programmes, and
- should disseminate information on their CSR policy to all stakeholders through their website, annual reports or other communication media

It remains without doubt that these guidelines cannot be used to regulate corporate behaviour or hold companies accountable for human rights abuses.

The Company Bill 2008 which seeks to replace the CA does not acknowledge human rights obligations but asks to set up a Stakeholder Relationship Committee to resolve grievances.

The Voluntary Social Code for Businesses which was devised by the Confederation of Indian Industries requires a written policy statement on CSR and an explicit strategy in the form of an annual work plan mainstreamed with business processes. Furthermore, 134 Indian companies are member of the Global Compact, a global platform for companies, UN agencies, labour and civil society to support fundamental principles in the areas of human rights, labour, environment and anti-corruption.

The Indian government mandates public steel companies to fulfill CSR targets asking them to spend at least 2% of their annual profit on corporate social governance. It is mandatory for insurance companies to distribute policies in rural sectors and social sectors (unorganised, informal sector) for the first five years of operation.

Apart from these initiatives there are currently no laws in India requiring representation of employees or affected communities on company boards and no laws on non-discrimination on the basis of gender, race or ethnicity. The non-discrimination provision found in Article 14 of the Indian Constitution only applies to discrimination by the State but not by private companies.

In summary, the intersection between business law and human rights in India is indeed narrow.

Although under labour and environmental protection laws companies can be held accountable, there are no reporting requirements on their social and environmental impacts and no duty on companies to consider human rights related impacts of their subsidiaries.

How does this gap in regulations affect communities that face human rights threats by corporations? And at the same time how do MNCs address their human rights risks whilst operating in India? The following cases will look into these issues in more detail.



Beetlevine plantation on proposed POSCO project area

PART II

Case Study: The POSCO project in Orissa

The following case study on the POSCO project in Orissa is based on interviews with the chairman and spokesperson of the Anti-POSCO Peoples Movement as well as other social activists, journalists and local

villagers whose livelihood will be adversely affected due to displacement in the face of the construction of a integrated steel plant and captive port. All data was collected during a visit to the Jagatsinghpur district of Orissa in November 2010.

Additionally, secondary data in the form of reports by the government enquiry committees, POSCO-India and the Anti-POSCO Peoples Movement were evaluated to substantiate and crosscheck the information obtained through interviews. The POSCO project office in Kujang, Orissa was contacted again on the information they had provided. Unfortunately they did not respond to further queries relating to compensation and employment opportunities of displaced communities as well as grievance mechanisms to ensure participation of displaced communities.

In January 2011 at the time of writing this manual POSCO-India received conditional clearance for its 12 billion ton steel mill from the Ministry of Environment and Forest (MoEF). According to media reports the state government has decided to exclude 284 acres of private land from Dhinkia Panchayat which would reduce the number of displaced families from 803 to 613 .

However, POSCO still has to face a case in the Supreme Court of India against its right to mine. Another corporate group Geomin Minerals, a private limited company has taken the state government to court for handing over iron ore mining rights to POSCO in disregard of its prior claim to the ore. It is therefore disputable whether the project will start in the near future since the company cannot produce steel without an iron ore mine.

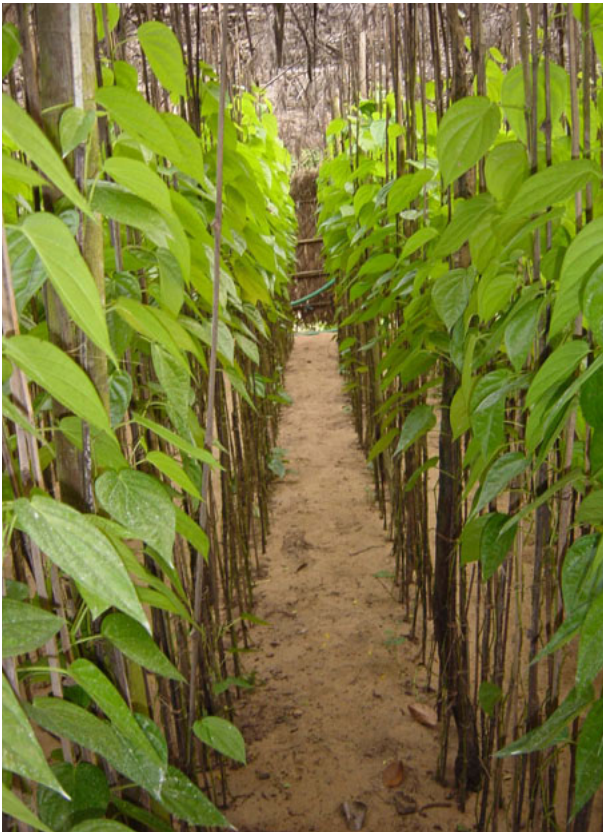
Background of the company

POSCO was established on 1st of April 1968. It is the fourth largest steel producer in the world with its headquarters based in Pohang, South Korea.

