

October 9, 2018

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***Submitted via electronic mail***

**Re: Supplement to Request for Inspection dated September 21, 2018 regarding Rural Water Supply and Sanitation Project for Low Income States (World Bank Project P132173)**

Dear Ms. Barlas,

We are the *Adivasi* (Indigenous or original inhabitants) *Santhal* community of Giddhijhopri in East Singhbhum district of the state of Jharkhand, India. Our common cultural resources, livelihood, and autonomy have been affected by the International Development Association supported IN Rural Water Supply and Sanitation Project for Low Income States (“RWSS-LIS”) (World Bank Project P132173), specifically its sub-project, the Chhota Govindpur and Bagbera Pipe Water Supply Scheme (“CB Scheme”). We are hereby filing a supplement to our Request for Inspection to the Inspection Panel dated September 21, 2018 through Shri. Sukhram Kisku, our *Majhi* (traditional Indigenous village head for the *Santhal* tribe).<sup>1</sup> Please find enclosed a list of names and signatures of community members that have come together to file the complaint (in confidential Annexure Z).

Giddhijhopri village is directly affected by the CB Scheme as a water treatment plant is being constructed on our common community land in the village. This land has deep historical and cultural significance for the community, and the Scheme will disrupt our way of life and customs. The CB Scheme also threatens to make our already poverty-stricken communities more vulnerable by charging us for drinking water.

This letter sets out violations of the World Bank’s social and environmental safeguard policies in the implementation of the CB Scheme. It documents that no adequate environmental or social assessment was done and that there was no proper assessment of impacts on physical cultural resources. It also documents failures to inform and consult with the affected community about the Scheme, including its design and planning.

This consultation failure violates not only World Bank policies, but also Indian law. As an Indigenous-majority area, Giddhijhopri enjoys special protections under the Constitution of India and domestic legislation, which requires any development scheme, welfare plan

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<sup>1</sup> *Santhal* villages have their own traditional governance and decision-making structures called the *Majhi Pargana Mahal*, as well as cultural and spiritual practices that are distinct from mainstream practices.

or decision regarding common community resources be taken by a relevant *Gram Sabha*. A *Gram Sabha* is a general assembly of all the people of a village, who have attained the age of 18 years, and whose name is registered in the electoral roll relating to a village.<sup>2</sup> A *Gram Sabha* resolution is a majority vote in favour of an issue. In this case, consent for this project by the *Gram Sabha* was not obtained. In fact, State administration and police authorities have used force to disperse peaceful community protests against the implementation of the Scheme and have filed false criminal charges against members of the village to pressure the community to withdraw their opposition. The community fears the CB Scheme is part of a larger plan to expand the boundaries of the adjacent city, Jamshedpur, which risks taking away the special legal protections afforded to the community as a rural Indigenous village in India.

We request the Inspection Panel to immediately conduct an investigation that affirms the violations of Bank policy described in this letter. The community trusts that the Panel process will result in the Bank taking steps to remedy the issues raised in this Request. In particular, the community requests the World Bank to:

- (i) immediately stop disbursement of the loan and suspend construction of various structures under the CB Scheme until such time that a proper social and environmental assessment is done and all residents of Giddhijhopri and other impacted villages have been fully informed and consulted about the CB Scheme, its impacts, and mitigation measures;
- (ii) appoint an independent hydrology expert to look at cumulative hydrological impacts of the CB Scheme as well as other schemes that have been implemented in Jamshedpur and surrounding areas under RWSS-LIS;
- (iii) release all relevant documents from the World Bank and the Governments of India and Jharkhand, including Hindi and Santhali translations;
- (iv) provide due compensation and reparations for damage done to their traditional graveyard and sacred grove by the construction of a water treatment plant;
- (v) conduct an independent consultation with all the traditional heads and *Gram Sabhas* of impacted villages to assess if piped water is desired in these villages, and if so, shift project components to alternative sites to avoid impacts to Giddhijhopri village's ancestral graveyard; and
- (vi) provide compensation for the harms suffered as a result of police violence and retaliatory criminal charges.

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<sup>2</sup> Section 2(iii), Jharkhand Panchayati Raj Act, 2001, available at: <http://www.jharkhand.gov.in/documents/10179/54684/Panchayat%20Raj%20Act> annexed as ANNEXURE A.

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## (1) The Rural Water Supply and Sanitation Project for Low Income States – Overview

The World Bank Board of Directors approved the Rural Water Supply and Sanitation Project for Low Income States on December 30, 2013, for US\$500 million.<sup>3</sup> The Project aims to address water and sanitation needs of four states, namely Assam, Bihar, Jharkhand, and Uttar Pradesh. The Jharkhand component of the project will reportedly be implemented in six selected districts of the state.<sup>4</sup> The CB Scheme is a sub-project in East Singhbhum district. One of the stated aims of the Project is to promote decentralised service delivery arrangements, with increased *Panchayati Raj* Institution (“PRI”) involvement and community participation.<sup>5</sup> *Panchayati Raj* refers to the system of local self-governance in India introduced through constitutional amendments in 1992.

The CB Scheme has two independent water supply schemes: the Chhota Govindpur Water Supply Scheme that will supply water to 20 *Gram Panchayats*<sup>6</sup> and the Bagbera Water Supply Scheme that will supply water to 16 *Gram Panchayats* and Ghaghidih Central Jail.<sup>7</sup> Each water supply scheme involves the construction of five overhead storage reservoirs, a pipe network, and a water treatment plant.<sup>8</sup> For the Bagbera Water Supply Scheme, the water will be drawn upstream from the meeting point of the Subarnarekha and Kharkai rivers (at the point called “Domuhani”).<sup>9</sup> The water will then be supplied to individual households for a fee.<sup>10</sup> CB Scheme construction, operation and management has been auctioned to Infrastructure Leasing and Financial Services Private Ltd.<sup>11</sup>

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<sup>3</sup> IN Rural Water Supply and Sanitation Project for Low Income States (Financials), available at: <http://projects.worldbank.org/P132173/india-rural-water-supply-sanitation-project-low-income-states?lang=en&tab=financial>.

<sup>4</sup> ENV Developmental Assistance Systems (India) Pvt Ltd, Environmental Assessment & Environmental Management Framework For the World Bank Assisted Water Supply Projects in Selected Districts of Jharkhand (Draft Final Report), March -2013, (*hereinafter* EA-EMF Report) *Introduction*, p. A, available at: <http://documents.worldbank.org/curated/en/369471468041971982/pdf/E41820v60EA0P10MF0JHARKHAND0Vol-0I.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> A *Gram Panchayat* is any local area comprising of a village or a group of contiguous villages/groups or tolas or part thereof to be a Gram Panchayat area with a population within its territory, as nearly as five thousand, that is declared so by orders of the Jharkhand Government. The Gram Panchayat is specified by the name of the village having the largest population. See Section 13(1)(2), Jharkhand Panchayati Raj Act, 2001, ANNEXURE A.

<sup>7</sup> Drinking Water and Sanitation Division, Jamshedpur, Detailed Project Report for Bagbera, Kitadih, Ghaghidih, Portion of Parsudih, Karandih to the Right Side of Tata-Barbil Railway Line Group of Villages Water Supply Scheme, annexed as ANNEXURE B (*hereinafter*, Bagbera Detailed Project Report), p. 1-2.

<sup>8</sup> Bagbera Detailed Project Report (ANNEXURE B), Executive Summary & Salient Features, *id.*

<sup>9</sup> Chhottagovindpur & Bagbera Drinking Water Supply Project Ltd., Preliminary Design Report (R-II), Bagbera, annexed as ANNEXURE C (*hereinafter*, Bagbera Preliminary Design Report), 4.2 Raw Water Intake Structure & Pump House, p. 4-2.

<sup>10</sup> Bagbera Detailed Project Report (ANNEXURE B), Cost Estimates, 5.1.7.

<sup>11</sup> The Telegraph, “Site recce for water project”, April 9, 2015, available at: <https://www.telegraphindia.com/states/jharkhand/site-recce-for-water-project/cid/1425406>, annexed as ANNEXURE D1.

Implementation of the Scheme has been delayed, in part because of strong local opposition due to fear of its potential impacts on physical cultural heritage and collective resources.<sup>12</sup> Community response to the Scheme, including ongoing resistance, is described in greater detail in the next section.

In the concept stage Integrated Safeguards Data Sheet (“ISDS”), the World Bank Task Team listed the following safeguards as potentially applying to the Project<sup>13</sup>:

- Environmental Assessment OP/ BP 4.01;
- Forests OP/BP 4.36;
- Indigenous Peoples OP/BP 4.10; and
- Involuntary Resettlement OP/BP 4.12.

It is notable that the Task Team did not envisage applicability of the Safeguard Policy on Physical Cultural Resources OP/BP 4.11 to the Project.

