**POSCO’s Clarifications on Alleged Violation of OECD Guidelines**

A group of four complainants have alleged that POSCO has violated certain provisions of the *‘OECD Guidelines for Multinational Enterprises’* in connection with its proposed steel plant project in the State of Odisha, India. POSCO completely refutes such allegations, which is grounded on only distorted facts and circumstances. Here, POSCO would like to make its position clear on each of the allegations.

**1. Forest Rights**

First of all, the actual facts and circumstances regarding the forest rights issues related to (i) *Saxena Committee* and *Meena Gupta Committee* reports and (ii) Land acquisition and *Scheduled Tribes (the “STs”) or Other Traditional Forest Dwellers* (the “*OTFDs*”) in the proposed project area that the complainants mentioned on page 9 ~ 11 in their complaints are as follows:

**[Allegation by the Complainants]**

With regard to the complainants’ allegations as for the forest rights of *STs* or *OTFDs* under the *Forest Right Act, 2006 (the “FRA”)* two issues can be raised - firstly, whether the *STs* or the *OTFDs*, who hold forest rights under the *FRA*, reside in the proposed project area, and secondly, whether the consent by *palli sabhas* was obtained in a legally valid manner (Some *palli sabhas* have given resolutions refusing to consent to diversion of forestland on which villagers are allegedly dependent).

In addition, the complainants argued that the *Odisha Govt’s* decision not to acquire the private land at this stage does not resolve the *FRA* issue.

**[POSCO’s Reply]**

The *Odisha Govt’s* official document (Oct. 2012) clearly indicates that the Govt followed all required legal procedures in identifying and locating the *STs* and *OTFDs* and subsequent to which it was confirmed that there were no residents protected under the *FRA* in the proposed project area. In order to be protected under the *FRA*, one has to reside in and depend on the forest or forest land for *bona fide* livelihood needs for at least 75 years. However, the proposed project area was notified as forest land in 1961 only and, therefore, it cannot be subject to the *FRA*. It was further confirmed that cashew and betel vine cultivated in the proposed project area are not the subject of protection under the *FRA* **(Annexure 1)**.

It should be noted that while granting the *Final Forest Diversion Clearance* in May 2011, the *Union Ministry of Environment & Forests (the “MoEF”)* refused to accept the *palli sabha’s* resolution of February 2011, the basis on which *POSCO Pratirodh Sangram Samiti (the “PPSS”)* was opposing the diversion of forestland, for two reasons. Firstly, the resolution was not made by following due legal procedure under the *Panchayat (village level assembly) Act* and secondly, it was also proven to be passed under the orchestrated influence of the *PPSS* activists, who deliberately excluded the participation of most of residents in the area. It should be noted that out of the total 3,445 voters of *Dhinkia* village, only 69 people signed the so-called *palli sabha* resolution and out of 1,907 voters of *Gobindpur* village, only 67 people signed the so-called *palli sabha* resolution.

Based on the aforementioned facts and circumstances, the *MoEF* issued the final approval of the forest diversion for the project in May 2011, which followed the approval from the Hon’ble *Supreme Court of India* in August 2008 and the *MoEF’s* initial approval in December 2009 reflecting the retrospective application of the *FRA*. Subsequent to the final approval of the forest diversion in May 2011, the *Odisha Govt* resumed land clearance such as tree-cutting etc and disbursement of compensation as per the *Rehabilitation & Resettlement Package (the “R&R package”)* agreed by the villagers. A petition against the tree-cutting activity was filed in the Hon’ble *Odisha High Court*. The petition is still pending and so far there is no judgment or order to stop the activity or the project.

Further, in September 2011, the Hon’ble *Odisha High Court* dismissed a petition to scrap POSCO’s Odisha project for violating the *FRA* **(Annexure 2)**.

