

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Working Group on the issue of human rights and transnational corporations and other business enterprises, Special Rapporteur on extreme poverty and human rights, Special Rapporteur on the right to food, Special Rapporteur on the rights to freedom of peaceful assembly and of association, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on the situation of human rights defenders, Special Rapporteur on the human right to safe drinking water and sanitation

REFERENCE: AL Housing (2000-9) Business enterprises (2011) Poverty (1998-11) Food (2000-9) Assembly & Association (2010-1) Health (2002-7) G/SO
214 (107-9) Water (2008-1)
KOR 1/2013

11 June 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to food; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the human right to safe drinking water and sanitation pursuant to Human Rights Council resolution 17/13, 15/8, 17/4, 22/9, 15/21, 15/22, 16/5, and 16/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding alleged plans to acquire land in India for the reported construction of an integrated steel plant and a captive port by the Pohang Iron and Steel Corporation (POSCO), a company headquartered in the Republic of Korea. A letter concerning this case has been sent to the Government of India and also to the company based in Goedong-dong, Nam-gu, Pohang and its subsidiary POSCO (India) Private Limited in Jagatsinghpur, Odisha, India.

It is the principal obligation of the State where this proposed construction is to take place, to respect, protect and fulfil human rights, and to ensure that operations of business enterprises within their territory respect human rights. However, as outlined below, international human rights standards, including the Guiding Principles on

Business and Human Rights (A/HRC/17/31), also impose on home States certain responsibilities regarding business corporations operating abroad. Home States, under the jurisdiction of which the corporations concerned are domiciled, have established their headquarters or have their main place of business, are expected to set out clearly the expectation that such corporations respect human rights throughout their operations, including in operations that take place outside their national territory. Home States may play a constructive role in preventing human rights abuses by business enterprises operating outside their territory and can also help reduce business related human rights harm through a constructive dialogue with relevant counterparts, including the concerned business enterprise. Furthermore, international human rights treaty bodies are encouraging States parties to take appropriate measures to prevent and address acts of corporations domiciled in their territory which negatively affect the enjoyment of human rights in other countries.

According to the information received:

The Government of India has agreed to grant to the POSCO Corporation, several important concessions following the Memorandum of Understanding (MOU) that was signed between POSCO and the state of Odisha on 22 June 2005. These allegedly include significant tax breaks and the facilitation of the necessary environmental and forest clearances. Representing the largest single foreign direct investment in India to date, the steel project will require over 6,000 acres of land for its various components, which include a mine, steel processing plant, captive port, and associated infrastructure. It is alleged that POSCO seeks to acquire 4,000 acres of land for the steel plant and port components, plus another 2,000 acres for a company town and associated infrastructure, including a township site with social developments. POSCO has also allegedly stated that it requires additional, unspecified amounts of land to facilitate transportation of millions of tons of raw materials and to divert from a local river the 120 billion litres of water required by the project.

We are informed that, in recent years, concerns have been expressed that the project does not comply with the procedures established by the Forest Rights Act of 2006 and by environmental authorities. We understand that the Government of the state of Odisha adopted a Resettlement and Rehabilitation Policy in 2006. We understand that on 30 March 2012, India's National Green Tribunal ordered a review of the 2011 environmental clearance for the project, and that India's National Human Rights Commission and the National Commission for Protection of Child Rights have raised concerns regarding human rights abuses associated with the project.

These allegations are described in more detail below.

Situation of human rights defenders

According to information received, the Anti-POSCO People's Movement was established in 2006 representing a collective, non-violent effort to oppose the project and highlight concerns that the integrated steel plant will destroy the livelihoods, undermine the ability to live in dignity, and result in serious violations of a range of human rights of the residents living in several of the affected villages. Human rights defenders and project opponents have allegedly been subject to harassment and intimidation as well as having had force used against them, notably as a result of conducting peaceful protests at the planned construction site. Reports received suggest that, on 15 May 2010, project opponents were fired upon with rubber bullets and metal pellets and beaten with batons, resulting in serious bodily injuries. According to reports, multiple project opponents have been faced with arbitrary detentions and multiple false charges against them, as a result of their activities to defending and promoting their human rights. It is also alleged that they have been denied protection by the authorities in India from attacks by individuals supportive of the project.