## **(2) Local Experience with the CB Scheme**

### *(a) Impacts on shared community resources and local culture*

Giddhijhopri is a *Santhal* village. A characteristic feature of a *Santhal* village is a sacred grove (known as the *Jaher* or "*Santal Sthal*") located on the edge of the village. It is believed that spirits live at this place, and as such a series of festivals take place at this site.<sup>14</sup> One of the water treatment plants under the CB Scheme is currently being constructed on a hill on the edge of Giddhijhopri village, where the community’s *Jaher Sthal* is located. The hilltop is a community graveyard and cremation ground, and the community has been burying and cremating their dead on this hilltop since time immemorial.<sup>15</sup> There is deep anger in the affected communities that the resting place of their ancestors is being used as a site for the water treatment plant. Furthermore, as per tradition, every five years, the community from Giddhijhopri and surrounding villages

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<sup>12</sup> The Pioneer, “Tribals protest against water plant”, July 27, 2016, available at: <https://www.dailypioneer.com/2016/state-editions/tribals-protest-against-water-plant.html>; The Avenue Mail, “Tribals stage demonstration in protest of installation of water filtration plant”, July 26, 2016, available at: <https://www.avenuemail.in/jamshedpur/tribals-stage-demonstration-protest-installation-water-filtration-plant/96156/>. Both newspaper articles collectively annexed as ANNEXURE D2 (colly.).

<sup>13</sup> Integrated Safeguards Data Sheet Concept Stage, Report No.: ISDSC1405, “II. SAFEGUARD POLICIES THAT MIGHT APPLY”, Prepared on Nov. 2, 2012, available at: <http://documents.worldbank.org/curated/en/563001468251987727/pdf/ISDS-Print-P132173-11062012-1352260223338.pdf>, annexed as ANNEXURE E.

<sup>14</sup> Kochar, V. K. “Village Deities of the Santal and Associated Rituals”, *Anthropos*, vol. 61, no. 1/2, 1966, pp. 241–257 (243, 256), JSTOR, available at: [www.jstor.org/stable/40458237](http://www.jstor.org/stable/40458237), annexed as ANNEXURE F1, Dey, Arup, “An Ancient History: Ethnographic Study of the Santhal”, *International Journal of Novel Research in Humanity and Social Sciences*, Vol. 2, Issue 4, 2015, pp: 31-38 (34), annexed as ANNEXURE F2.

<sup>15</sup> Photographic evidence of grave sites around the water treatment plant on the hilltop, ANNEXURES G-1 to G-6, annexed as ANNEXURE G (colly.).

gathers on the hilltop and worships at the sacred grove or *Jaher*, in a cultural and spiritual practice called *Jantad Pooja*.

Various shrubs and herbs are found on the hilltop that are used by the community for different purposes. One plant is used for the treatment of jaundice.<sup>16</sup> The oil from *sunum jada* plant is used in post-pregnancy massage, to help women recover quicker.<sup>17</sup> *Buru saru* is a vegetable found on the hilltop and is consumed by people from the community all year long.<sup>18</sup> There is a traditional medicinal plant that grows on the hilltop, that is used for treatment of clots after wounds.<sup>19</sup> *Bindi jaada* is another bush that grows on the hilltop,<sup>20</sup> it is used as a Vitamin D supplement, especially in case of tooth infections or mouth ulcers. *Puru* is a shrub that grows widely on the hilltop, and its twigs are used as fuel for household fire as well as for fencing of home gardens. Community members are concerned that their access to these important plant resources will be blocked with the construction of the water treatment plant complex on the hill.

Additionally, many affected community members in Giddhijhopri who used the hill as pasture land for their goats<sup>21</sup> are concerned that the construction of the water treatment plant hinders access to pasture land. Further, the red mud soil found at the hill is used by the Giddhijhopri community for many purposes such as painting their houses,<sup>22</sup> cleaning, and packing goods. The way of life of the Indigenous people of Giddhijhopri is inextricably linked to the site of the water treatment plant and has been an important focal point of culture and tradition for many generations of Giddhijhopri residents. Taking the hill away threatens the culture and economic stability of the community.

The community is also concerned about the economic impacts of the whole water supply scheme, fearing that it will worsen already poor conditions in the region. Many of the households currently live below the poverty line.<sup>23</sup> They rely on local water resources, including wells and hand-pumps, for their water needs. Until now, this water has been available free of charge. However, after the implementation of the Scheme, they will have to pay for access to water.<sup>24</sup> They fear that this will further impoverish the community.

The community also fears the CB Scheme is being used to expand the city limits of the adjacent city, Jamshedpur, which could alter the fundamental nature of the area from a protected Indigenous area under the Constitution to an urban centre that would lack such

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<sup>16</sup> Photograph of plant found on the hilltop used for treatment of Jaundice annexed as ANNEXURE I-1.

<sup>17</sup> Photograph of *sunum jada* annexed as ANNEXURE I-2.

<sup>18</sup> Photograph of *buru saru* annexed as ANNEXURE I-3.

<sup>19</sup> Photograph of medicinal plant used for clots annexed as ANNEXURE I-4.

<sup>20</sup> Photograph of *bindi jaada* annexed as ANNEXURE I-5.

<sup>21</sup> Photographic evidence of goats using the hilltop as pasture land, ANNEXURES H-1 to H-4, annexed as ANNEXURE H (colly.).

<sup>22</sup> The red mud is mixed with natural dyes and used for painting houses. Photographs of such houses in Giddhijhopri annexed as ANNEXURE J.

<sup>23</sup> The poverty line in India is INR 32 per day for a person in a rural area and INR 47 per day for a person in an urban area. See Down to Earth, "New poverty line: Rs 32 for rural India, Rs 47 for urban India", August 17, 2015, available at: <https://www.downtoearth.org.in/news/new-poverty-line-rs-32-for-rural-india-rs-47-for-urban-india-45134>.

<sup>24</sup> Bagbera Preliminary Design Report, *supra* FN 10.

protections. According to the Draft Proposal Master Plan for Jamshedpur Urban Agglomeration, Ghaghidih area – in which Giddhijhopri is located – has been included within the new proposed Jamshedpur Urban Agglomeration.<sup>25</sup> This could have a disastrous impact on the Indigenous community of Giddhijhopri and other surrounding villages, including impacts to their culture, access to resources and traditional governance practices. The *Santhal* community enjoys Indian Constitutional and legislative protections regarding rights over land and water resources. Expansion of city limits may dissolve those protections and further marginalise the Indigenous communities.

The CB Scheme, which has already been implemented by sidestepping traditional governance institutions, appears to be part of this expansion plan. According to the Draft Proposal Master Plan, one of the key goals of this urbanisation process is to establish an urban area with treated piped water supply.<sup>26</sup> The CB Scheme is therefore a key component in furtherance of this urbanisation process. As such, the World Bank is complicit in undermining the Constitutional rights and protections of Indigenous communities through its support of this Scheme.

*(b) Lack of consultation and failure to disclose information*

The impacted communities were not provided, and have not ultimately been able to access, adequate information regarding the CB Scheme in a language they understand. The World Bank Infoshop only carries baseline environmental and social impact assessments for Jharkhand as a whole, and that too, only in English. No sub-project level documents for the CB Scheme are available on the Infoshop. As a result, the complainants had to file a Right to Information (“RTI”) application under the Right to Information Act, 2005 to request the Drinking Water and Sanitation Department (“DWSD”) to disclose the relevant Detailed Project Reports, Environment Assessment Report, Social Assessment Report, Site Plan, and Environment Data Sheets.<sup>27</sup> The complainants were only provided the Bidding Document, the Draft Detailed Project Reports and Preliminary Design Reports for the CB Scheme. Further, the complainants were informed by the RTI Nodal Officer who was dealing with the request that those were all the documents that the DWSD had regarding the CB Scheme. These documents were made available after paying the photocopying fee of INR 5100 under the RTI Act,<sup>28</sup> and the affected community had to pool in money to get the amount. Even then, these documents did not contain environmental or social assessments, which was particularly absent for the Bagbera component. The access to information process, which should ideally be free of cost, has already consumed significant community financial resources.

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<sup>25</sup> State of Jharkhand, Addendum to Master Plan for Jamshedpur Urban Agglomeration Master plan 2027: Draft Proposal, April 2017, p.9., available at: [http://www.jharkhand.gov.in/documents/10179/1704975/jamshedpur%20UA\(urban%20agglomeration\).pdf](http://www.jharkhand.gov.in/documents/10179/1704975/jamshedpur%20UA(urban%20agglomeration).pdf) (*hereinafter* Draft Master Plan Jamshedpur), annexed as ANNEXURE K.

<sup>26</sup>*Id.*, at p.62.

<sup>27</sup> Photograph of application made under Right to Information Act, 2005 to the Public Information Officer, Drinking Water and Sanitation Department, May 18, 2017 (ANNEXURE L-1) along with the demand draft submitted (ANNEXURE L-2). Both documents annexed as ANNEXURE L (colly.).

<sup>28</sup> Photograph of response received from the Public Information Officer, Department of Drinking Water and Sanitation, Jamshedpur annexed as ANNEXURE M.