The Hon’ble *Odisha High Court* has issued a stay order on private land acquisition because according to the *Land Acquisition Act 1894* the *Odisha Govt* failed to complete the land acquisition and meet a 2-year deadline for compensation since the land acquisition notification. Such failure by the *Odisha Govt* was caused by restricted access to the project site on account of obstruction caused by the outfits like *PPSS*. Here, it should be noted that the private land is not the subject-matter of protection under the *FRA* and, therefore, the stay order on private land acquisition and the forest right are two separate issues and should not be mixed.

In addition, the petition letters by people living in the site area presented to the *Union Minister of Environment and Forests* in April 2011 reveal that the members of the *Saxena Committee* visited only *Dhinkia* village, which is 2~3 km away from the project site and which has been epicentre of the *PPSS* operations. Mr. *Dhirendra Kumar’s* petition letter reflects that the site survey was carried out by the members of the *Meena Gupta Committee* under the orchestrated influence of the *PPSS* **(Annexure 3)**.

**[Conclusion]**

Most parts of the review committee reports (*Saxena Committee* and *Meena Gupta Committee*) upon which the complainants have based their allegations against POSCO project, were rejected and dismissed by the Govts and the Courts after their careful scrutiny. Hence, making continuous and repetitive allegations based on the review committee reports despite the contrary findings and decisions by the Govts and the Courts only shows the malicious intention of the complainants.

**II. State-sponsored Human Right Abuses**

Secondly, the actual facts and information surrounding the complainants’ allegations for violation of the *OECD Guideline* *“1. Failure to seek to prevent or mitigate adverse impacts directly linked to their operations and exercise their leverage to protect human rights”* is as follows:

**[Allegation by the Complainants]**

The complainants have alleged that the opposition by local residents in the project area, expressed through peaceful demonstrations, has been met with violence and acts of intimidation. Examples of State-sponsored human right abuses are illustrated on page 11 ~ 13 of the complaint. They have also alleged that POSCO denied and kept silence with respect to human right abuses during the land acquisition process.

**[POSCO’s Reply]**

The allegations of the complainants with respect to human right abuses are solely based on the one-sided false claims of anti-POSCO outfits like, *PPSS*. They have not considered the actual facts and the majority opinion of the local population in the proposed project area and goodwill efforts made by POSCO.

The actual facts as per the majority opinion of the villagers with regard to the examples of alleged State-sponsored human right abuses raised by the complainants are as follows. (**Annexure 3**)