It is alleged that the permanent police presence surrounding the villages of Govindpur and Dinkia, in Jagatsinghpur District, Odisha, and the outstanding warrants filed against several local residents, have resulted in restrictions on the freedom of movement and barriers to their ability to access essential services, including emergency and routine medical care.

Access to adequate housing and an adequate standard of living

According to reports received, the people who stand to be forcibly evicted in order to build the steel plant received no information about the proposed project prior to the signing of the MOU in June 2005. In contravention of the prohibition against forced evictions, we understand that Indian authorities have not visited the affected communities in order to discuss the project or offer guarantees concerning the resettlement and compensation for those who would be evicted. Evidence is also reportedly lacking which would demonstrate efforts made by the Government of India to exhaust all feasible alternatives to forced evictions or to enter into meaningful consultation with affected communities.

We are informed that the affected villagers have made repeated attempts to participate in decisions related to the project as they concern their lands, by means of several *Gram Sabhas*, which are local governance structures recognized under Indian law. We understand that the resolutions from the *Gram Sabhas* have expressed an overwhelming rejection of the diversion of forest lands for the POSCO project, and that the Government of India has failed to uphold these decisions, despite its obligations to do so under the Forest Rights Act of 2006. Reportedly, the Government of India has stated that it will proceed with the acquisition of land for the project, which will require the forced eviction of the area's residents.

Information received also suggests that people who have already been displaced for the POSCO project have experienced serious declines in their standard of living. Today, we understand that the 52 families that live in the Badagaupur transit camp after their lands were ceded for the project now live in inadequate housing which fails to guarantee their safety and well-being, including failing to protect them from weather conditions and other threats to their health. Reportedly, many of the houses retain humidity and pose a serious risk of mold and other environmental hazards.

It is reported that the situation faced by more than 20,000 people if the project proceeds according to plans, includes those who have already been resettled as well as those that reportedly would be forcibly evicted if the project proceeds according to present plans. These people have allegedly received no official guarantee that they will continue to enjoy access to essential services (health care, energy services, education), nor that they would be protected from serious declines in their living standards, loss of access to agricultural land and livelihoods, as well as loss of economic independence, work and general impoverishment.

Access to water and sanitation

According to reports received, the POSCO project will require the diversion of 120 billion litres of water which is currently used for domestic and agricultural purposes by residents in the affected communities. The loss of this source of water poses serious risks to the ability of families to access sufficient water for their household use and of farmers to irrigate their crops.

People already displaced by the POSCO project, including the residents in the transit camp mentioned in this communication, have reportedly experienced marked declines in the quality of water that they are able to access. We understand that residents of the camp have been compelled to use water that bears a bad taste and allegedly causes the irritation of the throat and skin, which suggests serious concerns regarding its quality and adequacy. Camp residents allegedly do not enjoy sufficient access to adequate sanitary facilities, and reports received suggest that only four toilets are functioning properly in the camp, which serve 52 families, and women and girls are unable to use these facilities with sufficient privacy.

Access to food and livelihood resources

For generations, communities living in the area identified for the POSCO project have been able to ensure their food security, work and sustain themselves by means of rural agriculture, fishing and animal husbandry, as well as, for some, gathering forest products and engaging in agricultural day labor. It is reported that the high water table and unique soils in the area have enabled a robust and high-quality production of betel, cashew, rice, fish and shrimp, as well as family

gardens. Some also derive their subsistence from forest products, while others, including Dalits and landless people, have earned a living through day labor in the fields of other residents. The residents in the affected villages have reportedly regularly enjoyed access to nutritious food that is both economically and physically accessible. The area has also provided protection for coastal communities from natural disasters, such as cyclones and powerful storms. For these people, access to their land, with its unique agricultural potential and natural resources, has thus been instrumental in enabling them to realize a range of human rights.

