**Initial Assessment of Complaint on Violation of OECD Guidelines for Multinational Enterprises**

- Complainants: Lok Shakti Abhiyan (India), Korean Trans National Corporation Watch (Korea), Fair Green Global Alliance (the Netherlands), ForUM (Norway)

- Complainee : Posco India

**1. Backgrounds**

On October 10th of 2012, Lok Shakti Abhiyan, an Indian civic group, the Korean Trans National Corporation Watch within the Korean House for International Solidarity, a Korean civic group, the Fair Green Global Alliance, a Dutch civic group, and the ForUM, a Norwegian civic group (hereinafter collectively referred to as the "Civic Groups"), raised complaint to the Korean NCP that the business activities of Posco India are in violation of Ⅱ. General Policies, Ⅳ. Human Rights, and Ⅵ. Environment of the OECD Guidelines for Multinational Enterprises (hereinafter referred to as the "Guidelines").

**2. Details of Complaint**

The complaint raised by the Civic Groups is related to A.2, A.10, A.11 and A.10 of Ⅱ.General Policies, 2 and 5 of Ⅳ.Human Rights and 2 and 3 of Ⅵ.Environment of the Guidelines.

*\** ***Ⅱ. General Policies***

*A.2. Respect the internationally recognized human rights of those affected by their activities.*

*A.10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.*

*A.11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*

*A.14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.*

***Ⅳ. Human Rights***

*2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*

*5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the tasks of adverse human rights impacts.*

***Ⅵ. Environment***

*2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:*

*a) Provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and*

*b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.*

*3. Assess, and address in decision making, the foreseeable environmental, health and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.*

In the complaint, the Civic Groups argued:

First, Posco India violated the Guidelines as it did not take sufficient measures to protect human rights of the residents, who are affected by its construction project of integrated steel mills, from violence by gunmen and the Odisha provincial government.

Second, Posco India did not carry out human rights due diligence related to the issues raised above.

Third, In the process of the large-scale project that has significant impacts on the local communities, Posco India did not take into account the opinions of stakeholders including residents of the region.

Fourth, Posco India did not carry out environmental due diligence related to its large-scale development project.

Therefore, the complaint was raised against Posco India that the company is in violation of the Guidelines.

**3. Position of Posco India**

Posco India rebutted the complaint in its reply.

First, as for the human rights issues, the violence in question has taken place in the process of the provincial government's exercising its authority to stop the violence between the opponents and the proponents.

The business activities of Posco India are not directly related to the violence and the company has even made efforts to protect the residents, for example, by requesting the maintenance of order to the provincial government.

In addition, the company is fulfilling its social responsibility (CSR) to raise the living standard of the residents: provision of equipment for education and scholarships, free medical services, maintenance of community facilities, and support for cultural events, etc.

Second, as for the human rights due diligence, Posco India conducted a socio-economic survey reflecting opinions of the residents, and the survey has been approved by the Rehabilitation and Periphery Development Advisory Committee (RPDAC).

Third, as for the resident participation, Posco India's plan for compensation related to the development was submitted to and approved by the RPDAC.

The RPDAC is an official organization founded under the provincial government's policy on compensation for relocation and it consists of about 30 stakeholders including representatives of relocated residents, women, designated tribes, local NGOs, members of the provincial assembly, village councils, and government officials.

Fourth, as for the environmental due diligence, Posco India gained approval after carrying out a phased environmental impact assessment (EIA) in accordance with the EIA 1994 of India. On January 31 of 2011, the Environment Court of India ruled that the order of the Ministry of Environment and Forests to conduct a comprehensive EIA was aimed at taking preventive measures and was not relevant enough to invalidate the approval granted in 2007. The Environment Court decided that the comprehensive EIA should be submitted to a separate committee and Posco India submitted the comprehensive EIA.

**4. Initial Assessment by Korean NCP**

Based on the complaint, submitted materials and meetings with the parties, the Korean NCP reviewed the followings that are provided by the OECD Implementation Procedures of the OECD Guidelines for Multinational Enterprises and the Commentary on the Implementation Procedures.