* **[Incident on September 26, 2011]** In order to build a coastal road a contractor appointed by government agency (*IDCO*) started the work from the project site towards *Paradeep* with about 200 workers. Unfortunately, about 50 PPSS activists including Mr. Abhaya Sahoo armed with hand-made bombs came to the site and started throwing the bombs to stop the work forcefully, and the workers defended themselves against the attack by *PPSS* activists and chased them from the site. Both parties registered case in the police against each other.
* **[Incident in July, 2011]** The visit of *the* *National Commission for Protection of Child Rights* to the project area was made to investigate the *PPSS*’s attempt to block the entry of State Government officials to the project area by utilizing women and children as human shield. The police were stationed at schools temporarily during the school vacation only to protect State Government officials who were there to compensate the residents willing to demolish their betel vine. Even people in *Dhinkia*, the stronghold of *PPSS*, wanted to demolish their betel vine.
* **[Incident on June 2, 2010]** Some protesters detained the State Government officials who were conducting “socio-economic survey” peacefully. They assaulted government officials including an *Additional District Magistrate*, who were dispatched to the area to resolve the detention, by way of using verbally abusive words and snatching some record documents. In this case, the police arrested 2 people who snatched the documents. At present, people in the village of *Nuagaon* have been in support of POSCO project and all the betel vine and encroachments in the government land have been removed with the full support and cooperation of the villagers (**Annexure 4**).
* **[Incident in May 15, 2010]** The *PPSS* activists were illegally occupying *Balituda Bridge* (an entrance point to the proposed project area and surrounding villages) from January 26, 2010 blocking the entry of the State Government officials and checking those people who wanted to enter the site area. After 4 months of their illegal occupation, on May 15, 2010, in order to make the area accessible for all, the police were deployed to the area. The *PPSS* activists attacked the police by throwing hand-made bombs and stones causing serious injury to one female officer. Thereafter, the police started marching towards the mob. The *PPSS* kept on agitating and attacking by throwing explosive bombs in which several houses of the local people near the bridge were burned and damaged.
* **[Incident on June 20, 2008]** Nearly 400 *PPSS* activists from different villages including *Gobindpur* village proceeded to *Jatadhari* river mouth and vacated the village to take up some dredging works on the instruction of Mr. Abhaya Sahoo, and in the meantime, anti-*PPSS* people convened a meeting in the village against the *PPSS*. Thereafter, the *PPSS* activists returned from the riverside and proceeded to attack the anti-*PPSS*. At about 6:30 PM, some bombs were exploded while the *PPSS* and anti-*PPSS* attacked each other. As a result of the bomb explosion, Mr. Tapan (Dula) Mandal, Mr. Subha Sahani and Mr. Kalandi Jena were injured. The village people said these injured people were not taken to the hospital immediately for treatment rather kept in the village for more than 5 hours as per the instruction of Mr. Abhaya Sahoo, which caused death of Mr. Mandal on the way to the hospital at about 3:30 AM. Furthermore, before this incident on May 14, 2008, the *PPSS* activists had attacked the villagers who were not cooperating with the *PPSS* and in the process amputated one hand of Mr. Natabar Khatua, the village leader. After hearing the news of this incident, POSCO immediately wrote an official letter to the Chief Minister of Odisha and requested the State Government to maintain the law and order and protect innocent villagers from brutal violence by the *PPSS*. (**Annexure 5**)
* **[Incidents on November 27 & 29, 2007]** The *PPSS* activists blocked the *Balitutha Bridge* since September 25, 2007 in the name of opposing the project. They frisked all the people, including villagers who tried to enter the proposed project area, and even assaulted people who were not cooperating. The incidents of November 27 & 29, 2007 as mentioned in the complaints, occurred after and while *Nuagaon* and *Gadakujang* villagers, who were the main victims of the *PPSS*, conducted meetings against the anti-social activities of the *PPSS* members and decided to remove the blockage of *Balitutha* and evict the *PPSS* activists.
* At the center of human rights abuse there were brutality, violence, and anti-democratic activities of the *PPSS*. The *PPSS* has been notorious for burning the house of villagers who are not supportive, imposing penalties on those people who declined to attend their meetings / demonstrations against the POSCO project, and blocking the information flow by manipulating media reports. The *PPSS*’s forcible eviction of 50-odd households from *Dhinkia* village, the epicenter of *PPSS*, merely because of their expression of support for POSCO project, well represents the brutality of the *PPSS*. POSCO has been providing temporary shelters for these evicted people and supporting with other amenities like water, electricity, basic allowances etc.
* With regard to the reputation of Mr. Abhaya Sahoo, most of the villagers’ opinion is far from what the complainants depicted him in their petition. As a leader who came from outside, Mr. Abhaya Sahoo’s forcible / undemocratic control on villagers is well known to the villagers. According to the recent news reports, increasing number of people are breaking away from the *PPSS* opposing Mr. Abhaya Sahoo’s tyrannical leadership and recurring embezzlements. (**Annexure 6 & 7**) Also, attached are the police cases filed against Mr. Abhaya Sahoo. The issue whether these cases were falsely filed or not is matter to be determined by the Indian judiciary which is always inclined to the cause of social justice, not by the supporters of Mr. Abhaya Sahoo as stated in the complaint (**Annexure 8**).

**[Conclusion]**

It is to be noted that most of incidents involving alleged human right abuse occurred in the process where *PPSS* suppressed unsupportive villagers in the name of opposing POSCO project. POSCO has been making various efforts to respect human rights by requesting government authorities to restore public safety and law & order. POSCO has never come across a single case where the State Government has abused any human right in the name of maintaining law & order.