In 2000 POSCO was privatized with a target to produce 50 million tons of crude steel by 2007 as well as expanding its production to other countries such as Vietnam and India. POSCO-India Private Limited is a subsidiary of POSCO and was incorporated on 25th August 2005 with the Registrar of Companies, Orissa, under the CA. It plans to build an integrated steel plant, as well as develop mines and related infrastructure in the Jagatsinghpur district of Orissa (10 km south of Paradip Port). In June 2005, POSCO signed a memorandum of understanding with the State of Orissa. Under the agreement, POSCO plans to invest US\$12 billion (the highest FDI in India to date) to construct a steel plant with four blast furnaces, an electricity plant, a captive port (close to the existing Paradip Port) as well as housing and other related infrastructure. POSCO has been granted Special Economic Zone (SEZ) status for its steel plant and captive port. The expected annual turnover is Rs. 20,580 crores.

According to the POSCO a 4 million-ton per annum capacity steel plant was planned to be set up in Orissa, during the first phase of the project by 2011/12, which would later be expanded to the final production volume of 12 million tons of steel per annum.

The company promised to create 18,000 direct and 30,000 indirect



Beetlevine, Orissa

employment opportunities in the region. POSCO planned to start production in 2010.

However ongoing opposition to the project by local residents since 2005 have brought the start of operation to a halt. Opposition leaders claim that the project will only benefit the company while displacing more people than it employs, damaging the environment and taking India's mineral resources at a very low price.

Loss of livelihood and proposed compensation

Estimates on the likely number of people who will be affected by displacement varies from 471 families claimed by the company to 4,000 families claimed by the Anti-POSCO movement.

According to the PPSS the proposed plant will affect three gram panchayats (local-governance bodies) – Gadkujang, Nuagaon and Dinkia – which cover 11 villages in total, comprising 4000 families of over 22,000 people in Erasama block of Jagatsinghpur District. Almost one third belongs to the Dalit (Untouchables) community and other backward castes.

In its Resettlement and Rehabilitation (R&R) policy 2006 the Directorate of Resettlement and Rehabilitation, Government of Orissa mentions the following objectives:

- To avoid displacement wherever possible and minimize it exercising available options otherwise
- To recognize voices of displaced communities emphasizing the needs of the indigenous communities and vulnerable sections

- To ensure environmental sustainability through participatory and transparent process, and
- To help in guiding the process of developing institutional mechanism for implementation, monitoring, conflict resolution and grievance redressal

POSCO claims that the compensation it plans to pay will be in full compliance with Orissa's Resettlement and Rehabilitation policy and that it plans to compensate displaced residents as follows:

- Original displaced families losing homestead land and agricultural land will be given employment, cash compensation varying from 1 lakh to 5 lakhs, and a house in a resettlement habitat.
- Families losing all agricultural land will be compensated with the best land value in recent three years and simultaneously would be entitled to jobs and cash compensation.
- Vocational training through training centers in Sandhakuda in Paradip and existing facilities in and around Jagatsinghpur would be utilized for enhancing employability of the affected people for sustainable livelihood.
- One guaranteed job to one eligible member of each displaced family or cash compensation.
- Education support to one member from each displaced family not having any eligible person for a job in the company.

Even though the company plans a compensation strategy in line with Orissa's R&R policy 2006 affected people oppose the project due to many reasons. First, the proposed project area is used as agricultural land, especially for the cultivation of Beetlevine (pan leave) as well as forest land which provides the livelihood for tribal communities and other forest dwellers who are dependent on the forests for fuel, fodder, fruits and medicinal plants. The local residents do not want to leave their homeland on which they have lived with their families for generations. They fear they will lose their livelihood since they would not be compensated with land for the land they will lose but only with

cash or industrial employment. According to a new job reservation policy by the Government of Orissa, all industries setting up units in the state of Orissa would have to provide at least 90 per cent jobs in unskilled category to local people including the families affected by project and up to 60 per cent jobs in semi-skilled category. POSCO India was reluctant to accept this requirement claiming that job reservation on geographical basis did not conform to the constitutional provisions of India. There have been a number of additional contentions that have been raised:

