

UPDATE COLLECTIVE

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Development vs Indigenous Peoples Rights

Protectors turn Predators: The Tragedy of Adivasis in Nagarnar

The proposal by the National Mining Development Corporation (NMDC) to set up a Steel Plant at Nagarnar in the Bastar district of newly created Chattisgarh state has edged out democracy, constitutional norms and constitutional protection to ensure social justice accorded to the Adivasis to the brink. Ironically but not unusually, National Commission of the Scheduled Castes and Scheduled Tribes (SC & ST) has established a *prima facie* case amounting to dishonesty, graft, opportunism as well as committal of penal offences including creation of false documents and tampering with the official records of the Gram Sabhas against the National Mineral Development Corporation (NMDC), a public Sector Undertaking of the Government of India, State government officials, the district Collector of Bastar, on the basis of complaints received by Mr. Manuram Baghel, Sri Satya Narayan Sethiya, Pavan and Sri Prahalad Singh Baghel of Bastar district. Among other things, these complaints have raised matters of fundamental concerns, which called for the National Commission for SC and ST to discharge its constitutional obligation under article 338(5) to

The state is behaving in such a way that for its hunger for foreign capital it can go to any extent suppressing and butchering the people and their democratic voice. If any voice comes up it can be silenced with the most brutal police force subjugating them to comply with the dictates of the state... - Bijay

protect, ameliorate and advance the interest of the Adivasi people.

The Plant to be set up in Bastar district proposed the need to acquire 1,100 acres of land, which included five villages namely,

Public Hearing of Adivasis from Nagarnar

Delhi – May 5th : This country has for long seen the struggles and movements of Adivasis demanding separate states for protection of their rights, control over their livelihood resources and self-governance. In the recent past some of these struggles have borne fruit: three new states have been formed. If one looks into the background of these movements to see why they had come up and what they have achieved, you see a very contrary picture of what it has begetted. Be it the Tahri project after the new state of Utrakhand was formed, much worse has been the case of Koel Karo in the new state of Jharkhand and now it is the Nagarnar in Chattisgarh, where shameful, heinous, brutal and repressive face of the state can be seen. This is merely the beginning. The big question

is why these states, that are to protect the rights of Adivasis, themselves have become the predators?

On the 5th of this month a Public Hearing was called at the India International Centre, Delhi on the issue of violation of the constitutional rights of the Adivasis in Baster. Here, the jury for the Public Hearing was headed by Justice Rajendra Sachhar. Other members included Dr. Ram Dayal Munda, Kuldip Nayyar, Vandana Shiva and Pradipto Roy. Seven persons including two women from Nagarnar presented the grim picture obtaining in Nagarnar and other four villages bears testimony to the inherent duplicity of the established structure of power- the shadows between words and deeds. The homes of the people here have been ransacked, men and women mercilessly beaten up and compensation cheques were handed over in the police station under threat of physical assault and forced to deposit the same in Bank.

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Nagarnar, Kasturi, Maganpur, Amagura and Chowkawara. Under the provisions of the Land Acquisition Act of 1894, the State can acquire land for a public purpose subject to payment of due compensation. However, in view of the special situation in the Adivasi areas with simple people and rich resources, a special provision was made in the Constitution which envisages prior consultation with Gram Sabha before land acquisition. The Constitution, thus mandates the State with special responsibility to ensure that the community or the person affected may claim a place of honour in the new economy built on the resources, which hitherto had been under their command and sustained their life. In this respect State's record as the evidence suggests has either completely abandoned its responsibility or resorted to *ad hocism* in response to people's demand. Non-existence of Rehabilitation policy, even after five decades of independence, either at the State or Central level, is a clear evidence of the non-committal approach of the State with respect to the its constitutional obligation to protect Adivasi rights and their resources. Unsurprisingly, none of the eight procedures laid down to acquire land was applied lawfully for the proposed Steel plant at Nagarnar.