Further, no consultation about the Project was held in Giddhijhopri village, itself. A couple of years prior to work beginning on the ground, some community members received some information about the CB Scheme from the previous administrative elected head at a meeting in neighbouring Ranadih village. The villagers asked the administration to conduct a similar meeting in Giddhijhopri and properly consult them. However, that was never done. They were further assured in this meeting that nothing would happen without the Giddhijhopri *Gram Sabha*'s consent. Aside from the few community members who had attended that earlier meeting, most community members learned about the water treatment plant and the CB Scheme about one month prior to work beginning on the ground, on June 6, 2016, when the Sub-Divisional Officer ("SDO") came to neighbouring Ranadih village, along with members of the police force, to reportedly coerce the villagers into giving their consent for use of their sacred grove for the water treatment plant.<sup>29</sup> However, there cannot be a free and open consultation in such a coercive environment with the presence of police. Approximately one month later, on July 15, 2016, they arrived in the village with massive police force and earth excavating machines.

All this time, women from Giddhijhopri were never involved in the consultation process in other villages, even though one of the purported grounds for the Scheme is that women have to travel far and wide to collect water.<sup>30</sup>

Project documents confirm the lack of appropriate consultations in Giddhijhopri. The Detailed Project Reports do not list any public consultations apart from the meetings of the Village Water and Sanitation Committees (VWSC). For the baseline Environmental and Social Assessments as well as the Tribal Development Plan, consultations were done at the Jharkhand state level and not for the CB Scheme in particular.

### *(c) Invalid Gram Sabha Resolution*

East Singhbhum district is a Schedule V protected area under the Indian Constitution.<sup>31</sup> The Panchayats (Extension to Scheduled Areas) Act, 1996 ("PESA") applies to all rural Schedule V protected areas.<sup>32</sup> Under PESA, any development scheme or welfare plan to be implemented in a Schedule V area, or any decision regarding common community resources, should be taken with the consent of the village *Gram Sabha*.<sup>33</sup> Although

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<sup>29</sup> *Infra* FN 43.

<sup>30</sup> IPE Global Pvt. Ltd., Social Assessment, Capacity Building and Communication Framework for the Rural Water Supply & Sanitation Project in Jharkhand, March 2013, available at: [https://mdws.gov.in/sites/default/files/Social\\_Assesment\\_Capacity\\_Building\\_and\\_Communication\\_Frame\\_work.pdf](https://mdws.gov.in/sites/default/files/Social_Assesment_Capacity_Building_and_Communication_Frame_work.pdf), (*hereinafter* Social Assessment Report) annexed as ANNEXURE N.

<sup>31</sup> Scheduled Areas (State of Jharkhand) Order, 2007 available at <http://www.jharkhand.gov.in/documents/10179/2712021/Presidential%20Order%20for%20the%20Scheduled%20Areas%20of%20Jharkhand>, annexed as ANNEXURE O.

<sup>32</sup> Schedule V refers to Fifth Schedule, Article 244(1) Constitution of India. See Part C, sub-part 6, Fifth Schedule. Available at: <https://www.mea.gov.in/Images/pdf1/S5.pdf>.

<sup>33</sup> Section 4(e), Panchayats (Extension to Scheduled Areas) Act 1996, (*hereinafter* PESA) available at: <https://tribal.nic.in/actRules/PESA.pdf>, annexed as ANNEXURE P.



Giddhijhopri is a hamlet within the larger revenue village of Ghaghidih, it satisfies the definition of a village in PESA.<sup>34</sup>

In the past, any development activity that has been implemented in the village, such as the construction of the primary school building, village roads, *Anganwadi* centre,<sup>35</sup> etc., has only been done after the Giddhijhopri *Gram Sabha* passed a “No Objection” resolution.

The land on which the water treatment plant is being constructed falls under the jurisdiction of the Giddhijhopri *Gram Sabha*. The land constitutes a common community resource for the Giddhijhopri community, which is reinforced by the fact that the Giddhijhopri *Santhal* Indigenous community has used the land as their graveyard since time immemorial. There are tomb stones near the water treatment plant site, belonging to ancestors of Giddhijhopri residents.<sup>36</sup> Two of these tombstones have physical markings on them, which state:

1<sup>37</sup>: ॐ

SHRI SHYAM SUNDAR GORAI  
S/O SHRI PC GORAI  
DATE OF BIRTH 11.11.1969  
DATE OF EXPIRED 18.8.1987

2<sup>38</sup>: FAGU SOREN  
SON OF SRI NUNA SOREN  
GIDDHIJHOPRI  
DATE OF BIRTH 03.09.1969  
DATE OF BIRTH 18.08.1987  
QUALIFICATION: B COM 2ND YEAR.

These markings show that the land has been used as a graveyard by the Giddhijhopri community, at the very least, for the past two and a half decades. Further, the site is also the place where a sacred grove is located. The community worships this sacred grove every five years, a practice called *Jantad Pooja* locally.

Despite reports to the contrary, the Giddhijhopri *Gram Sabha* has never passed a “No Objection” (“NOC”) resolution regarding the water treatment plant. According to a media report dated February 23, 2016, Giddhijhopri village gave a “No Objection Certificate” for

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<sup>34</sup> For the purposes of PESA, “a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.” See Section 4(b), PESA, ANNEXURE P. In other words, a village in a Scheduled V area can be smaller than the revenue village (which is comprised of hamlets). This has been acknowledged in the Tribal Development Plan, as well. See IPE GLOBAL, Jharkhand Tribal Development Plan, March 2013, available at: <http://documents.worldbank.org/curated/en/153061468041654030/pdf/IPP6290v20P1320C0disclosed04050130.pdf> (*hereinafter* Tribal Development Plan), annexed as ANNEXURE Q.

<sup>35</sup> An *Anganwadi* refers to rural day care centres for children in India.

<sup>36</sup> ANNEXURE G.

<sup>37</sup> Photographs of the tomb annexed as ANNEXURE R1, R2 as part of ANNEXURE R (colly.).

<sup>38</sup> Photograph of the tomb annexed as ANNEXURE R3, R4 as part of ANNEXURE R (colly.).

the construction of the water treatment plant.<sup>39</sup> For the record, our village never gave any such NOC. The then SDO,<sup>40</sup> along with Middle Ghaghidih Gram Panchayat Head, organised a *Gram Sabha* in Ranadih village instead.<sup>41</sup> The *Majhi* of another village, Gultujhopri, reportedly stated that he gave permission for the construction of the water treatment plant, naming Ranadih as the relevant village. However, the land belonging to Ranadih village is not the site where the water treatment plant is being constructed. The water treatment plant site is squarely within the jurisdiction of the Giddhijhopri *Gram Sabha*. Without the consent from the correct *Gram Sabha*, the construction of the water treatment plant on the current site, which belongs to Giddhijhopri, is illegal and unconstitutional under Indian Law. The Giddhijhopri *Gram Sabha* does not accept the decision of the Ranadih *Gram Sabha* about the use of land resources that fall within its jurisdiction and opposes any such resolution passed by them. The community is profoundly disturbed by the World Bank's support of a project that is in violation of Indian law, especially laws designed to protect the rights of Indigenous people.<sup>42</sup>

*(d) Use of threats, force, and intimidation tactics*

Attempts have been made by the state administration to force the Giddhijhopri community to withdraw its opposition to the CB Scheme. On June 6, 2016, the then SDO visited neighbouring Ranadih along with police to discuss the issue of *Gram Sabha* consent for the first time.<sup>43</sup> A few community members from Giddhijhopri were in attendance, amongst people from various villages. The SDO asked about water requirements, and Giddhijhopri community members who were present stated their satisfaction with the quality, quantity, and medium of the water supply in Giddhijhopri. They stated not needing or wanting a piped water supply scheme, and opposed the spot selected for the construction of the water treatment plant because it is a traditional graveyard and sacred grove. Upon hearing this, the SDO stated that he would ensure the plant is constructed on that site using police force.<sup>44</sup> The community filed a criminal complaint against the SDO because of his threatened use of force and his insistence on getting the Project implemented in Giddhijhopri through any means necessary, despite restrictions placed by PESA and the Constitution of India.<sup>45</sup>

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<sup>39</sup> Photograph of newspaper clipping dated February 23, 2016 annexed as ANNEXURE D3, part of ANNEXURE D (colly.).

<sup>40</sup> Mr. Suraj Kumar was the SDO at that time.

<sup>41</sup> Some members from Giddhijhopri village were at the Ranadih meeting and that is how the community came to know about the meeting.

<sup>42</sup> Section 4(e), PESA, ANNEXURE P, *supra* FN 33.

<sup>43</sup> The Telegraph, "Talks before water plant", June 7<sup>th</sup>, 2016, available at: <https://www.telegraphindia.com/states/jharkhand/talks-before-water-plant/cid/1325992>, annexed as ANNEXURE D4.