- Firstly it is questionable whether Beetlevine farmers are suitable to work in or construct a steel plant. There are around 5,000 betelvine farms in this area tended by about 10,000 cultivators which provide an average annual income of Rs.1 lakh per acre each apart from providing wages of about Rs.1 lakh of ancillary employment being generated for a number of daily labourers.
- Secondly, the fishing community, a large community depending entirely on the river and the sea fears that their fishing rights will be affected by the project due to environmental pollution and also the change of the river mouth due to the construction of a captive port.
- Thirdly, to date Orissa's land rights have not been settled in many areas. Government land has been used for cultivation for years. Many families have not registered their land in their name because they lack the knowledge to do so. There are a number of landless farmers who grow beetlevine and cashews on Government land. Others depend on basket making, work as daily labourers on the beetlevine farms or are engaged in pisciculture, mostly prawns. These groups will be particularly vulnerable to the loss of land and livelihood opportunities.
- Fourthly, local people are worried about the water consumption of the project which might affect the availability of drinking water in the region. According to the Memorandum of Understanding (MoU), the Government of Orissa permits draw and use of water (roughly 12 thousand to 15 thousand crore liters) from the Mahanadi barrage at Jobra and Naraj in Cuttack for the proposed POSCO project. Concerns

have been raised that this would have adverse effects on the water supply for domestic and irrigation use in the areas of Cuttack city and farm lands of Cuttack, Puri and Jagatsinghpur districts of Orissa.

- Lastly, the issue of industrial waste produced by the steel plant and its disposal worries local residents and has not been properly addressed.

With a history of failed promises of compensation in other industrial projects that were supposed to bring development and prosperity to one of India's poorest states it is obvious that the local community is suspicious of any mega project of the sort that is proposed.

According to journalist and social activist Ravi Das, "people who will be affected by the project cannot be employed outside the agriculture sector. They are deeply rooted in agricultural, fishing and forest activities to earn their livelihood. Even if they are given cash compensation for their land, they cannot start a business because they lack knowledge and skills." He therefore believes that they have to be provided with means to secure their livelihood with the skills they possess.

Opposition to the POSCO project in Orissa

The POSCO Pratirodh Sangram Samiti

The POSCO Pratirodh Sangram Samiti (PPSS) (Anti-POSCO Peoples Movement) describes itself as a democratic mass movement adhering to the principles of peaceful and democratic resistance. It has built up resistance against the POSCO project in Orissa for more than five years by organising mass awareness campaigns as well as a series of demonstrations, rallies and protests. Apart from campaigning efforts and public protests PPSS has also successfully stopped the entry of POSCO, police and government officials to the proposed project area (covering eight villages). It has even set up check gates with guards at the entry

of every village. However, resistance to the project has also resulted in confrontation with police forces and registration of more than 100 cases with police against members of PPSS and some activists even being sent to jail. According to PPSS the police has filed First Information Reports (FIRs) against supporters of the movement and uses these to arrest anti-POSCO villagers who venture out of the area. People cannot leave their villages to receive health care because of the threat of arrests. Until now 158 cases have been registered against villagers by the government, 825 warrants have been issued out of which 340 are against women and six persons are presently imprisoned.

PPSS claims it is not opposed to industrialization for the growth of economy per se but it opposes further industrialization at the cost of the agricultural economy. In contrast to the construction of a 12 million ton steel plant it suggests establishing small-scale agriculture-based industries such as cashew processing plants that would help the local farmers in the region.

PPSS has a widespread solidarity network including solidarity groups in every major Indian city as well as social activists from within and outside of India including Human Rights groups from South Korea and trade unions. It is further supported by individuals from some of the political parties (mainly from the Communist party of India) but is not affiliated to any party as such. PPSS claims that it has thousands of local supporters and that at least 80 per cent of the affected villagers are supporting their movement. The movement is financed by donations mainly from the local community on a donation collection pattern based on the size and number of betelvine plants of farmers (one Rupee per one tree, i.e. one row of betelvine plants) in four to five affected villages.

The major demand of the PPSS is that the government of Orissa withdraws all environmental clearances that have been granted in violation of the FRA. Furthermore, PPSS demands that other CSO's show solidarity against MNC projects that displace people and endanger water, land, livelihood, forest and natural resources.

In its struggle PPSS draws on the experiences and the successes of the Anti-Displacement movement and other specific movements against MNCs such as TATA Industries, Vedanta and ArcelorMittal.

Campaigning methods and strategies - Success and Failures

PPSS opposes the POSCO project which would include the construction of a 12 million ton capacity steel plant and a captive port. Its main concerns are the deforestation of land and related loss of livelihood by local communities.

To pursue its goals it adopted various campaigning and communication strategies.