**III. Human Rights Due Diligence: Consultation with Communities**

Thirdly, with regard to the complainants’ allegations for *OECD Guideline* *“2. Failure to conduct comprehensive human rights due diligence, including consulting with and preventing harm to affected communities”*, the background information and actual facts are as follows:

**[Allegation by the Complainants]**

Lack of evidence of sincere efforts from POSCO side to listen and reflect the opinions of affected communities at any stage of the project planning process.

**[POSCO’s Reply]**

As a matter of fact, even during the time when *PPSS* activists blocked the entry to the proposed project area and cut off the affected communities from outside world, POSCO tried to communicate with the affected people and villagers and discuss the project progress. Until the end of 2010, POSCO held meetings with villagers more than 171 times and met and discussed with 2,681 households, including 718 of them who have been planned for resettlement. The requests made by the villagers were reflected in the R&R package of POSCO approved by *Rehabilitation & Periphery Development Advisory Committee (RPDAC)* where all the representatives of interested parties participated.

To lessen the harm, if any, to the project affected villagers, POSCO hired *Xavier Institute of Management*, *Bhubaneswar*, an institute recognized by the *Odisha Govt* for its well versed experience in the area, and had it conducted a socio-economic study. The socio-economic study report reflecting different opinions of villagers was approved by the *RPDAC*. In addition, POSCO accepted requests from the villagers which got reflected in the R&R package approved by the *RPDAC* in July 2010. Therefore, the R&R package far exceeds the requirement of the *Odisha R&R Policy, 2006*. For the reference, *RPDAC* is an official entity constituted under the *Odisha R&R Policy, 2006* and is attended by 30-odd representatives of all interested parties, including but not limited to affected villagers, women representatives, scheduled tribes, local NGOs, Members of Parliament, Members of Odisha Legislative Assembly, *Panchayat Raj* (village level assembly) representatives, government officials etc.

In addition, POSCO has been continuing various Corporate Social Responsibility (the “CSR”) activities since the inception of the project in order to play active role in the local communities as a socially responsible corporate citizen. To name a few, its CSR activities include school assistances, scholarships, free healthcare services, rural development works, cultural events etc. (**Annexure 9**)

**[Conclusion]**

POSCO has been proceeding with Odisha project in continuous discussion and consultation primarily with local communities.

**IV. Environmental Due Diligence**

Fourthly, the facts and basic information for the complainants’ allegations regarding the violation of *OECD Guideline* *“3. Failure to carry out environmental due diligence, including consulting with and informing affected communities”* on page 16 ~ 19 in their petition are as follows:

**[Allegation by the Complainants]**

The conclusion that POSCO has violated the obligation for environmental due diligence can be drawn based on the issues raised by the majority report of *Meena Gupta Committee* *i.e.,* rapid Environmental Impact Assessment (the “*EIA”)* in lieu of comprehensive *EIA*, *EIA* for 4 million tons per annum (the “*MTPA”)* steel plant in lieu of 12 *MTPA*, recommendation to cancel the Environment Clearance (the “*EC”)* approved in 2007, procedural issues in the process of *Public Hearing* (the “*PH”*), violation of Coastal Regulation Zone (the “*CRZ”)* rules, absence of comprehensive and integrated *EIA* including ancillary facilities and infrastructural needs.

**[POSCO’s Reply]**

The issues raised by the majority report of the *Meena Gupta Committee* were disposed of and concluded by the Governments and Courts after their thorough investigation and careful scrutiny.

In consultation with the Governments, POSCO Odisha project would proceed in 3 phases to reach the ultimate capacity of 12 *MTPA* by constructing a 4 *MTPA* steel plant in each phase. The completion of 12 *MTPA* steel plant requires a period of about 15 years, each phase 5 years. Since the *EC* is valid for a period of 5 years under the environment regulation, the environment authorities recognized that it would be a reasonable approach for POSCO to obtain the *EC* for 4 *MTPA* initially and obtain the *EC*s for subsequent phases.

As per the *EIA Notification 1994*, POSCO was required to approach respective *Expert Appraisal Committees* (the “*EAC*s”) for steel plant and captive minor port, and accordingly, rapid *EIA*s were submitted. The respective *EAC*s being well aware of the other component approved the rapid *EIA*s after appraising their legitimacy. Although it was not mandatory to submit comprehensive *EIA* Reports as per the *Notification* at the time, POSCO on its own submitted the comprehensive *EIA* Reports prepared by accredited agencies.