<sup>44</sup> Photograph of newspaper clipping dated June 26, 2016 titled (translated) "Now Administration will start the work" annexed as ANNEXURE D5.

<sup>45</sup> Hindustan Times, Debashish Sarkar, "Sedition slap for SDO over water project", July 15 2016, annexed as ANNEXURE D6; Photographs of various newspaper clippings dated July 14, 2016 annexed as ANNEXURE D7; Petition by community members for filing criminal complaint against SDO in the Court of Chief Judicial Magistrate, Jamshedpur annexed as ANNEXURE S.

On July 15, 2016, police officers<sup>46</sup> arrived at the site of the graveyard of Giddhijhopri village accompanied by workers, earth extraction machines and leaders from semi-urban areas who reportedly support the CB Scheme. When women from the village heard about this, they assembled together along with a few men. The police officers came in the afternoon, when most men had left for work. The women demanded to see the *Gram Sabha* resolution from Giddhijhopri village showing consent for the construction work. When the police could not produce any such *Gram Sabha* resolution, the community members demanded the work be stopped and that the workers and police leave the site, and remove the machinery. In response to this peaceful protest, the police officers used batons to disperse the women, some even brandishing their service revolvers to scare the protestors. Several women and children were beaten by male police officers.<sup>47</sup> The men who tried to intervene were also beaten badly. Several villagers suffered serious injuries and had to go to hospital.<sup>48</sup> Media reports also indicate that unarmed women were beaten by male police officers.<sup>49</sup>

The use of force was apparently pre-meditated. In a letter dated May 25, 2016, from the Executive Engineer, DWSD, Jamshedpur to the SDO, Dhalbhum Subdivision, a request was made for the use of force to deal with villagers opposing the project.<sup>50</sup> The letter mentions that a “No Objection Certificate” was obtained from the concerned Land Officer. This is preceded by another similarly worded letter from the Assistant Executive Engineer, DWSD, to SDO Dhalbhum Subdivision dated April 23, 2016, requesting the use of force.<sup>51</sup> It is notable that in an earlier letter dated January 20, 2016, the Land Officer, while granting the “No Objection Certificate” for the water treatment plant site, laid down the condition that construction work can only begin after permission is obtained from the concerned *Gram Sabha*.<sup>52</sup> As already mentioned, this requirement was never fulfilled.

Minutes of a meeting dated July 15, 2016 (the same day as the use of force against villagers), of District Level Officers of Jamshedpur, including police officers, reveal that the district administration decided to take criminal action against all those protesting land disputes.<sup>53</sup> These minutes and letters were obtained as part of the District Administration’s

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<sup>46</sup> The police force included police teams from Bagbera, Parsudih and Jugsalai police stations.

<sup>47</sup> Photograph of newspaper clipping sourced from Hindustan Times, titles “Water Wars”, dated July 16, 2016 annexed as Annexure D8; photograph of newspaper clipping from Prabhat Khabar dated July 16, 2016 titled (translated), “Opposition dampens. Villagers angry” annexed as ANNEXURE D9.

<sup>48</sup> Medical examination records of community members who suffered injuries because of use of force by the police annexed as ANNEXURE T.

<sup>49</sup> Photograph of newspaper clipping from Prabhat Khabar dated July 16, 2016 titled (translated) “Villagers beaten with batons, women manhandled” annexed as ANNEXURE D10.

<sup>50</sup> Letter from Executive Engineer, Drinking Water and Sanitation Department, Jamshedpur to the Sub-Divisional Officer, Dhalbhum Sub-division, Jamshedpur in Reply filed by district administration to the National Commission for Schedule Tribes on the issue of use of force against the community (*hereinafter* NCST Reply) p. 6, annexed as ANNEXURE U.

<sup>51</sup> NCST Reply, p.8, ANNEXURE U.

<sup>52</sup> NCST Reply, p.10, ANNEXURE U.

<sup>53</sup> NCST Reply, p.55-56, ANNEXURE U.

reply to a community complaint to the National Commission for Scheduled Tribes in relation to use of force by local authorities.<sup>54</sup>

The same day, July 15, 2016, a complaint letter levelling false allegation against 39 members of the community was submitted in the Bagbera Police Station by the Assistant Sub-Inspector of Police.<sup>55</sup> The letter insinuates there was a violent mob that was involved in an altercation with police officers. Following this complaint, charges were registered against the 39 people under multiple sections<sup>56</sup> of the Indian Penal Code. The alleged offences are serious and range from rioting, kidnapping, and causing grievous hurt, to attempted murder. However, even after two years, no evidence has been filed in courts. Instead, these charges are regularly used to harass community members. It has consequently become difficult for Giddhijhopri community members to obtain character certificates from the police station. These certificates are needed in India for various purposes, such as employment.

### **(3) Violations of World Bank Policies**

#### *(a) Operational Policy on Environmental Assessment OP 4.01*

##### *(i) Erroneous Project Categorization*

This Project was wrongly categorised as a category B project, which lowered the required level of environmental assessment. Under the World Bank Policy on Environmental Assessment, a proposed project is classified as Category A "if it is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented. These impacts may affect an area broader than the sites or facilities subject to physical works."<sup>57</sup> A potential impact is considered "sensitive" if it may be irreversible (for example, lead to loss of a major natural habitat) or raise issues covered by OP 4.04, Natural Habitats; OP/BP

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<sup>54</sup> The National Commission for Schedule Tribes is a body established under the Indian Constitution. Its functions include the duty to investigate complaints concerning rights and safeguards of Schedule Tribes. The communities submitted a complaint to the National Commission of Schedule Tribes dated July 15, 2016, regarding the use of force by the state administration on peaceful protestors.

<sup>55</sup> Complaint letter by Lalji Hembram to Station House Office, Bagbera Police Station, dated July 15, 2016, annexed as ANNEXURE V.

<sup>56</sup> Sections 147 (Punishment for Rioting), 148 (Rioting, armed with deadly weapon), 149 (Every member of unlawful assembly guilty of offence committed in prosecution of common object), 342 (Punishment for wrongful confinement), 323 (Punishment for voluntarily causing hurt), 325 (Punishment for voluntarily causing grievous hurt), 324 (Voluntarily causing hurt by dangerous weapons or means), 307 (Attempt to murder), 427 (Mischief causing damage to the amount of fifty rupees), 353 (Assault or criminal force to deter public servant from discharge of his duty), 364 (Kidnapping or abducting in order to murder), 120B (Punishment of Criminal Conspiracy) of Indian Penal Code, 1860, available at <http://www.advocatekhaj.com/library/bareacts/indianpenalcode/index.php?Title=Indian%20Penal%20Code.%201860>.

<sup>57</sup> The Environmental and Social Safeguard Policies (*hereinafter* ESSP), OP 4.01, Environmental Assessment, ¶ 8(a).

4.10, Indigenous Peoples; OP/BP 4.11, Physical Cultural Resources or OP 4.12, Involuntary Resettlement.<sup>58</sup>

The CB scheme is one of the many large multi-village schemes that are being implemented under the Project.<sup>59</sup> In at least one state in which the Project is being implemented (i.e. Jharkhand), there will be wide ranging impacts on Indigenous Peoples, including issues covered under OP/BP 4.10. Moreover, construction of large multi-village schemes require infrastructure creation which often have diverse, wide ranging impacts on ecology, human health and safety, resources and rights of people. Further, the Project envisages monetizing access to drinking water for rural communities in India. This is likely to have unprecedented impacts on impoverished rural communities in all the four states, if they currently have free access to drinking water. Bank Management did not adequately consider the serious adverse impacts of these multi-village schemes on the impacted communities and their physical cultural and water resources at the time of project screening.

The CB Scheme, in particular, involves serious and multidimensional environmental concerns, as well as impacts on critical cultural and economic resources of the *Santhal* Indigenous community.<sup>60</sup> A large-scale infrastructure development project that has the potential to irreversibly destroy or damage a physical cultural resource, such as a traditional graveyard and sacred grove, must be considered a “sensitive” adverse environmental impact within the scope of the definition of a Category A project.

The impacts go beyond the physical structures in Giddhijhopri and other villages. The CB Scheme proposes to extract significant volumes of water from the Subarnarekha river, which is likely to have adverse impacts on the hydrology of the area. Most of the impacted villages are Indigenous villages where local bodies of water, like ponds and wells, form a key component of many cultural practices. Diversion of the water of the river, which feeds groundwater and other water reservoirs in the area, can have significant negative impacts on local bodies of water in these villages, thereby affecting the cultural practices and way of life of many Indigenous communities. The potential adverse impacts of the CB Scheme on the hydrology of the region have the potential to be significant and irreversible.

Additionally, even though the World Bank is not directly funding the Jamshedpur Urban Agglomeration Plan, the fact is that the Bank-funded CB Scheme is a key component of the proposed Urban Agglomeration Plan.<sup>61</sup> As described above, this Plan will adversely impact several Indigenous villages. The urbanisation of the rural areas around Jamshedpur will also significantly increase the run-off into the Kharkai and Subarnarekha rivers surrounding these areas.<sup>62</sup> The community fears that increased urban run-off to these rivers,

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<sup>58</sup> ESSP, OP 4.01, Environmental Assessment.