These involved media campaigning strategies such as writing letters and petitions to the Government, running an online petition entitled 'Scrap POSCO Project' addressed to the Prime Minister of India as well as constructing several websites that provide information about the project and its likely impacts. Moreover, there has been on the ground campaigning efforts such as denying access to the area to POSCO as well as government officials and police forces by creating road blocks and checkpoints at the entry of the affected villages. PPSS also prevented the laying of the foundation stone of POSCO's steel plant by the Korean president in 2010.

The movement started with organizing a mass awareness campaign with street meetings in each village to inform villagers about the consequences of a mega-industrial project and understand what is at stake. In order to achieve their goal PPSS needed to gain local peoples' trust and convince them to join and support the movement. This was done through regular interaction with the affected community and dialogue about their concerns and needs.

A seven day march from Dhinkia village to the site of Vedanta University near Puri was organized along with other mass movements in Orissa,

including the Vedanta University movement, the Vedanta Bauxite movement, the Anti-TATA movement, Farmers Movement and the Movement against Nuclear Power Plants.

PPSS follows a strict no-communication strategy with the company however, in one instance, they were willing to engage with the Government. In June 2010 the government of Orissa invited PPSS representatives for a discussion with the Chief Minister of Orissa who assured PPSS representatives that he would visit the proposed project site if they allowed a land survey of the area (in order to count the local population and number of trees, and beetle vine plantations). PPSS agreed to facilitate the survey if the Chief Minister paid a visit the project site.

Allowing a land survey to be conducted and negotiating with the Government was seen as a deviation from its actual campaigning strategy and the PPSS was criticized by other activists for doing so. Consequently after the survey was completed the Chief Minister did not come to visit the affected villages. PPSS representatives felt betrayed by the Government for not holding its promise.

PPSS has also made use of the Forest Rights Act 2006 (FRA) which states that people living on forest land for more than 75 years have the right to stay there and cannot be displaced. A temple in one of the villages of the project site has property in its name from the year 1893, a proof of human settlement in this area.

Legal steps against the project have not been taken so far, except for filing a complaint with the National Environment Commission with the help of a petition by the PPSS solidarity network.

One of its campaigning successes is PPSS' support from its broad solidarity network. The PPSS protest has found support around the country with leaders of trade unions and people's movements visiting the protestors. It has also achieved remarkable media coverage for its cause.

PPSS chairman Abhay Sahoo described the most successful campaigning strategy as follows: “Our most successful strategy was breaking the police barricades and removing police camps from our villages on April 1st 2008. To date if the police want to enter our villages they have to seek our permission. From November 2007 till April 1st 2008 the entire project area was barricaded by police forces. The police were stationed in schools in the villages. People were not allowed to move freely and could not even go to the market - a human rights violation. On April 1st we requested the support of all mass movements to come and save Dinkia village. And people came in thousands from Orissa and also delegations from all over India. In their presence we broke the barricades and removed the police forces. We encouraged people to stand in front of the police peacefully.”

In its struggle against the POSCO project PPSS has however also faced many atrocities especially from police forces using teargas and firing at camps of protesters. During such an incidence in May 2008, 100 people were injured and 15 arrested. Many human rights organizations including Amnesty International have condemned this behavior by the police.

Assessment by the POSCO Enquiry Committee

After conducting a land survey the government of Orissa started to partly acquire land for the POSCO project without implementing the FRA. Upon a letter of protest to the MoEF two enquiry committees were sent to investigate the case. The first, the Saxena Committee, came to the conclusion that the acquisition of forest land is illegal under the FRA. It pointed out that the state was unable to provide village council clearances for using forest land and other documents as required by the Environment Ministry.

A second committee led by Meena Gupta, a former state environment secretary looked into the case in July 2010. Its specific role was to evaluate the implementation of the FRA and rehabilitation and

resettlement provisions. Committee members reviewed documents and clearances that had been given to the company and interviewed different stakeholders.

It should be noted that this committee could not come to a joint conclusion and therefore submitted two separate reports to the MoEF.

The first report by three of the four committee members declared the forest and environment clearances given to POSCO by the Orissa state government as illegal and therefore recommended that hence the clearances should be withdrawn. On the status of implementation of the FRA the first committee report concluded that the final forest clearance should be revoked because there is a forest dwelling community living in the project area whose forest rights have not been implemented under the FRA yet. Thus the acquisition of land is in violation of the regulations imposed by the MoEF.