*The National Green Tribunal* (the “*NGT*”) also held that it is not permissible under the law to challenge the original the *EC* issued in 2007 dismissing the recommendation of the *Meena Gupta Committee* majority report for *EC* cancellation, and further held that the final order made by the *MoEF* dated January 31, 2011 is nothing but inclusion of some more conditions by way of precautionary measures. The *NGT*, therefore, upheld that the original *EC*s granted in 2007 do not merge in the final order and the final order cannot nullify the original *EC*. While upholding the validity of 2007 *EC*s, the *NGT,* however*,* directed *MoEF* to constitute a fresh review committee to review the project and recommend specific conditions.

With regard to the allegations raised by the *Meena Gupta Committee* majority report for illegality of *PH* on April 15, 2007, the *NGT* clearly held that there was no flaw in the *PH* and the entire procedure as required under the law was followed. The *NGT* observed that the *EAC*s fully appreciated the issues and problems raised during the *PH* by watching video recording of the *PH* and referring to various official documents (**Annexure 10**).

*OCZMA (Odisha Coastal Zone Management Authority)* and *ORSAC (Odisha Space Application Centre)* in their joint efforts drafted *Coastal Zone Demarcation Map* in 1995 and as until now, this map is the formal and official map. Based on the map, POSCO with the help of *National Institute of Oceanography* accredited by the MoEF, made the *CRZ* *Demarcation Map* indicating the location of proposed steel plant and captive port, and obtained approval from *OCZMA* and *MoEF* as per the relevant laws and regulations.

The *NGT* also recognized and understood the situation where POSCO had to proceed for separate *EC*s for steel plant and captive port pursuant to the relevant laws. The *NGT* judged that the issues with respect to comprehensive *EIA* raised by *Meena Gupta Committee* majority report were also discussed in depth by the *EAC*s and the issues were properly reflected. The *NGT* ordered to *MoEF* that it should establish guidelines / directives for comprehensive and integrated *EIA* and recommended the industries to follow such guidelines / directives.

With regard to the current *EC* status for POSCO Odisha project, a fresh review committee was formed in May 2012 as per the *NGT* judgment dated March 2012, to review the project along with the additional conditions of 2011 and recommend specific conditions. The report by the committee is expected to be submitted to the *MoEF* by November 2012.

As the 2007 *EC*s expired, POSCO have already applied for the revalidation of the *EC* for the steel plant which has been approved by the *EAC*. POSCO is awaiting the final approval from the *MoEF*. For the revalidation of port *EC*, POSCO is preparing a new *CRZ* Map as per the *CRZ Notification*, 2011 following the instruction of the *EAC*.

**[Conclusion]**

POSCO has been observing all the required procedures and filing required reports / documents as per the concerned regulations. As a matter of fact, POSCO has also taken and will be taking more measures than required under the applicable laws to minimize impacts on the environment. Therefore, it is our opinion that the complainants’ allegations that POSCO violated the obligation of environmental due diligence and lacked in necessary competency and good faith to prevent or minimize environmental damage is groundless and not based on the actual facts and circumstances.

**V. Concluding Remark**

To conclude, POSCO has never requested the Government to use force to acquire land. Rather, it has been proactively working towards the protection of human rights by way of requesting the Government authorities to maintain law & order to prevent the innocent local villagers from being exposed to human right abuses by anti-social outfits like *PPSS*. During the whole process of project implementation, POSCO has abided by the relevant laws and regulations in both Korea and India and faithfully followed *OECD Guidelines for MNEs* as well.

**We hereby strongly protest that the organizations, which have the social responsibility, should not defame the image of a corporate entity and disturb its legitimate business activities by way of spreading false information and make groundless allegations based on distorted and unverified facts. Therefore, we expect more responsible approach and behaviour on part of such organizations in future.**

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