The National Commission of Schedule Caste and Schedule Tribes after investigating in the Complaint under Article 338 of the Constitution in its findings and recommendations dated 7.12.2001 found, that the laws and procedures were utterly disregarded in the land acquisition process for the plant by the State and Central Government officials in Bastar. It was an arbitrary decision without associating the people. Firstly, the mandatory provisions envisaged under the guidelines of the State Government read with Section 4(i) of the Provisions of the Panchayat (Extension to Schedule Areas) Act. 1996 which calls for prior consultation and necessary time to consider the proposals by the Gram Sabha, were not followed. The directions issued by the Government of Madhya Pradesh through its circular in pursuance of Section 4(i) of the

Provisions of Panchayat Act is categorical and envisages:

--Whenever private land is acquired in the scheduled areas under part (1) of Article 244 of the constitution, the Gram Sabha under whose jurisdiction that land is situated should be consulted before issuing notification under Section 4 of the Land Acquisition Act of 1894 and the action for acquisition shall start only after such consultations.

However, in the present case no information was made available to people which could form the basis of informed consultation. As a matter of fact people of the affected villages asked for 15 days for proper consultation which was denied by the district administration and Gram Sahbas in the affected villages were convened hurriedly. In Gram Sabha meetings most of the people did not agree with the proposal of NMDC to establish a Steel Plant in their village.

Secondly, the notification under Section 4 of the land acquisition Act was issued on the basis of the so-called administrative reports of the nodal officers which are illegal and illegitimate. It is only on the basis of the formal resolution of the Gram Sabhas, as envisaged in the guidelines, that the Collector can take the decision about issuing the notification. Hence the National Commission of SCs and STs in its findings dated 7.12.2001 stated that in the absence of the resolution of the Gram Sabhas, the notification under Section 4 of the Land Acquisition Act is *ab initio null and void*.

Thirdly, the 2000 guidelines delineates six points on which the information has to be submitted along with the application for land acquisition. These points are as follows:

1. Full details including the Khasra numbers about the land proposed for the acquisition;
2. Full details about those lands, which will not be acquired even though they are likely to be affected by the project;

3. Full details about the purpose of acquisition covering specific use of each block separately in respect to and proposed for acquisition;
4. The reason for the need of the extent of the proposed land with reference to the purpose of the project;
5. Details about non-availability of any other alternative land other than the one proposed for acquisition;
6. Description about rehabilitation and employment in the context of National or State rehabilitation policy, full details with Khasra numbers about land for land and rehabilitation sites.

The spirit of the above preconditions provided for in law is in tune with the social justice component of the Constitution to protect the vulnerable groups like the Adivasis. However, the officials involved in the land acquisition process for the proposed Steel Plant at Nagarnar showed scant regard to any of the above six preconditions laid down as procedures in the law. The National Commission for SCs and STs after having scrutinised the depositions made by the officials and available evidences, in light of the complaints, on each of the above six points received by the villagers felt that the interests of the Adivasi people living in the area was compromised.

Fourthly, the Provisions concerning environmental clearance as envisaged in the Ministry of Environment and Forest notification of 27th January 1994 have been violated.

However, the more serious charges levelled against the concerned officials involved in the land acquisition for the proposed plant at Nagarnar is of tampering with the official records of the Proceeding of the Gram Sabhas of the villages to be affected by the project. These charges have also been independently

confirmed by the Commission in its inquiry after careful examination of the facts and submissions made before it by the collector and other officials.

The Commission in its findings and recommendation maintains that 'there is a convincing evidence to show that the record of the Gram Sabhas concerning the mandatory consultations have been fabricated. Moreover, false records have been prepared in the form of the so-called administrative reports'.

The seriousness of the charges leveled by the people and confirmed by the Commission against district level officers not only undercut the rule of law flowing out of Constitution but also significantly implicates the same officers of being involved in 'criminal offences, dereliction of duty and subversion of Democracy in Bastar region.'

As if these were not enough, the district administration used its intimidation and terror tactics by deploying several contingents of State Police to terrorise and silence the deprived and marginalised Adivasis protesting against the government's high-handedness in the whole affair. Around March 2001, media reports suggests the Nagarnar was transformed into a virtual police cantonment as 5,000 policeman were deployed to suppress any protest by the people and leaders against the construction of the plant. On several occasions police resorted to lathi-charge, firing and shelling tear gas on the protestors. Several of the movement leaders fighting for Adivasis rights and injustices were pursued badly by the police and some of them were threatened for life. As of late news 365 people are arrested out of them 174 are women. People's Union for civil Liberties (PUCL) report investigating the police violence alleged that pregnant women including some in their last stage of pregnancy were tortured by the police. Residents project affected villages fled to nearby jungles to avoid and save themselves from police brutality.