On the status of Rehabilitation and Resettlement (R&R) Implementation the committee report concludes that the rehabilitation package has to:

- Take into account the loss of sustainable livelihood
- Provide land for land compensation and account for particularly vulnerable sections of the community such as landless labourers and women, and
- Include a rehabilitation strategy for the affected fishing communities who are currently left out of the R&R scheme

It also states that there have been more failures than successes with the implementation of R&R schemes in the past and accordingly displaced people often live in greater destitution than before. If carried out in a rush and without adequate transparency and assistance displacement can be a 'psychologically traumatic event'.

Finally, on the granting of environmental clearances for the steel plant and captive port the committee report states that a comprehensive EIA as mandatory under the Environment Protection Act 1986 was not

carried out properly. The rapid EIA that took place does not capture the full environmental impact and can thus not be used as the basis for granting environmental clearance for a project of such scale. With regard to the captive port it should be noted that its construction might lead to severe erosion along the coastline and an increase of pollution. The above mentioned issues as well as a public hearing process about the project which was not carried out in an appropriate way because it did not cover all affected stakeholders led the committee to conclude that all environmental clearances given by the MoEF should be cancelled.

The contesting report by the fourth committee member Meena Gupta comes to a different conclusion. Although the report agrees that the implementation of the FRA has to be re-done in all affected villages, it considers the R&R scheme in line and even better than the one proposed by the government of Orissa. However, it acknowledges that landless labourers and fisherman have to be included in the scheme and compensated adequately. Only once forest rights are implemented and the affected people compensated for their loss of land, should forest land be diverted for the project purpose. The construction of a captive port and the disruptions it might cause along the coastline including increased pollution of the sea and threat to endangered species, the water consumption of the steel plant from a local water barrage and the scarcity of drinking and irrigation water it might cause have yet to be addressed. Environmental clearance should only be given to the project after a comprehensive EIA. However, the author disagrees with the other committee members on the revocation of clearances that have already been granted for the first phase of the project.

Both committee reports reveal serious flaws and violations of environment laws by the MoEF as well as the government of Orissa. It is appalling that environment clearances have been issued without a comprehensive EIA by the company and an independent third party. Furthermore, the R&R scheme leaves out particularly vulnerable sections of the community whose livelihood will be adversely affected by displacement.

Conclusion: POSCO-India Building better tomorrow with steel?

The company slogan 'Building better tomorrow with steel' leaves a bitter aftertaste knowing that whole village communities will have to be displaced to make room for a development project designated to help poverty-stricken Orissa and create economic growth in one of India's poorest states. It remains unclear how it will help to build a better tomorrow if forests, land, livelihoods and mineral and natural resources of the state are being diverted and explored for steel production. It is also questionable just how sustainable economic growth will be since natural resources are finite and thus once depleted it is unclear what will happen to this once fertile agriculture land.

Communities affected by MNC projects are often the most vulnerable ones without any other livelihood options and a general lack of access to information and effective remedy.

Even while using modern technology called FNEX which operates without blast furnaces, sintering plant and coke ovens the project will have severe social and environmental impacts. The change from agriculture and forest land to industrial land leaves beetle vine farmers and plantation labourers and other forest dwellers without an opportunity to secure their livelihood. It could be argued that people oppose the project simply because they do not want to leave the land on which they have lived for generations. However, they are not even compensated with land of equal value but only with cash and housing in a rehabilitation colony. Depriving people of their livelihood options can be seen as a violation of their rights. Journalists and activists in Orissa are of the opinion that if livelihood options are taken from people they have to be compensated with a means to secure their livelihood and that "these livelihood options have to be according to their choice and not according to the MNC's choice!"

Apart from the social impact one has to look at the environmental impact

of the project as well. Several government committee reports have made it clear that environmental clearances have been given in violation of existing laws. It is alarming that there has been no proper EIA to assess the impacts of the POSCO project on land, coastline, water consumption and industrial waste disposal. The minimum requirement to grant clearance for an industrial project of this scale should be that all laws are implemented and state government institutions that grant permission act in accordance to these laws. Environmental and human rights laws cannot just be broken in the name of development and industrialization.

Peoples Movements such as the PPSS are essential in ensuring that local people get their voices heard. Even with little resources these movements can survive due to an international support network and cause considerable delays or valuable alterations of a project. A legal struggle against POSCO has not been taken up by PPSS so far but might be necessary in light of the recent granting for clearance. Another important legal tool is the FRA which allows affected families to enforce their rights with respects to the land they live on.

A lesson that can be drawn from this case study for other campaigns against MNCs is the importance of grassroots level activism which has the power to prevent or at least alter corporate projects combined with a strong national and international support network that ensures media attention and informs global civil society about potential human rights abuses.

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