

MoEF/MoTA Committee on Forest Rights Act

Report of visit to Jagatsinghpur (site of proposed POSCO project), Orissa, 23-24 July 2010

4 August 2010

Introduction

Three members of the MoEF/MoTA Committee (Arupjyoti Saikia, Ravi Rebbapragada and Ashish Kothari) went to Jagatsinghpur as part of the MoEF/MoTA FRA Committee's study tour of Orissa. Apart from Jagatsinghpur, the study tour also included a full day public consultation in Bhubaneswar, discussions with senior officials of the Orissa government, visits to Mayurbhanj district (including Simlipal Tiger Reserve and some community forest protection areas), and discussions with district officials (a separate report on these is being prepared).

At Jagatsinghpur, the team carried out the following:

1. Discussions with the District Collector and senior officials of various departments.
2. Perusal of land and forest records, to the extent made available at the district HQ and locally during the site visit.
3. Perusal of documents available with communities as evidence of their claims to the forest land.
4. Discussions with villagers at 6 places (at all of which local officials were also present): Dhinkia/Patna and Govindpur of Dhinkia panchayat (including Sarpanch Sisir Kr. Mahapatra), Nuagaon panchayat (two separate congregations of people, hereafter called Nuagaon-I and Nuagaon-II) (including Sarpanch Bhaskar Swain), Nolia Sahi and Gadkujang of Gadkujang panchayat (including Sarpanch Nakulananda Sahu).
5. Visit to the forest lands proposed for diversion for the proposed POSCO project.

The Committee also obtained a number of documents subsequent to the field visit, as evidence of the long-standing uses and dependence of the local villages on the forest land proposed for diversion. Some of this has not been in the public domain till date, but would surely have been available to official agencies if they had sought it.

At all the places visited and people spoken to, the discussion was largely limited to the status of implementation of the FRA process. As far as possible, the team avoided discussion on the pros and cons of the proposed POSCO project, as also on the extent of local opposition or support to it. These issues were not in its mandate, even though both villagers and officials brought them up off and on.

Main findings

1. The District Collector and other officials told us that implementation of the FRA has been diligently carried out in the district, with extensive awareness programmes carried out in 2008, and FRCs formed in 1291 villages. Only 47 ST families, have made IFR claims, of which 45 have been granted. No CFR claims have been made. **The District Collector categorically said that there are no OTFDs in the district, and no claims received from people identifying themselves as OTFDs.** Since, according to the officials, there are no claimants in the area to be affected by the POSCO project (where also, FRCs were formed, as per palli sabha documents given to the team), the requirement of gram sabha consent for forest land diversion does not apply.
2. The proposed POSCO project requires 1253.225 hectares of forest land. According to officials, what is now forest land was earlier revenue land, and does not have traditional dependence of local people, whose use of this land for *paan* cultivation and other purposes is recent (last 20-30 years). Officials however accept that the villages themselves are several generations old, with some hamlets being more recent. Villagers claim, however, that whatever the status of the land, much of it (other than that used for *paan* cultivation) had actual natural vegetation including forest, till it was degraded, and finally replaced by plantations after the cyclones. Old records (mentioned below) appear to corroborate their claims.
3. The team was shown settlement records of the 1950s, but when it repeatedly requested the district officials for records of the 1930s, these could not be supplied, as they were reportedly in Cuttack (Jagatsinghpur district was only recently carved out of Cuttack district). Additional documents pertaining to the then Bardhaman State (within which this area fell), were also not available at the district HQ. They were however subsequently obtained by the team, with the help of NGOs and researchers. It is important to note that if the official agencies had been pro-active, they too would have had access to these documents.
4. At the villages, the team was told that FRCs were formed and claims made, but it is not clear what happened to these claims. Residents of Nuagaon-I said they filed claims (approximately 250, respectively) and sent them to the tehsildar, who returned them saying there were no eligible OTFDs. No further process was carried out. Residents of Nolia Sahi said they filled in about 280 claims and sent them to the panchayat secretary Sachin Raut, but no further process was carried out; the Sarpanch of Gadkuchang, within which Nolia Sahi falls, expressed ignorance of this. Residents of Dhinkia/Patna have not filed the claims, as they were at the epicenter of the anti-POSCO agitation (there are reportedly cases against some named individuals and “800 others” of Dhinkia, so there is fear that anyone can be arrested). In Govindpur, Nuagaon-II, and Gadkuchang, there appeared to be very little knowledge of the FRA; no-one seemed to have realized (or been told) that they could qualify as OTFDs and make their claims for rights to the forest land.
5. **The district administration has made no pro-active moves to identify potential claimants and provide them documents that could help determine their eligibility.** This is despite the knowledge that a lot of people lost their belongings and whatever documents they may have had, in the supercyclone that hit this part of the Orissa coast in 1999. It is only on the basis of not having received claims (according to the officials; it is

unclear what happened to the claim forms sent to the tehsildar in the case of Nuagaon-I), that the administration has concluded that there are no OTFDs.