The repressive measures employed by the police and unlawful conduct of government and administration to deprive the Adivasis of their legitimate rights has only strengthened their determination and grid to fight for them more vigorously than ever. On 10th of December, International Human Rights Day, the Adivasis of the region organised a rally with Dr. B. D. Sharma of Bharat Jan Andolan to highlight the arbitrary, autocratic overbearing and willful attitude of the administration while pressing for the restoration of their rights. And the movement still continues to assert against the injustice to realise the true spirit of natural and social justice provided for in the constitution.

-- Maheshwer Singh

Following are the and Recommendation given by the National Commission for SC and ST after the through investigation of the Complaints registered by the project affected villagers protesting against the Nagarnar Steel Plant.

Recommendations

1. The policy frame as also the guidelines for establishment of an Industry in the Scheduled Areas appear to have been totally missed in the case of the proposed Steel Plant in Bastar.
2. The mandatory provisions envisaged under the guidelines of the State Government read with Section 4 (i) of the Provision of Panchayats (Extension to the Scheduled Areas) Act. 1996 **before** consultation of the Gram Sabhas have not been followed. In particular, there was no information available to the people, which could form the basis of informed consultation. Moreover no rehabilitation plan was even attempted.
3. The proceedings of Gram Sabhas convened specially for consultation have not followed the procedures prescribed either for the General Meetings or for special meetings for consultation as in the Guidelines. It has been concluded by the Commissioner that no resolution as envisaged in the guidelines was passed by any of the Gram Sabhas. Therefore the consultation in the eyes of law remains inconclusive.
4. The Notification under Section 4 of the Land Acquisition Act has been issued on the basis of the so called administrative reports of the nodal officers which has no place in law. It is only on the basis of the formal resolution of the Grams Sabhas, as envisaged in the Guidelines, that the Collector can take the decision about issuing the Notification. In

the absences of the resolution of the Gram Sabhas, the Notification under Section 4 of the Land Acquisition Act, is ab initio null and void.

5. There is reasonable ground to believe that official records have been fabricated and false records have been created. These are penal offences. Moreover, Since that was done with a view to deny the Tribal People the protection of law concerning their lands, they also attract the provision of Atrocities Act.
6. Since the Collector and the representative of NMDC have specific mandatory responsibility in the conduct of the special meetings of Gram Sabhas, they have to share the responsibility for the fabrication and falsification of records.

Appeal Appeal Appeal

KISAN SANGHARSH SAMITI

NAGARNAR, BASTAR, CHHATTISGARH

(AFFILIATED TO BHARAT JAN ANDOLAN, 18 / 110 NEW SHANTI NAGAR, RAIPUR-492001)

STATE REPRESSION ON ADIVASIS IN BASTAR

As you are aware that the National Mineral Development Corporation decided to establish a steel plant at Nagarnar in May 2001. The NMC in collusion with the state officials contrived acquisition of land in violation of the Constitutional mandates and the provision of the land Acquisition Act itself. As there was no response from the state, the Adivasis approached the National Commission for Scheduled Caste and Schedules Tribes. As the local administration was disturbed by the exposures, a pre-emptive attempt was made to terrorise the people on 24th October 2001 when activists were apprehended. As people resisted the move, there was a brutal lathi charge and even police firing injuring 45 people mostly women. The administration was bold enough to deny the entire incidence even though scores of people were admitted in hospital. Chhattisgarh State PUCL went to the area for a fact finding mission and found out that the District administration along with the police has lathi charged and fired upon the people in order to make them abide the unlawful intention of the state.

The National Scheduled Caste & Scheduled Tribe Commission on the basis of inquiry

conducted under Article 338 (5) of the Constitution came to the conclusion that the acquisition process was violative of the Constitutional mandate for the Scheduled areas. Therefore it *was ab initio* null and void. They further held senior official including the Collector and Chief Executive were involved in a conspiracy and indulged in certain criminal offences such as destruction of Public records and fabrication of false Records. Further, the National guidelines for establishment of industries in Scheduled Areas (1974) had not been followed. The National Commission advised the State Government and NMDC to restart the process honouring the spirit of the constitution and legal provision as who to take action against the concerned officials.