<sup>59</sup> Project Information Document (PID) Concept Stage, p. 9, available at <http://documents.worldbank.org/curated/en/217221468771091447/pdf/PID0Print0P13217301025201201351185627617.pdf>

<sup>60</sup> See (2)(a) *Impacts on shared community resources and local culture*, p. 5.

<sup>61</sup> Draft Master Plan Jamshedpur, p.62, ANNEXURE K.

<sup>62</sup> United States Environment Protection Agency, Drinking Water Treatment Plant Residuals Management Technical Report (EPA 820-R-11-003 ) (*hereinafter* EPA report on WTP Residuals), p. 5-3, “The

accompanied by the mass abstraction of water from them, may lead to devastating impacts on the aquatic ecosystem, hydrology, hydro-geology, direction and nature of river flow and erosion patterns.

Given the potential for diverse, large-scale, unprecedented impacts on Indigenous communities in the region, the Scheme required a rigorous environmental assessment which should have been done as per Category A standards. The hydrology impacts alone of these large multi-village schemes should have required independent, internationally recognised hydrology experts as per the requirements of the Operational Policy on Environmental Assessment.<sup>63</sup>

The Bank failed to do an adequate project screening, which in turn caused a failure to adequately assess the potential impacts of the RWSS-LIS and the various sub-projects under it. A proper and timely Category A Environmental Assessment for the CB Scheme would have provided the necessary opportunity for the Bank to fully analyse risks and issues presented by the CB Scheme, and to identify alternative approaches that would have minimised adverse impacts and maximised possibilities to restore and improve the environment.

(ii) *Absence of Environmental Assessment*

In spite of the large-scale potential adverse impacts of the CB Scheme, it appears that no meaningful environmental assessment was carried out. The Baseline Environmental Assessment & Environmental Management Framework (“EA-EMF”) for the state of Jharkhand as a whole did not examine potential adverse impacts of sub-projects. Instead, it noted that for sub-projects, an Environment Data Sheet and categorisation into Category 1 or 2 was needed. In the case of Category 2 sub-projects, a detailed environmental appraisal was required.<sup>64</sup> There is no indication that these requirements were fulfilled in the case of the CB Scheme. None of these documents are publicly available. As discussed above, when the community requested these documents through an RTI application,<sup>65</sup> they were instead provided with the Detailed Project Reports and Preliminary Design Reports, neither of which contain an environmental assessment.

The apparent failure to conduct an environmental assessment is a clear violation of the World Bank’s Safeguard Policy on Environmental Assessment. It indicates a failure on the part of Bank management to properly monitor various sub-projects and ensure compliance with the World Bank’s Safeguard Policies. The Bank’s supervision of the DWSD, Jamshedpur was insufficient and wanting, and as such in non-compliance with the requirements of OP 4.01.<sup>66</sup>

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industrialization and urbanization of rural land increases the amount of runoff into source water”, available at: <https://www.epa.gov/sites/production/files/2015-11/documents/dw-treatment-residuals-mgmt-tech-report-sept-2011.pdf>, annexed as ANNEXURE W.

<sup>63</sup> ESSP, OP 4.01, Environmental Assessment., ¶4.

<sup>64</sup> EA-EMF Report, p. 117.

<sup>65</sup> ANNEXURE L.

<sup>66</sup> ESSP, OP 4.01, Environmental Assessment., ¶9.

(iii) *Lack of a proper mechanism for sludge disposal*

A water supply scheme of this level will generate enormous amounts of sludge. It is therefore concerning that neither the Detailed Project Report nor the Preliminary Design provide any indication as to where the sludge will be disposed. On the contrary, the Detailed Project Report indicates that the sludge might be manually cleaned,<sup>67</sup> a practice that is banned under Indian law because of its harmful impacts on those doing the cleaning.<sup>68</sup>

Residual sludge generated from water treatment processes can be toxic. It can have suspended solids, pathogens, and heavy metals. Such sludge, if not properly disposed of, can further contaminate the receiving waters and adversely impact aquatic ecosystems as well as water chemistry.<sup>69</sup> Such sludge is also likely to have heavy metal residuals, which can be toxic to phytoplankton and zooplankton and to higher aquatic plant and animal species, including fish.<sup>70</sup> Further, the community fears that the use of chlorine for water treatment<sup>71</sup> can lead to chlorine residuals in the sludge, which can be highly toxic.<sup>72</sup>

Given the potentially alarming levels of toxicity in the sludge that will be discharged, the Detailed Project Report and Preliminary Design Report should have discussed these risks and provided details about sludge disposal.<sup>73</sup> The fact that the reports lacked relevant and important information regarding sludge disposal should have been a cause of concern for the Bank. The Bank Task Team should have looked into these components before approving the reports and subsequently the CB Scheme itself. Even a rudimentary environmental assessment for a water treatment project must include details about the project's sludge disposal process. Such an oversight by the Bank suggests that the scope and level of scrutiny employed by the Bank was deficient.

(iv) *Lack of Public Consultation*

Under the World Bank's Environment and Social Safeguard Policy ("ESSP"), the borrower is supposed to consult project affected groups about the Project's environmental impacts

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<sup>67</sup> Bagbera Detailed Project Report (ANNEXURE B), Sludge removal (3.8.3.6), "Manual cleaning would be discouraged as far as possible".

<sup>68</sup> The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, available at <http://nask.nic.in/sites/default/files/manualsca-act19913635738516382444610.pdf>.

<sup>69</sup> EPA report on WTP Residuals, p. 10-2, 10-3, ANNEXURE W.

<sup>70</sup> EPA report on WTP Residuals, p. 10-3, ANNEXURE W.

<sup>71</sup> Bagbera Preliminary Design Report, 4.4.3 Treatment Process, p. 4-8.

<sup>72</sup> EPA report on WTP Residuals, p. 10-4, ANNEXURE W.

<sup>73</sup> In the past, the Inspection Panel has found the Bank in violation of its policies for failure to properly address the issue of sludge disposal at the environment assessment stage. See Investigation Report-Colombia: Cartagena Water Supply, Sewerage and Environmental Management Project, June 24, 2005, p.44, available at: <http://documents.worldbank.org/curated/en/824481468770490508/pdf/320340ENGLISH01ationReport01PUBLIC1.pdf>

and take their views into account.<sup>74</sup> However, this Policy has been violated with respect to the CB Scheme.

As described above, many community members, especially women, only became aware of the Scheme on the day that machinery was brought to Giddhijhopri to construct the water treatment plant in the presence of police. When community members expressed their reservations, they were threatened and beaten.<sup>75</sup>

The Jharkhand Baseline EA-EMF claims that it was developed through broad consultations across Jharkhand.<sup>76</sup> The scope of these consultations was to assess the existing status of water supply, sanitation, public health, and personal and environmental hygiene.<sup>77</sup> It seems these consultations did not make a rigorous attempt to understand the impacts of planned components of the Project on project affected people. An environmental assessment as per the ESSP has to evaluate a project's potential environmental risks and impacts and examine project alternatives.<sup>78</sup> Public consultations related to an environmental assessment should therefore include consultations specifically regarding these aspects. The Bank should properly monitor and review the scope of an EA-EMF for all sub-projects, including scrutiny of the nature and extent of consultations.<sup>79</sup> The extremely narrow scope of the EA-EMF consultations falls short of the requirements for an EA-EMF and indicates a failure on the part of the Bank to properly appraise DWSD's work.<sup>80</sup>

Specifically, regarding the CB Scheme, no proper consultation took place in Giddhijhopri village. Little attempt has been made to take community views into account even though a key component of the Scheme is being constructed on land where the community's ancestors are buried. The community believes that the CB Scheme does not fulfil the ESSP's requirements for public consultations.<sup>81</sup>

(v) *Inadequate Information Disclosure*

The World Bank has failed in this Project to ensure that its information disclosure requirements are fulfilled. Under World Bank policy, the borrower is supposed to provide relevant material in a timely manner prior to consultation and in a form and language understandable and accessible to project affected people.<sup>82</sup> In the case of the CB Scheme, the implementing authority never provided any documents to the community. There is also no information about the Scheme on the World Bank's website. In fact, the World Bank's website only has documents for Jharkhand as a whole, which discuss the over-arching RWSS-LIS. The Giddhijhopri community first realised the World Bank is funding the CB Scheme through media reports.

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<sup>74</sup> ESSP, OP 4.01, Environmental Assessment., ¶15.

<sup>75</sup> See 2(d) *Use of threats, force, and intimidation tactics*, p. 11.

<sup>76</sup> EA-EMF Report, p. 3.

<sup>77</sup> EA-EMF Report, p. 4.

<sup>78</sup> ESSP, OP 4.01, Environmental Assessment., ¶2.