Reports received suggest that, if these residents lose access to the lands upon which they have based their subsistence, they face serious risks to their food security. For the local people who produce their food on their land, they would be deprived their primary means of subsistence. For those who access food by means of income earned in local markets from the sale of their agricultural production, there is no guarantee that they would be able to access adequate food that is affordable and culturally acceptable.

Access to health care and education

According to the information received, a large number of residents are allegedly unable to access health care outside of their villages due to a substantial police presence in the area. Local residents are reportedly fearful of leaving their villages because of the use by local police of outstanding warrants to arrest community members on false charges. This has reportedly presented substantial obstacles to the ability of parents to send their children to school and access hospital care for their children. Further, members of the Indian police force have allegedly occupied local schools in several occasions. We have also been informed that several women in the affected communities have experienced serious medical problems due to their inability to travel to health care facilities, and obtain sexual and reproductive health services. Concerns have also been expressed that, if residents are displaced for the POSCO project, they will receive no guarantee that their new homes will be located within a reasonable distance from adequate and affordable health care or educational facilities.

Notwithstanding the principal obligation of the concerned host State, India, to respect, protect and fulfil human rights, and to ensure that operations of business enterprises within their territory or jurisdiction respect human rights, home States to transnational corporations such as the Republic of Korea also have an important role to play to protect human rights when such business enterprises engage in conduct that is alleged to violate or harm the enjoyment of human rights abroad.

United Nations treaty bodies have repeatedly reiterated that States should take steps to prevent human rights violations that occur outside of their territories as a result of the activities of business enterprises that are incorporated under their laws that have their main seat or their main place of business under their jurisdiction. These recommendations

are, *inter alia*, pursuant to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), international human rights treaties ratified by the Republic of Korea on 10 July 1990, as well as other international laws that the Republic of Korea is party to, including the Convention on the Rights of the Child, (ratified by the Republic of Korea on 25 September 1990).

The Committee on the Rights of the Child (CRC) recommended, in its concluding observations concerning the Republic of Korea in 2011, that “the State party further promote the adoption of effective corporate responsibility models by providing a legislative framework that require companies domiciled in Korea to adopt measures to prevent and mitigate adverse human rights impacts in their operations in the country and abroad, whether by its supply chain or associates” (CRC/C/KOR/CO/3-4, para. 27).¹

Similarly, the Committee on Economic, Social and Cultural Rights (CESCR) in its Concluding Observations on Germany in 2011, expressed “concern that the State party’s policy-making process in, as well as its support for, investments by German companies abroad does not give due consideration to human rights” and called on Germany “to ensure that its policies on investments by German companies abroad serve the economic, social and cultural rights in the host countries (E/C.12/DEU/CO/5, para. 10)”.²

The Human Rights Committee, mandated to monitor compliance with the ICCPR, has also elaborated upon the extra-territorial obligation to ensure human rights by regulating corporate activity abroad, including in the context of forced evictions. In 2012, in its Concluding Observations on Germany, the Human Rights Committee stated that Germany should “set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations” and that it “take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad”.³

The Guiding Principles on Business and Human Rights (A/HRC/17/31), endorsed by the Human Rights Council in its resolution 17/4, reaffirm the foundational principle that “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations” (Principle 2), including their operations abroad.

The Guiding Principles also clarify that all business enterprises have an independent responsibility to respect human rights, regardless of whether the State in which they operate fulfils its own responsibilities. This responsibility applies to all

¹ See also CRC Concluding Observations for Azerbaijan (CRC/C/AZE/CO/3-4 para 29); Australia (CRC/C/AUS/CO/4 para 28); Bahrain (CRC/C/BHR/CO/2-3, para 21); Canada (CRC/C/CAN/CO/3-4 para 28-29), Liberia (CRC/C/LBR/CO/2-4 para 29-30); Thailand (CRC/C/THA/CO/3-4, para 29) and Turkey (CRC/C/TUR/CO/2-3, para 22-23).