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| **1. Are the identities of the parties concerned and their interest in the matter clear?** |

□ The complainants - Lok Shakti Abhiyan, KTNC Watch, Fair Green and Global Alliance, ForUM - are civic groups and they have clear interest in the matter in that they raised the complaint in Korea, which is a member of the OECD Guidelines, against business activities in India, a non-member of the Guidelines.

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| **2. Is the issue material and substantiated?** |

□ The issues raised are related to adverse impacts of business activities by a multinational enterprise on human rights and environment of India. It is a significant issue, given the purpose of the Guidelines which is to pursue sustainable development of nations and companies alike by fulfilling corporate social responsibility.

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| **3. Is there a link between the enterprise's activities and the issues raised?** |

□ The complaint raised is mainly related to:

1. Violence between proponents and opponents of the development project or between the opponents and the authorities;

2. Legitimacy of the administrative actions regarding the land expropriation under the Forest Rights Act; and

3. Approval of the Ministry of Environment and Forests and the Environment Court's ruling on the approval.

These are related to the administrative and judicial acts of the Odisha provincial government, which signed a contract with Posco India. If this is seen as the business activities of Posco India, problems arise about how much flexibility is allowed in interpreting the definition of business activities in the Guidelines. Therefore, the Korean NCP finds the issues raised not directly linked to the business activities of Posco India.

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| **4. Is there any applicable law and procedures including court rulings that are being proceeded, have been proceeded or will be proceeded?** |

□ After the ruling on approvals and additional conditions by the Environment Court in March 2012, the approvals and conditions for steel plants and ports are being renewed currently.

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| **5. How have similar issues been treated in other domestic or international proceedings?** |

□ No cases of indirect business activities have been found from the OECD Watch.

\* The Survival International vs Vedanta Resources case may look similar to this case. However, considering various issues ranging from administrative acts by the provincial government related to the evacuation of state-owned land, to the mobilization of police forces, the foundation of establishment and administration of RPDAC and authorities of interpreting and applying the Forest Act, there should be a clear distinction between business acts and administrative acts. In this regard, no cases of indirect business acts similar to the Posco case have been found.

□ The case where a developer covered the cost which was supposed to be covered by a nation or a local government, on the request of administrative authorities (Korea Land and Housing Corporation VS Dalseo-gu District Office of Daegu Metropolitan City)

- According to a precedent from a court in Korea, "If a developer covers the cost, on a request of an administrative agency, and if such cost was originally supposed to be covered by municipalities or other authorities, the cost may be seen as 「surcharges paid to municipalities or other authorities」 and included in development cost, even if such charges paid by a developer to the country or municipalities are not required by other laws or not a condition for approval." This shows that although the developer covers related cost, there should be a distinction between the developer and the local government.

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| **6. Would the proceeding of the procedure contribute to the purposes and effectiveness of the Guidelines?** |

□ The issues raised are related to human rights and environment, and they are very significant in the development of a nation and society through responsible business conduct of multinational enterprises, which is also a purpose of the Guidelines.

ㅇ The complaint is not directly related to business activities of Posco India. Instead, it is related to the administrative activities of the provincial and the central governments of India and the rulings of the Indian court, whose legality and legitimacy are not to be determined by the Korean NCP.

□ In this case, the proceeding of the procedure has a high possibility of conflicting with actions of India's central or provincial governments or courts. In this sense, the Korean NCP has decided that the proceeding does not contribute to the effectiveness of the Guidelines, which are aimed at harmonizing business activities of multinational enterprises with government policies and helping the enterprises to contribute to sustainable development.

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| **Conclusion** |

□ The Korean NCP considers the complaint to be related to the administrative activities of the provincial government of India rather than business activities of Posco India, and it is not the Korean NCP but the Indian court that should determine legality and legitimacy of such activities.

*\* OECD Guidelines for Multinational Enterprises*

*Ⅰ. Concepts and Principles*

*2. Obeying domestic laws is the first obligation of enterprises. The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation with domestic law.*

□ On the basis of the due diligence provisions and other procedural or practical issues stated in the Guidelines, the Korean NCP cannot find any problems in the court rulings and other relevant procedures of the Posco case.

□ Therefore, the Korean NCP has decided that there will be no additional proceedings.