<sup>79</sup> ESSP, BP 4.01, Environmental Assessment, ¶16.

<sup>80</sup> ESSP, OP 4.01, Environmental Assessment., ¶9.

<sup>81</sup> ESSP, OP 4.01, Environmental Assessment., ¶14.

<sup>82</sup> ESSP, OP 4.01, Environmental Assessment., ¶16.



As a result, the community filed an RTI application for documents related to the CB Scheme. The already impoverished community collected INR 5100 to get access to the documents that were made available in response to the RTI application.<sup>83</sup> Several trips had to be made to the DWSD office to finally get the documents, consuming additional time and resources. Even then, the community was only given the bidding documents, Detailed Project Reports and Preliminary Design Reports, not all the documents they had requested. Moreover, the documents are largely in English and were not translated into Hindi or Santhali, the languages spoken by the project affected people. Thus the information disclosure for the CB Scheme fell far short of meeting the ESSP requirements.<sup>84</sup>

*(b) Operational Policy on Indigenous Peoples OP 4.10*

The Bank's Indigenous Peoples Policy OP 4.10 applies to the CB Scheme's implementation in Giddhijhopri. Most of Giddhijhopri's population is comprised of the *Santhal* Indigenous community. The *Santhals* are an impoverished community in East and Central India that has suffered marginalisation because of rapid industrialisation at the cost of their ancestral land and resources. They identify as *Adivasis* and are recognised as a Scheduled Tribe under the Constitution of India.<sup>85</sup> As mentioned earlier, at the edge of every *Santhal* village is a *Jaher Sthal*, which is a common community resource and is believed to be the resting place for ancestral spirits. *Santhal* villages have their own traditional governance and decision-making structures called the *Majhi Pargana Mahal*, as well as cultural and spiritual practices that are distinct from mainstream practices. The *Santhals* speak Santhali. Based on these facts, it can be concluded that the *Santhals* in Giddhijhopri are Indigenous communities for the purpose of the Indigenous Peoples Safeguard Policy.

Under the Policy, the Bank is supposed to ensure that Indigenous communities receive social and economic benefits in a culturally appropriate manner.<sup>86</sup> In light of the lack of appropriate consultation, risks to important Indigenous resources and cultural heritage, and the violent retaliation towards community members, the community believes that the Bank's actions with regard to planning and implementation of the RWSS-LIS, and specifically the CB Scheme, disrespect and threaten the dignity, human rights, economy, and cultures of Indigenous Peoples.

*(i) Lack of free, prior, and informed consultation*

According to the Bank's Policy on Indigenous Peoples:

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<sup>83</sup> Response to RTI Application, *supra* FN 27.

<sup>84</sup> ESSP, OP 4.01, Environmental Assessment., ¶15.

<sup>85</sup> Bihar Schedules Areas Regulation, available at: <http://www.jharkhand.gov.in/documents/10179/54299/List%20Of%20Caste%20And%20SubCast%20under%20CNT%20ACT>. Scheduled Tribes is a term that refers to tribal groups that are recognised as such by the Constitution of India.

<sup>86</sup> ESSP, OP 4.10, Indigenous Peoples, ¶1.

*A project proposed for Bank financing that affects Indigenous Peoples requires<sup>87</sup>:*

- (a) screening by the Bank to identify whether Indigenous Peoples are present in, or have collective attachment to, the project area...;*
- (b) a social assessment by the borrower...;*
- (c) a process of free, prior, and informed consultation with the affected Indigenous Peoples' communities at each stage of the project, and particularly during project preparation, to fully identify their views and ascertain their broad community support for the project...;*
- (d) the preparation of an Indigenous Peoples Plan...or an Indigenous Peoples Planning Framework...; and*
- (e) disclosure of the draft Indigenous Peoples Plan or draft Indigenous Peoples Planning Framework...*

Regrettably, the development of the CB Scheme neglected most of these requirements. It bears repeating that the first time many community members learned about the CB Scheme and the fact that a water treatment plant was being constructed on their sacred ancestral land was the day that machinery was brought to the village. When community members raised their concerns, they were beaten and threatened by police officers.<sup>88</sup>

The CB Scheme has been implemented by keeping Giddhijhopri communities in the dark and excluding them from the decision-making process. The community was not asked if they required piped water or how they wanted water supplied. According to the Tribal Development Plan prepared for Jharkhand, the Detailed Project Report was to be approved and consulted on at the habitation level.<sup>89</sup> However, this did not take place, and the community could only access the Detailed Project Report after expending financial resources and time to get it from DWSD using the RTI Act.

Under the Policy on Indigenous Peoples, the Bank must undertake a screening to determine whether Indigenous Peoples have a collective attachment to project land.<sup>90</sup> It seems no such screening was done for the CB Scheme because the project implementer continues to deny that the land is a traditional graveyard, despite ample proof. The Bank must consult with the affected Indigenous communities during the screening process,<sup>91</sup> but the Giddhijhopri community was not consulted on any aspect of the CB Scheme. World Bank management failed to take steps to do a proper appraisal of risks to Indigenous communities.

The project documents do not disclose any attempts made to ascertain if the CB Scheme has broad community support.<sup>92</sup> According to the Tribal Development Plan for Jharkhand, self-selection by Indigenous communities from the habitation/village was supposed to be a central principle under the RWSS-LIS.<sup>93</sup> However, in the case of the CB Scheme, it has been forced upon the communities despite their vehement opposition.

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<sup>87</sup> ESSP, OP 4.10, Indigenous Peoples, ¶6.

<sup>88</sup> See 2(d) *Use of threats, force, and intimidation tactics*, p.11

<sup>89</sup> Tribal Development Plan, ANNEXURE Q, p. 59.

<sup>90</sup> ESSP, OP 4.10, Indigenous Peoples, ¶8.

<sup>91</sup> ESSP, OP 4.10, Indigenous Peoples, ¶8.

<sup>92</sup> ESSP, OP 4.10, Indigenous Peoples, ¶11.

<sup>93</sup> Tribal Development Plan, ANNEXURE Q, p. 50.

As highlighted earlier, the CB Scheme appears to be part of a larger process to urbanise constitutionally protected Indigenous areas. The Indigenous communities in the area do not require piped water supply. They have adequate access to good quality water in their village free of cost, and have independently verified its quality through scientific testing.<sup>94</sup> Instead, the demand for piped water is coming from irregular housing colonies of non-Indigenous communities that have emerged around Giddhijhopri village, including residents of Bagbera colony, who have long been complaining about a shortage of water.<sup>95</sup> Using their Indigenous ancestral resources, the CB Scheme is neither wanted nor needed, but is being imposed on the Giddhijhopri community. These facts show that a process of free, prior, and informed consultations did not take place.

The Tribal Development Plan for Jharkhand acknowledges that traditional governance institutional systems have substantial influence in Indigenous areas and that “people often have more faith in these than PRIs and VWSCs”.<sup>96</sup> The Tribal Development Plan recognises that “inclusion of traditional tribal institutions will be critical as they have substantial influence in their respective tribes.”<sup>97</sup> The Giddhijhopri village is organised under the *Majhi-Pargana* system. Yet, for the implementation of the CB Scheme, the *Majhi-Pargana* system was completely sidestepped. Moreover, when traditional leaders have asked for rights violations caused by implementation of the CB Scheme to be remedied, they have been labelled as land mafia by administrative authorities and accused of serious criminal charges.

(ii) *No assessment of the negative impacts of CB Scheme on Indigenous community resources*

The World Bank Policy on Indigenous Peoples makes clear that even for large projects which have multiple-sub-projects, if the screening of an individual program or subproject indicates that Indigenous Peoples are present in, or have collective attachment to, the area of the program or subproject, the borrower must ensure that, before the individual program or subproject is implemented, a social assessment is carried out and an Indigenous Peoples Plan (IPP) is prepared.<sup>98</sup>

The “issues for consideration” described in the Jharkhand Tribal Development Plan do not

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<sup>94</sup> In May 2018, water from Giddhijhopri village’s hand pump and community well were sampled and sent to a laboratory for testing for arsenic, cobalt, iron, lead, manganese, and molybdenum. ANNEXURE Y contains results of this testing. Note that it is redacted to withhold the identity of the laboratory. A scientific expert was consulted to interpret the test results.

<sup>95</sup> The Telegraph, Water March to Capital, August 31, 2018, available at [https://www.telegraphindia.com/1120831/jsp/jharkhand/story\\_15915872.jsp](https://www.telegraphindia.com/1120831/jsp/jharkhand/story_15915872.jsp), Avenue Mail, Residents of Bagbera Complain against poor quality of water supply, February 27, 2014 available at <https://www.avenuemail.in/jamshedpur/residents-bagbera-complain-poor-quality-water-supply/31351/>, The Business Standard, Jamshedpur Water Supply Dries Up As Tisco, Bihar Govt Clash, January 27, 2013, [https://www.business-standard.com/article/specials/jamshedpur-water-supply-dries-up-as-tisco-bihar-govt-clash-197031301082\\_1.html](https://www.business-standard.com/article/specials/jamshedpur-water-supply-dries-up-as-tisco-bihar-govt-clash-197031301082_1.html).