The advice of the National Commission was totally ignored and pressure was mounted for taking over the law wrongfully. As the people insisted that they can have a dialogue only after the NMDC and the state government restart the process on the basis of the recommendations of the National Commission. The four-concerned Gram Sabhas also decided to have a joint assembly and 2-3 March 2002 in which the concerned officials of the state and NMDC were also invited. The invitation was also extended a number of National Dignitaries to come and advise on the issues, which concern the democratic governance at the village level in Scheduled Areas. Which the concerned officials did not respond, the police did not allow the high dignitaries like Siddhraj Dhadha, Vandana Shiva, Dada Geetacharya and senior journalist Manimala. Nevertheless the joint assembly was held on 2nd but was adjourned on 3rd because of the unseemly restrictions the honoured guests had to return.

The joint assembly of Gram Sabha in its resolution made it clear that they were not opposed to the establishment of steel plant. However, the Assembly resolved that the Guidelines must be followed and complete rehabilitation package including land for land should be prepared for all directly and indirectly affected in the likely zone of

influenced of the steel plant. It was also resolved that the agreement must also provide safeguards against privatisation as in BALCO in the form of shareholding for the community. The local officers conveyed to the people that all but two of their demands were acceptable. The people asked for a formal response, which could be placed before the Joint Assembly of Gram Sabhas for their consideration.

As the people were hoping for a peaceful democratic resolution of the issues, there was a sudden volt face by the administration without any notice on the 8th March. There was announcement in the villages that those who have not accepted compensation cheques should take the same immediately. Simultaneously the police started coercion and physical assault on the people. Even there they did not succeed in breaking the resistance.

On the 10th March, hundreds of policemen descended on Nagarnar while the senior officials lodged themselves in the police station. The police started beating indiscriminately the people who were sitting at Nagarnar. As the news spread, the womenfolk who have been taking a lead in the struggle as a natural response since she is the real 'bread women' in the Adivasi setting, started gathering. There was a cane charge and a truck full of women was dispatched to Jagdalpur. On the way near AMAGUDA on National Highway 43, people had gathered who stopped the vehicle, which was taken away from forest route. There was resultant commotion in all the villages.

The police in the mean time spread out to apprehend the dissidents from their homes. Their doors were broken, even women and children were beaten up and a number of people were arrested. At about 9 PM the police reached AMAGUDA, another village and broke doors & ransacked homes and apprehended people ruthless. The action was continued in Kasturi and also Nagarnar past midnight. The frightened people ran out of their villages and took shelter in forest and fields. Some 169 were arrested and taken to jail.

The operation was continued on 11th with a much larger contingent. As a large number of people had deserted the village, the police picked the remaining dissidents one by one. Those who refused to accept the cheque were mercilessly beaten up. There is a total reign of terror by the police and the district officials with the deployment of about 5,000 civil and armed police. The whole MISSION POSSIBLE is being personally managed and co-ordinated by the IG Police, Bastar under the strict instructions given by the Chief Minister, Chhatisgarh to show the Adivasis their real position in their land.

About 300 villagers mostly women are put in the Jagdalpur jail some of them are in their late stage of pregnancy. It is reported that 3 women have left their newborn babies outside. The police has terrorised the villagers so much that they take the help of goondas to identify the dissidents and catch hold of them bring them to the Nagarnar thana beat them up brutally and hand over the cheque. The arrest is still continuing. The villagers who have been arrested have been implicated under IPC Section No. 307, 506, etc. Some reports say that the people have been taken to the SDM and from there they have been sent to the jail.