5. Though specific claims may not have been filed or may have gone missing, **Dhinkia and Nuagaon palli sabhas have passed resolutions stating their long-standing residence in the area, their traditional dependence on the forest land, their eligibility of rights under the FRA, and their refusal to grant consent to the proposed diversion of land for POSCO.** Copies of these are available with the team. Interestingly, these palli sabhas were called after a notice was issued by the district administration, and are mentioned in the District Collector's letter No. 139 dt. 23.2.2010 (sent to MoEF by the state government as evidence of the absence of eligible claimants under FRA), but the resolutions rejecting the proposed diversion of forest land are not mentioned in this letter. Nor have the palli sabha resolutions been sent to MoEF.

6. **The team went into the question of whether OTFDs exist in the area or not, in great detail.** Records available on site or subsequently from Bhubaneswar (including reports of the Uchhab Naik, ex-zamindari settlement reports, forest settlement reports, rent receipts of families, and nistar records), from the early decades of the 20th century, were perused, with local translation help. Several documents were clearly from these sites, and referred to the lands now proposed for diversion. Observations were made of physical evidence of occupation of these villages, and it was clear that they are quite old (Dhinka, for instance, has a cooperative since 1925). At several sites, elderly people were asked about their childhood memories of their families' livelihoods, and all of them said that their fathers did *paan* cultivation, and there was extraction of firewood, other NTFP, and grazing on the common lands including the forest lands slated for diversion. The team has names of the specific elders who testified to this (not named here, as there are possible repercussions in the atmosphere of tension that the area is under). The team also observed that if there were villages in the area before 1930, there must have been dependence on the surrounding commons (much of which is forest land), since that is a universal feature of traditional settlements in India.

7. OTFDs are defined in the FRA in the following way: "any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs." The team notes the difference in grammar between the requirement of residence (which implies that residence must be 3 generations old), and that of dependence (which implies that there must be current dependence). According to this, taking the usage in its strict sense, and using the clarification of the term "reside in" and "depend on" by the Ministry of Tribal Affairs in its circular no. 17014/02/2007-PC&V (Vol.III), dated 9 June 2008), **it is clear that the residents of these villages are OTFDs. However, even if one takes the requirement to be 75 years for both residence and dependence, available documents and oral evidence suggests that these residents are OTFDs.**

8. There is clearly continued usage of the forest land, including for cultivation of *paan*, collection of minor forest produce (including pandanus flowers for making essence) and fuel, grazing, cashew trees, and other uses.

9. Interestingly, for a patch of forest land close to the land proposed to be diverted for POSCO, palli sabha consent was reportedly sought and obtained by the administration for a IOCL complex. Yet in the case of POSCO the administration is saying that such permission is not needed.

10. The team advised villagers in each of the 6 sites where it met residents, that they may proceed with extending the time frame of their FRCs and carry through the process of filing claims. District officials who were with the team, including the Sub-collector M.D. Mallik, promised to help them with locating relevant documentary evidence. It has subsequently been reported to us that claims have begun to be filed.

Conclusion

Given the above, the team has arrived at the following:

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

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

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

The team’s findings were reported to the district administration on 24 July, and the state Chief Secretary (along with secretaries of all relevant departments) on 27 July 2010. It appears from news reports, however, that the district administration is proceeding with land acquisition and demolition of the *paan* cultivation of people on forest land. Reportedly this is of families who have consented to such acquisition; however this does not alter the fact that such work is illegal.

The team concludes that:

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

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

MoEF is therefore urged to take the following steps:

- 1. Ask the Orissa government to stop all such work till the required processes under the FRA are completed, and till and if palli sabha consent is obtained.**
- 2. Withdraw the forest clearance provided in December 2009.**

Not doing the above would tantamount to not only ignoring the key objective of the FRA of redressing historical injustice, but also heaping new injustice on the residents of these villages.

Report written by:

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