<sup>96</sup> Tribal Development Plan, ANNEXURE Q, p. 9.

<sup>97</sup> Tribal Development Plan, ANNEXURE Q, p. 10, 14.

<sup>98</sup> ESSP, OP 4.10, Indigenous Peoples, ¶14.

include issues arising out of community opposition to projects and their various components due to impacts on community resources.<sup>99</sup> Instead, they are limited to improving access to water and toilets. There is no indication that a social assessment was conducted to evaluate the CB Scheme's potential positive and adverse effects on Indigenous Peoples or "to examine project alternatives where adverse effects may be significant."<sup>100</sup> In fact, the Baseline Social Assessment for Jharkhand makes an incorrect assessment that the program interventions will not impact Indigenous communities.<sup>101</sup> The World Bank Task Team appears to have overlooked these contraventions of the Safeguard Policy on Indigenous Peoples.

As described in detail above, the water treatment plant in Giddhijhopri is being constructed on ancestral land that is tied to the community's way of life. It is the meeting point for important cultural practices, as ancestors are buried and cremated there. For many community members, the site has the last memories of their loved ones. A scared grove is located there and is worshipped every five years. The community also relies on the hill for grazing of livestock.

As mentioned earlier, the CB Scheme is also closely tied to the Jharkhand Urban Agglomeration Plan that threatens to fundamentally change the nature of this Indigenous area and convert it into an urban zone. Thus, the social assessment should assess the negative impacts of the Proposed Urban Agglomeration Plan as well.

*(iii) Absence of a mitigation plan to provide remedy for the negative impacts of the CB Scheme on Indigenous communities*

OP 4.10 requires that where adverse impacts are unavoidable, the borrower must minimise, mitigate, or compensate for such effects.<sup>102</sup> The Detailed Project Report does not contain a mitigation plan to remedy the negative impacts that the CB Scheme is likely to cause, nor have they been compensated for the harm already caused. Moreover, if the Scheme is completed, the community will be forced to pay money to access water.

*(c) Operational Policy on Physical Cultural Resources OP 4.11*

*(i) Impacts on physical cultural resources not taken into account in the Project Design*

The Bank's policy on Physical Cultural Resources requires a borrower to address impacts on physical cultural resources in projects proposed for Bank financing, as an integral part of the environmental assessment process.<sup>103</sup> This is true even for projects involving sub-projects like the CB Scheme.<sup>104</sup> The Baseline and Impact Assessment should include: "(a)

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<sup>99</sup> Tribal Development Plan, ANNEXURE Q, p. 40.

<sup>100</sup> ESSP, OP 4.10, Indigenous Peoples, ¶ 9.

<sup>101</sup> Tribal Development Plan, ANNEXURE Q, p.7.

<sup>102</sup> ESSP, OP 4.10, Indigenous Peoples, ¶1, ¶12.

<sup>103</sup> ESSP, OP 4.11, Physical Cultural Resources, ¶4.

<sup>104</sup> ESSP, OP 4.1, Physical Cultural Resources, ¶14.

an investigation and inventory of physical cultural resources likely to be affected by the project; (b) documentation of the significance of such physical cultural resources; and (c) assessment of the nature and extent of potential impacts on these resources.”<sup>105</sup> The borrower is supposed to have extensive consultations with Project Affected groups for identifying physical cultural resources because they are often undocumented or unprotected by law.<sup>106</sup>

In the CB Scheme documents, there again is no indication that any steps were taken to identify physical cultural resources that will be impacted by the Project. In the Concept Stage ISDS for the Project, the Task Team did not envisage applicability of the Safeguard Policy on Physical Cultural Resources OP/BP 4.11 to the Project.<sup>107</sup> Management’s initial appraisal of the project design is weak and fails to adequately consider the true extent of impacts on Physical Cultural Resources. The Baseline EA-EMF also concludes that no existing cultural property will be damaged.<sup>108</sup> However, the EA-EMF does envisage “possible damage to places of cultural, heritage and recreational importance” as a construction stage environmental impact.<sup>109</sup>

As mentioned, a characteristic feature of a *Santhal* village is a sacred grove (known as the *Jaher* or "*Santal Sthal*") on the edge of the village. For the Giddhijhopri community, the hill where the water treatment plant is currently being built is their *Jaher Sthal*, where the community gathers and worships at their sacred grove every five years, as well as a community graveyard and cremation ground where the community has been burying and cremating their dead. The impacts on the *Jaher* was not taken into account at any stage in the project.

(ii) *No steps to mitigate the impacts on community cultural heritage*

When physical cultural resources are impacted, the borrower is required under Bank policy to develop a physical cultural resources management plan that should include measures for avoiding or mitigating any adverse impacts on physical cultural resources, provisions for managing chance finds, any necessary measures for strengthening institutional capacity, and a monitoring system to track the progress of these activities.<sup>110</sup> Even for projects involving sub-projects, the Bank is supposed to ensure implementation of mitigation measures and monitor it during project implementation.<sup>111</sup>

However, the Environmental Management Framework developed under the Baseline EA-EMF does not provide any measures to avoid or mitigate impacts on physical cultural resources. The hilltop is an important point of convergence for the Giddhijhopri community’s cultural and spiritual activities. They are deeply connected to it from life to

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<sup>105</sup> ESSP, BP 4.11, Physical Cultural Resources, ¶ 8.

<sup>106</sup> ESSP, BP 4.11, Physical Cultural Resources, ¶ 7.

<sup>107</sup> Integrated Safeguards Data Sheet Concept Stage, ANNEXURE E.

<sup>108</sup> EA-EMF Report, p. B.

<sup>109</sup> EA-EMF Report, p. 89.

<sup>110</sup> ESSP, OP 4.11, Physical Cultural Resources, ¶ 9.

<sup>111</sup> ESSP, OP 4.11, Physical Cultural Resources, ¶ 14 read with OP 4.01, Environmental Assessment, ¶9.

death. Yet, rather than mitigating impacts to their ancestral land, the borrower's response has been one of denial.

#### **(4) Violations of Indian and International Law**

The Bank Policy OP 4.01 on Environmental Assessment requires that the environmental assessment consider “the country's overall policy framework, [and] national legislation...related to the environment and social aspects...” and “identify matters pertaining to the project's consistency with national legislation or international environmental treaties and agreements”.<sup>112</sup>

##### *(a) Violation of Constitutional Provisions*

Schedules V and VI of the Constitution of India provide for self-governance in tribal majority areas under Article 244.<sup>113</sup> The object of Schedule V is to preserve the autonomy, culture, and economic empowerment of Indigenous or tribal peoples to ensure social, economic, and political justice in the scheduled area.<sup>114</sup> Clause 5(2) of Schedule V even prohibits the state from transferring public/state land in Scheduled areas to non-tribals.<sup>115</sup> The public policy rationale for this law is to preserve peace and safeguard the tribal way of life: if the Government transfers the public land to non-tribals, “peace would be disturbed, good governance in scheduled area would slip into the hands of the non-tribals who would drive out the tribals from scheduled area and create monopoly to the well-developed and sophisticated non-tribals...”<sup>116</sup>

This makes clear that it is illegal and unconstitutional for the state to transfer land in Giddihopri, a recognised scheduled area, to a corporation for the construction and operation of a water treatment plant. In this case, possession has been given to Chhota Gobindpur and Bagbera Drinking Water Supply Project Limited, an entity of Infrastructure Leasing and Financial Services Limited.

##### *(b) Violation of PESA and Jharkhand Panchayati Raj Act (“JPRA”)*

Under PESA, any plan or proposal that is presented by the *Gram Panchayat* has to receive prior approval, after consultation, from the *Gram Sabha*.<sup>117</sup> The *Gram Sabha* has the power

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<sup>112</sup> ESSP, OP 4.01, Environment Assessment, ¶ 3.

<sup>113</sup> Constitution of India, Art. 244.: “Administration of Scheduled Areas and Tribal Areas (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam Meghalaya, Tripura and Mizoram.”

<sup>114</sup> *Samatha vs State Of Andhra Pradesh And Ors.*, 11 July, 1997, Appeal (civil) 4601-02 of 1997, available at <https://indiankanoon.org/doc/1969682/>.

<sup>115</sup> Clause 5(2) Fifth Schedule, Article 244(1) Constitution of India, read with *Samatha vs State Of Andhra Pradesh And Ors.*

<sup>116</sup> *Samatha vs State Of Andhra Pradesh And Ors.* *Supra* FN 114.