As it seems the state government under the pressure of inviting foreign capital is hell bent on suppressing the people's right over livelihood resources. Throwing away, their constitutional provisions and legality of its action to the wind. The state is behaving in such a way that for its hunger for foreign capital it can go to any extent suppressing and butchering the people and their democratic voice. If any voice comes up it can be silenced with the most brutal police force subjugating them to comply with the dictates of the state. Now the time is to rise up and be with the voices of the Adivasis and other disadvantage sections of Bastar so that we can safeguard our democratic rights. It is, therefore, that prominent people, organisations from all over the country extent their support to the people of Nagarnar by writing to the Governor and Chief Minister of Chhattisgarh. Since it is a scheduled area the protection of the Adivasi people is the responsibility of the Union Government and the President. *You may kindly address the President, The Prime Minister, The Union Minister for Tribal*

Affairs and The Union Minister for Rural Development. You may also the Union Minister for Steel and the Chairman of NMDC condemning the bid of a Public Sector enterprise to wrongfully take over Adivasi land. All of them must ensure that the recommendations of the National Commission for Schedule Caste and Tribe must be accepted. We are also sending a copy of the letter is enclosed for your reaction on this matter to be sent to different authorities.

Honourable President, Prime Minister, Governor / Chief Minister / other Ministers.

Sir,

We are shocked to learn about the reign of terror in Nagarnar let loose on 10th March and still going on where the Adivasi people are struggling to defend their right to life and livelihood resources. What is worse in this case is that the democracy has been subverted at the village level by senior officials by not only dereliction of their duties but also indulging in criminal offences. We demand that

1. The police force be withdrawn from Nagarnar and other villages and normalcy restored in the area forthwith;
2. A judicial inquiry should be instituted about the police repression, atrocities, particularly against women, criminal offences and subversion of democracy;
3. The conditions of joint assemblies of 4-gram sabhas discussed and decided unanimously on 2nd March 2002 must be accepted by the government of Chhatisgarh before proceeding with the establishment of the steel plant.
4. The state must compensate the damages to the properties of people in police action
5. Stringent actions should be taken against the police and officials for their illegal and undemocratic actions against the people.

Yours truly
name

In view of the grave situation your personal visit to Nagarnar will help in restoring the confidence of the people. More over all struggles require financial support to tide over the present crisis.

Full information about the Nagarnar is contained in a booklet entitled - THE BESIEGED -, which can be obtained from Sahayog Pustak Kutir, 11 a Nagli Rajapur, Nizamuddin east, New Delhi - 13. Ph - 011-4353997 or on e-mail from <pilsarc@del2.vsnl.in>

In Solidarity,
Bijay
On Behalf of Kisan Sangharsh Samiti

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The repression particularly against women is unprecedented in the history of Bastar. It came to light in the hearing that 365 people including 178 women are in jail now for about a month. A number of mothers have been separated from their young children. In the police beating old, women, children and even a blind person were not spared. The homes are deserted for fear of police. There is no one to take care of cattle etc., all this when the agricultural season is also approaching fast.

Dr. B. D. Sharma from Bharat Jan Andolan gave a brief history of the struggle of adivasis against the undemocratic, illegal and brutal manner in which land is being acquired for the NMDC steel plant in Nagarnaar, tracing it back to May 2001. He drew attention to the open flouting of the 1974 guidelines by the district administration, which mandates prior preparation of a comprehensive plan for people likely to be displaced by any industrial project. He also pointed to the tampering of gram sabha records by the district administration, and complete disregard of the gram sabha as a pivotal unit of democracy as guaranteed by the constitution.

Seven people from Bastar also shared their experience of brutal suppression and violence unleashed by the police and the administration.

The public hearing was supported by some organisations like All India People's Resistance Forum, Association of Voluntary Agencies for Rural Development, Delhi Forum, Diverse Women for Diversity, Gandhi Peace Foundation, Human Rights Law Network, Indian Confederation for Indigenous and Tribal People, Indian Social Institute, Insaaf, Institute for Social Sciences, Jan Hasthashkep, Kisan Sangharsh Samiti (Bharat Jan Andolan), Kriti Team, National Centre for Advocacy Studies, Navdanya, Other Media, Peace, People's Union for Civil Liberties, People's Union for Democratic Rights, PRIA, Sruti, Research Foundation for Science, Technology and Ecology. It drew the attention of people and the press to the violation of the rights of Adivasis in Nagarnaar and also sought to mobilise support for them.

The biggest problem till now is that no one can reach the villages as the goons are in command of highways and urban centres. Moreover, Nagarnaar is not an isolated event; it brings in to sharp relief the anti-people processes which are coming in to the open throwing to wind their egalitarian pretensions.

