

Mining in the Niyamgiri Hills and Tribal Rights

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The Orissa government's agreement with Vedanta Alumina to allow mining of bauxite deposits in the Niyamgiri hills, the home of the Dongaria Kondha tribe, is an example of how corporate interests backed by state support are trampling on tribal livelihoods and threatening an ecologically rich and important region.

Imagine that a multinational company arrives one day with your national or state government's approval and seizes your lands, destroys your environment, local farms and the agricultural system, your religious places, pollutes your river, creates hazardous waste dumps throughout your town, blocks your efforts to seek justice through the courts, and threatens to get people and activists arrested for trying to resist this destruction of your way of life. This is exactly what the Dongaria Kondha, a primitive tribe in the Niyamgiri hills, Orissa is actually experiencing today. They have lived there for more than 200 years now.

In October 2004, the Orissa government signed an agreement with Vedanta Alumina, a subsidiary of Sterlite Industries (India) (SIL) to mine bauxite deposit from the Niyamgiri hills jointly with the Orissa Mining Corporation (OMC), ignoring environmental and human rights issues.¹ This article seeks to address briefly the implications of the Vedanta Aluminium Refinery project on tribal rights in the Niyamgiri hills.

The experience of the Dongaria Kondhas with the UK-based Vedanta company provides one of the best examples of the fundamental linkages between the natural environment and basic human rights in the context of the conflict between multinational corporations and communities across the country from – Madhya Pradesh to Chhattisgarh, from Bihar to Jharkhand, and from Andhra Pradesh to Karnataka. It is a classic story of human rights violation and injustice, of exploitation across the full spectrum of economic, political, civil, social and cultural rights, and of the ways in which the tribal community and other local people have sought to defend their lands, livelihoods, and cultures. The acts of the Vedanta company are also a prime example of what is known as “development aggression”.

The Dongarias are the original indigenous landowners of the Niyamgiri hills

that will now be occupied by SIL's massive bauxite mining operations. With lands spanning dense forest and river valleys, the Dongarias practise a subsistence economy based on sustainable agriculture, forest products, fishing, and hunting – their culture intimately entwined with the surrounding landscape. The Dongarias believe that the hill country belongs to “Niyam Raja Penu”, a male deity represented by a sword and worshipped during the festivals of Dussera and Jura parab. They claim to be descendants of the niyam raja. The Dongarias have derived their name from “dongar” meaning agricultural land on hill slopes. If one claims to be a Dongaria Kondha, he/she must reside in the Niyamgiri hills and possess land of his/her own, and pass it on to future generations.² The Dongarias have also a distinguished heritage, because of their dress style, mode of living, indigenous skills, cultural pattern and social system interlinked with nature and forests. In this way, they enjoy a critical and symbiotic relation with the Niyamgiri forests.

In addition to this, both culturally and ecologically, the Niyamgiri hills are extremely rich and significant. They are the source of the Vansadhara river as well as a major tributary of the Nagavali river. This region has some of the most pristine forests in Orissa, and is home to a number of vulnerable wildlife species including the tiger, leopard, sloth bear, pangolin, palm civet, giant squirrel, mouse deer, langur and sambhar. It is also on the path of the migration corridor of elephants, and comes within the territory of the Royal Bengal Tiger. In view of its ecological importance, it has been declared a game sanctuary and has also been proposed as a wildlife sanctuary in the working plan of the Kalahandi forest division. The state wildlife organisation proposed in 2004 to declare the area as the south Orissa elephant reserve.³

Usurpation of Indigenous Land

Ignoring the importance of the socio-cultural and environmental aspects of Niyamgiri hills, the Orissa government has made all-out efforts to bring resource-intensive mode of development that would create ecological instability and violate the fundamental rights of thousands of people. Worse, it has reached an agreement

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with a company (Vedanta Alumina), which is ranked as one of the most dangerous and damaging mining outfits in the world.⁴ Recently, the Norwegian government sold its entire stake in Vedanta Resources Plc, a mining and metals company with a significant presence in India, and operations in Zambia, Australia and Armenia because of what one Norwegian government official referred to as “environmental and human rights violations” by the firm and for “grossly unethical practices”.⁵ The Orissa government has, however, welcomed the company to invest in the state and reached an agreement to provide all kinds of support to carry out its mining activities in Niyamgiri hills.