<sup>117</sup> Section 4 (e)(i), PESA, ANNEXURE P.

to safeguard community resources.<sup>118</sup> Its powers include managing natural resources like land, water, and forests falling within the limits of the village area.<sup>119</sup>

However, as mentioned above,<sup>120</sup> for the CB Scheme, *Gram Sabha* approval has not been provided in Giddhijhopri. The Detailed Project Report shows that letters have been obtained from various VWSCs. The PESA requirement is a resolution from the whole *Gram Sabha*, i.e. all adult members in a village who are on electoral rolls and not just the VWSC. It should be noted that in a letter dated January 20, 2016, the concerned Land Officer for this area, while granting the “No Objection Certificate” for the water treatment plant site, clearly laid down the condition that construction work can only begin after permission from the concerned *Gram Sabha* is obtained. This requirement was never fulfilled as the Giddhijhopri *Gram Sabha* never passed a *Gram Sabha* resolution providing any such permission. It is worrying that a World Bank-funded scheme is violating domestic legislation meant for the protection of Indigenous communities and that Bank management has failed to adequately monitor compliance with safeguards and local laws by the borrower.

### *(c) Violation of the Polluter Pays Principle*

The “polluter pays” principle is a well-accepted general principle of international law and is codified in international instruments.<sup>121</sup> The principle is now also part of Indian environmental jurisprudence.<sup>122</sup> The principle holds that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment.

It is well-documented that Jamshedpur and its surrounding areas has suffered considerable environmental degradation because of industrialisation and intense mining, including uranium mining.<sup>123</sup> The Baseline EA-EMF for Jharkhand acknowledges this environmental degradation,<sup>124</sup> noting that “metallic and dissolved toxic wastes from TISCO, Jamshedpur and HCL, Ghatsila and radioactive wastes from the uranium mill and tailings ponds of the UCIL at Jaduguda flow into Subarnarekha and its tributaries”<sup>125</sup>.

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<sup>118</sup> Section 4 (d), PESA, ANNEXURE P.

<sup>119</sup> S. 4(j), (m), ANNEXURE P. S. 10(xi), Jharkhand Panchayati Raj Act, ANNEXURE A.

<sup>120</sup> See 2(c) *Invalid Gram Sabha Resolution*, p.9.

<sup>121</sup> Principle 16, Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (vol. I); 31 ILM 874 (1992).

<sup>122</sup> Indian Council For Enviro-Legal Action Etc. vs Union Of India & Ors, 1996 AIR 1446, February 13, 1996, available at: <https://indiankanoon.org/doc/1818014/>; Vellore Citizens Welfare Forum vs Union Of India & Ors, AIR 1996 SC 2715, August 28, 1996, available at: <https://indiankanoon.org/doc/1934103/>. See also Satish C. Shastri, ‘The Polluter Pays Principle’ and the Supreme Court of India, *Journal of the Indian Law Institute*, 42 JILI (2000) available at: [http://14.139.60.114:8080/jspui/bitstream/123456789/17813/1/027\\_The%20Polluter%20Pays%20Principle%20and%20the%20Supreme%20Court%20of%20India%20%28108-116%29.pdf?source=app](http://14.139.60.114:8080/jspui/bitstream/123456789/17813/1/027_The%20Polluter%20Pays%20Principle%20and%20the%20Supreme%20Court%20of%20India%20%28108-116%29.pdf?source=app).

<sup>123</sup> See, e.g., Amita Bhaduri, “Subarnarekha is dying. Who’s responsible?”, *India Waterportal*, May 25, 2016 available at: <http://www.indiawaterportal.org/articles/subarnarekha-dying-whos-responsible>.

<sup>124</sup> EA-EMF Report, p. C.

<sup>125</sup> EA-EMF Report, p. 86.

The Indigenous communities in the region have tried to preserve their water and land resources despite this rapid industrialisation. Yet, the CB Scheme will in effect put the burden on the Indigenous communities, instead of the polluters, by making communities pay for access to drinking water, which is presently free. This is not consistent with the polluter pays principle. Giddhijhopri village's water is safe and fit for drinking, which has been proven through scientific testing. Hypothetically, even if it was not, the community should not be made to pay to treat water they did not pollute in the first place.

## **(5) Prior Attempts to Resolve Problems with the World Bank**

On behalf of the Giddhijhopri community, the Giddhijhopri *Majhi* Sukhram Kisku sent a letter to the World Bank Task Team leader, Mr. Shyam K.C., by electronic mail dated April 6, 2018,<sup>126</sup> raising various grievances of the Giddhijhopri community regarding the CB Scheme. The letter is enclosed. In a response dated April 13, 2018, also enclosed, Mr. Shyam K.C. assured the community that he will ask the State Project Implementation Unit to look into these grievances.<sup>127</sup>

Despite the passage of over four months, no tangible steps have been taken to solve the issues raised. Following Mr. Shyam K.C.'s response, the *Majhi* was contacted by the local police asking him to withdraw community opposition to the CB Scheme in exchange for withdrawal of criminal charges filed against 39 members of the community. On May 29, 2018, officials from the DWSD visited Giddhijhopri with only a few hours' notice. These DWSD officials did not visit the traditional graveyard at the water treatment plant site, despite requests to do so from the community members present. Community members raised their grievances about the CB Scheme with these officials, but have not received any satisfactory response from them.

On June 10, 2018, another e-mail was sent to Mr. Shyam K.C., notifying him about the lack of any assurance or concrete steps from the State Project Implementation Unit to remedy the harms caused.<sup>128</sup>

On October 6, 2018, after the community sent a Request for Inspection to the Inspection Panel, the Lead Water and Sanitation Specialist, Mr. Xavier Chauvot De Beauchene sent an electronic mail, stating that the Bank is following up on the points raised.<sup>129</sup>

The Giddhijhopri community's issues regarding the CB Scheme, which concern their autonomy as an Indigenous community, their culture, and their economic resources, remain unresolved. Despite repeated attempts to reach out to World Bank Management, the response has been inadequate. Meanwhile, construction of the water treatment plant continues.

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<sup>126</sup> E-mail to Shyam K.C., Task Team Leader, RWSS, annexed as ANNEXURE X1.

<sup>127</sup> Reply from Shyam K.C., annexed as ANNEXURE X2.

<sup>128</sup> E-mail to Shyam K.C. dated June 10, 2018, annexed as ANNEXURE X3.

<sup>129</sup> Reply from Xavier Chauvot De Beauchene dated October 6, 2018, annexed as ANNEXURE X4.



## **(6) Requested Next Steps**

The Giddhijhopri community, through fellow Complainant and community representative *Majhi* Sukhram Kisku, requests that the Inspection Panel conduct an immediate investigation to confirm the violations of Bank policy described above. The Complainants trust that the Panel process will result in the Bank taking steps to remedy the issues raised in this Request. The Complainants strongly urge the World Bank to:

- (i) Immediately stop disbursements to the RWSS-LIS and all construction activity on the CB Scheme, until such time that affected communities have been fully informed and consulted about the details of the CB Scheme, including its impacts, remedy and mitigation measures, and an independent analysis of alternative designs, in which the rights and needs of our community are made the priority. The CB Scheme in its current form is violating World Bank policies, as well as Indian and international law. Therefore, it should not be allowed to proceed further the way it is;
- (ii) Conduct a complete environmental impact assessment of the CB Scheme, including a social assessment as well as an assessment of the impacts of the CB Scheme on Indigenous populations;
- (iii) Appoint an independent hydrology expert to look at cumulative hydrological impacts of the CB Scheme, as well as other schemes that have been implemented in Jamshedpur and surrounding areas under RWSS-LIS;
- (iv) Once prepared, translate all assessment documents into Hindi and Santhali and disclose them through culturally appropriate consultations with our community, as well as other project affected communities;
- (v) Allow us, as affected people, to participate in the analysis and decision-making process for possible alternatives. The water treatment plant should be relocated, and our ancestral graveyard and sacred grove should be restored to its original form. If it is environmentally feasible, the CB Scheme could be implemented in alternative sites to benefit communities that actually require water, rather than imposing it on our community, which has preserved its water resources despite various challenges;
- (vi) Make reparations to our community for the harms suffered because of false criminal charges and police violence in response to our protests;
- (vii) Conduct all future baseline studies and monitoring reports with full transparency and participation of affected communities and make the results public.

Please note we are attaching a Hindi translation of this supplement, however, please treat the English version as authoritative.

Please do not hesitate to contact us through *Majhi* Sukhram Kisku with any questions you may have. Please send correspondence to Sukhram Kisku in both the Hindi and English languages via electronic email: [sukramkisku.mpm@gmail.com](mailto:sukramkisku.mpm@gmail.com). Please also copy all communications to our advisor and supporter Mr. Bineet Mundu at [bineet.mundu@gmail.com](mailto:bineet.mundu@gmail.com).

We look forward to hearing from you.

Sincerely,

*Suka Ram Kisku*

ग्राम प्रधान (माझी बाबा)  
गिदीझोपड़ी,  
पा० थाना-बागबेड़ा  
पूर्वी सिंठमूम (झारखण्ड)

Giddhijhopri Community  
Through *Majhi* Sukhram Kisku