² Committee on Economic, Social and Cultural Rights, Concluding Observations: Germany, UN Doc. E/C.12/DEU/CO/5, (12 July 2011), at para. 10.

³ Human Rights Committee, Concluding Observations: Germany, UN Doc. CCPR /C/DEU/CO/6 (12 November 2012), at para. 16.

business enterprises regardless of sector, size, operational context, ownership or structure (Principle 14). The business responsibility to respect human rights requires that business enterprises “(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Principle 13).

To meet this responsibility requires that business enterprises have in place “policies and processes appropriate to their size and circumstance, including: a) A policy commitment to meet their responsibility to respect human rights; b) A human rights due diligence policy to identify, prevent, mitigate and account for how they address their impacts on human rights; c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute” (Principle 15). Due diligence requires processes to identify, prevent, mitigate, and address potential and actual impacts at various stages in a project or the enterprise’s operations. It should be an on-going process and should involve meaningful consultation with potentially affected stakeholders (see Principles 17-21).

Consequently, if a corporation, through their business relationships, causes or contributes to the process of an illegal forced eviction, and fails to take appropriate action to prevent, mitigate and remedy other associated adverse human rights impacts experienced by local people, they can be considered to have failed to meet their responsibilities to respect human rights.

The Guiding Principles reaffirm that States must protect against human rights abuse within their territory and/or jurisdiction by business enterprises, as well as ensure that when such abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy. Furthermore, several UN treaty bodies have recommended that as part of their treaty obligations, in which the Guiding Principles are grounded, States should take steps to prevent human rights violations that occur outside of their territories as a result of the activities of business enterprises that are incorporated under their laws that have their main seat or their main place of business under their jurisdiction. They have further affirmed that States should take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad.

It is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Is the Government of the Republic of Korea in possession of any further information concerning the accuracy of the alleged facts?

2. Has the Republic of Korea directly or indirectly supported the forementioned activities of POSCO in India, for example through risk insurance provided by a Government funded export credit agency or any other means?

3. What measures, including policies, legislation, regulations and adjudication, has the Government of the Republic of Korea taken to prevent, investigate, punish and redress human rights abuse by business enterprises within its territory and/or jurisdiction?

4. What policy, legal, regulatory, and/or adjudicatory measures has the Government of the Republic of Korea taken to encourage or require that business enterprises domiciled in its territory or jurisdiction, including POSCO, meet their responsibility to respect human rights throughout their operations? In addition to such measures, has the Government provided guidance to business enterprises on how to respect human rights throughout their operations? This may include measures and/or guidance on, inter alia, conducting human rights due diligence, meaningful consultations with potentially affected stakeholders, and addressing and mitigating any negative impacts?

5. What judicial, administrative, legislative or other steps has the Government of the Republic of Korea taken to ensure that victims of business-related human rights abuse by companies domiciled in the Republic of Korea have access to remedy?

Finally, it is also relevant to note that the Maastricht Principles on Extra-Territorial Obligations, adopted by international human rights experts, and which are based on customary and conventional international law as it relates to extra-territorial human rights obligations, reaffirm these findings. Specifically, Principle 24 states that “All States must take necessary measures to ensure that non-State actors which they are in a position to regulate, as set out in Principle 25, such as private individuals and organisations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights.”⁴ Pursuant to Principle 25, “States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means, in each of the following circumstances: ... c) as regards business enterprises, where the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned”.⁵

We would be most grateful to receive an answer within 60 days. We undertake to ensure that the response of your Excellency’s Government will be taken into account in our assessment of the situation and in developing any recommendations that we may make for your Excellency’s Government’s consideration pursuant to the terms of our

⁴ Maastricht Principles on Extra-Territorial Obligations of States in the Area of Economic, Social and Cultural Rights, adopted by leading international human rights experts and based on customary and conventional international law, adopted 28 September 2011, Principle 24.

⁵ Id. at Principle 25.

respective mandates. Additionally, we undertake to ensure that the response of your Excellency's Government is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

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

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