Some of the facts that came to light in the Public Hearing are as follows:

- In accordance with the 73rd Amendment, and followed by the Provisions of the Panchayats (Extension to the Scheduled Areas) Act of 1996, local Adivasi communities of Nagarnaar passed a resolution that the State safeguard their constitutional rights in any decision related to the proposed steel plant. This resolution has been given a blind eye by the administration.
- Public servants, including the District Collector, who is the highest executive authority for ensuring people's rights in the district, chose to abdicate their responsibility to protect Adivasi. They collaborated with the National Minerals Development Corporation (NMDC) to commit criminal offences openly and with impunity. They disobeyed the law, trampled the rules and ignored the 1974 guidelines and other regulatory processes.
- There has been unprecedented violence against Adivasis - 365 people who are in jail since March 2002 including 176 women with "heinous" false charges foisted on them.
- The working of the Gram Sabha – an important constitutional unit of the local democratic process and fundamental now to governance in the Scheduled Areas- has been subverted.
- The recommendations of the National Commission for Scheduled Castes and Scheduled Tribes, the highest Constitutional authority for the protection of Adivasis under Article 338, have been completely negated and ignored.
- The NMDC has unlawfully taken over the land of the Adivasis, with the backing of the State. The administration, ganging up with anti-social elements, has created a reign of terror with vulgar show of authority, use of force, misuse of legal processes and victimization of activists. The people are at the mercy of a hostile and enraged administration, which is out to teach them a

'lesson' for approaching national authorities to safeguard their rights.

- The district administration has restricted the movement of people and is not allowing anyone to meet those arrested. Even the visiting PUCL team and Medha Patkar were forced to leave the area.
- The recommendation of the Bhuria Committee regarding 50% ownership of any industry by the local community directly affected by it has been completely ignored.

The meeting discussed certain immediate action points that can be taken to support the struggle of the adivasis in Nagarnaar. All the sponsoring organizations decided to establish a permanent body to meet the challenge of crimes against basic democratic institutions at the village level and provide logistical and financial support to the struggling people. Some long-term plans were also discussed which could prevent such acts by the State in the future.

- KRITI Team

Immediate action:

- The challenge thrown by the goons in collusion with state power has to be met.
- Release of the arrested persons
- Filing a PIL in the Supreme Court on the basis of a report prepared by Bharat Jan Aandolan and the findings of the National Commission of SC/ST
- Mobilising support in the media

Long term:

- Pressurising the district and state administration to accept the recommendations made by the National Commission of SC/ST
- The issue of 50% ownership in any industrial project by the local community to be raised and lobbied at the national level.
- Strengthening the National Commission of SC/ST and the Panchayati Raj institutions, especially the Gram Sabhas in the Scheduled Areas.

- At this meeting it was decided that a working group would undertake some actions to support the campaign. This work was divided into three groups and the participants volunteered for these.
- Legal Group: A group of lawyers is being identified who would arrange for getting the arrested people out of jail.
- In order to pressurise the district administration in Bastar, the possibility of organising a march to Nagarnar from a convenient place in Bastar has been planned. This march is to be led by representatives of Adivasis people from all over the country after coming together with other people joining in solidarity. This could be organized in the end of May as after that rainy season begins.
- Funds will be raised for supporting the struggle of the people of Nagarnaar.
- Join this collective effort to safeguard people's rights.

For details on the three groups and to volunteer for any of them, please contact:

Legal group- Sunita Dubey of Environmental Justice Initiative, Delhi Tel 4319856, email: ejj@vsnl.com

Bastar march- Bineet Mundu of Delhi Forum, Delhi Tel: 6680883, email: delforum@vsnl.com

Fund raising- Volunteers are welcome for this group. It will be finalised on the 20th May-Delhi group meeting.

The next meeting of the Delhi Group will be held on 20th April, at Indian Social Institute, Lodi Institutional Area, Delhi, at 3.30 in the afternoon.

Update Collective

F-10/12, Malviya Nagar, New Delhi – 17
Tel : 011-6680883, Telfax : 011- 6687724
Email : delforum@vsnl.com

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