The 2004 agreement between the government of Orissa and Vedanta has given Vedanta broad powers over the local population and resources, including the right to usurp land, water, and other natural resources. This usurpation of indigenous land is particularly harsh in view of the Dongarias’ cultural and religious association with the Niyamgiri hills, which they regard as the most sacred land. According to the memorandum of understanding (MOU) signed by SUIL and the government of Orissa on June 7, 2003, SUIL would set up an alumina complex, which includes 1.0 million tonnes per annum (MTPA) of alumina refinery plant, 3.0 MTPA of bauxite mining and 75 mega watts of captive power plant at Lanjigarh in the district of Kalahandi at an aggregate investment of approximately Rs 4,000 crore. For the Dongarias, the conflict with Vedanta has begun with the company taking away their territory. In such a situation, thousands of tribal people protested against the Vedanta Resources alumina refinery being set up in the Lanjigarh area and vowed to stop the \$ 874 million project.

India’s national laws have, however, enabled Vedanta’s free reign. The laws do not comply with international human rights standards; they offer no adequate respect for community land rights, no rights of refusal or of informed consent, and no effective protection for traditional livelihoods and cultures. While there has been fundamental changes in the common law countries recognising occupancy rights and entitlement rights of indigenous people, the legal regime in India governing natural

resources grants near-total control to the government under the “eminent domain theory”. A close look at the evolution of environmental laws in us, Canada, Australia and New Zealand, reveals that the developments in India are far behind the developments in these countries.⁶ For example, American Constitution law has established that the native Red Indian tribes have full rights to common ancestral lands as well as entitlements to the benefits arising from the resources and the public use of such lands. In Canada, occupancy rights of the tribals over their common land has been established through various court judgments. The constitutional rights of the natives have also been affirmed in the first Canadian Constitution of 1981. The Australian Aboriginal Land Rights (Northern Territory) Act, 1976 and Pitajantjajara Land Rights Act 1981 have also ensured tribals entitlements to their ancestral lands.

The recent enactment of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in India for the first time recognises right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling scheduled tribe or other traditional forest dwellers.⁷ The act undoes what colonial forest regime had done and provides for rights to conserve, protect and regenerate. It also attempts to redistribute power between communities and bureaucracy, and seeks to create a new democratic system of forest governance. But if the recent stand of the Orissa government towards the SUIL is any indication, then the agreement has violated the forest rights act as the state government has not taken the local communities, especially the tribals into consideration.

Economic Aggression

In fact, the Orissa government has treated opposition to economic “development” as a crime of subversion, often acting with aggression against indigenous communities seeking to retain their customary lands or to participate in decision-making regarding use or management of natural resources. As the company is constructing its mining base camp, roads, and other infrastructure, local villages are forced to relocate

and are barred access to land now under the company’s control. Meanwhile, the state government and police – provisioned by Vedanta and operating with a mandate to protect the company – have made all efforts to crack down ruthlessly on those who have protested the invasion.

In their protest, the local people including the Dongarias consistently speak about the loss of human dignity and the mistreatment – physical, psychological, spiritual, and economic – they have experienced since Vedanta, its agents, and its by-products (subcontractors, police force and others) arrived there. *Down to Earth* (2007) quoted a villager as saying, “There is no way we are going to leave. This mountain is our mother; it has sustained us for generations.” Through their struggle, local communities with help of like-minded activists and NGOs appealed to the Supreme Court of India to restore the rights of tribal people and forest resources in the Niyamgiri hills.⁸ The Central Empowered Committee (CEC) of the Supreme Court has found illegalities in central government clearances to the Sterlite Industries’ bauxite mining project in the state. The committee has recommended (to the apex court) against diversion of forest lands for the project. Furthermore, the CEC highlighted that the area allocated to the company forms part of schedule V area as specified by the Constitution. Schedule V provides protection to the adivasi people living in these areas. No land in these areas is allowed to be transferred to non-tribals.⁹ The Supreme Court’s ruling on November 23, 2007 delighted the tribal people as it barred Vedanta Resources from mining bauxite in the Niyamgiri hills.

However, the decision offered the tribe only a temporary reprieve, as the court ordered the company’s Indian unit, Sterlite Industries,¹⁰ to come back with a new proposal for the project. The court has also provided an escape clause for the mining giants, by setting up a special purpose vehicle (SPV), which would have to ensure that environmental regulations are complied with. The project entails development of the bauxite mines at the Niyamgiri hills near Lanjigarh in Kalahandi district and the Khambasi hill in the adjoining Rayagada district. Once the requirements of employment of the displaced persons

and tribals and protection of wildlife are taken care of, the companies can approach the court again for its green signal.

The local people continue to protest even today after the Supreme Court's rejection of their appeal to stop mining activities totally in the Niyamgiri hills. The future is uncertain. Yet by taking a determined stand in defence of their rights, the local people have drawn the attention of civil society groups operating across the country as well as the urban intellectuals. Their struggle underscores the urgent need for more successful mechanisms for safeguarding the socio-cultural and environmental rights of communities and for governments and corporations to adopt international human rights instruments and "best practice standards". In short, the Dongaria Kondha's experience

demands strong support from all sections of the society to protest against the anti-human and anti-environment development plans that threaten to devastate communities and the natural environment in the name of corporate profits and "trickle-down development".

NOTES

- 1 See, 'A Brief Report on Ecological and Biodiversity Importance of Niyamgiri Hill and Implications of Bauxite Mining', Environmental Protection Group, Orissa, 2007.
- 2 For more details, see P S Daspattnaik, 'Ownership Pattern, Land Survey and Settlement and Its Impact on the Dongaria Kondhas of Orissa' published in *Adibasi* journal in January 1984, Vol XXIII, No 4, p 26.
- 3 See Kanchi Kohli (2006), 'Mine? What Mine? Ah, Yes, the Mine', www.indiatogether.org. Also, see the report of the Central Empowered Committee submitted to the Supreme Court of India in September 2005.
- 4 See Comment by Nostromo Research titled 'Norwegian Government Indicts Vedanta as 'Grossly Unethical'', London, November 12, 2007,

available at <http://www.minesandcommunities.org/Action/press1711.htm>.

- 5 See Padmaparna Ghosh's article 'Norway Government Fund Sells Its Vedanta Stake', New Delhi, November 7, 2007. Available at <http://www.minesandcommunities.org/Action/press1711.htm>.
- 6 See Upendra Baxi (1985), 'Environmental Law: Limitations and Potentials for Liberation' in J Bandyopadhyaya, N D Jayal, U Schoettli and C Singh (eds), *India's Environment: Crises and Responses*, Natraj Publishers, Dehradun.
- 7 For more details, see Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Chapter 2, 3(a).
- 8 Biswajit Mohanty of Wildlife Society of Orissa, Prafulla Samantara and Academy of Mountain Environics have filed application Nos 564, 571 and 579, respectively before the CEC against the establishment of the project.
- 9 For more details, see Central Empowered Committee Report (2005) in IA 1324 regarding the alumina refinery plant being set up by Vedanta Alumina at Lanjigarh in Kalahandi district, Orissa.
- 10 Sterlite Industries is a public limited company manufacturing aluminium and aluminium products. Other major Sterlite group companies operating in India include Sterlite Optical Technologies, Bharat Aluminium Company (BALCO) and Hindustan Zinc (HZL).