



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

No. 555, West Cross 4th Street, K.K.Nagar, Madurai - 625 020, Tamil Nadu, India.

Mobile: 99943-68540

E.mail: hrda.india@gmail.com Web: www.hrdaindia.org

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October 15, 2021

To,
Mr. C S Mawri,
Focal Point - Human Rights Defenders & Assistant Registrar,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA,
New Delhi – 110 023
Email: hrd-nhrc@nic.in

Dear Sir,

Sub: HRD Alert - India - Urgent Appeal for Action- Odisha: Threats, intimidation, and illegal arrest of HRDs Mr. Bijaya Khila, Mr. Dasi Nandibali and other HRDs under fabricated charges as reprisal for opposing bauxite mining in Mali Parbat, Koraput, Odisha.

Greetings from Human Rights Defenders Alert - India!

HRD Alert - India is a forum of Human Rights Defenders for Human Rights Defenders. It endeavors to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We are writing to express our grave concern regarding the threats, intimidation, and arrest of Mr. Bijaya Khila, Mr. Dasi Nandibali and other HRDs under fabricated charges and in violation of due procedure in reprisal for opposing bauxite mining by Hindalco in Odisha's Mali Parbat, Koraput.

About the Human Rights Defenders:

Mr. Bijaya Khila, Mr. Dasi Nandibali, Mr. G Hemant Kumar (42), Mr. Rabi Khora (43), Mr. Mahanta Khosla (35), Mr. Samba Pangi (45), Mr. Bhikari Guntha (43), Mr. Dambaru Guntha (38), Mr. Ratan Kadia (28) and others are members of Mali Parbat Surakhya Samiti, an organisation formed in 2003 to oppose plans to set up a bauxite mine in Mali Parbat in Koraput district. The HRDs have organized and participated in numerous peaceful protests and demonstrations against the mine over the past two decades. They have also met high-ranking administrative officials and government representatives during this period to press on their demands.

Source of Information:

- Communication with HRDs in the region
- Police records
- Media reports

Date of Incident:

September 22, 2021 – October 5, 2021

Place of Incident:

Koraput district, Odisha

The Perpetrators:

Mr. Deben Kr Pradhan, Additional District Magistrate of Koraput

Background of the Incident:

In 2003, the Hindalco Industries Limited was granted lease for mining bauxite in Mali Parbat in Odisha's Koraput district. The lease area was spread over 268.11 hectares in Semiliguda and Potangi blocks, and included a sacred grove known as Pakuli Pahar Gumph, which was worshiped by tribal residents of Aligon, Kachiguda, Daleiguda, Rajaniguda, Pakijhola, Mania and other surrounding villages.

Tribal residents in the area formed the Mali Parbat Surakhya Samiti to oppose the bauxite mine, saying mining would affect more than 44 villages directly and 200 villages indirectly. While the Environment Impact Assessment report stated that there were no water bodies in the project area, the Samiti pointed out that there were 36 perennial streams in Mali Parbat, and nearly 2,500 families relied on this water for irrigation. They also feared the mine would pollute local streams and soil due to dumping of oil, lubricants and other waste material generated during mining.

Mali Parbat Surakhya Samiti organised several peaceful demonstrations and meetings in Koraput and other places and mining operations at the site could not commence till 2011 due to stiff resistance, after which environmental clearance for the mine expired. In 2020, the Expert Appraisal Committee of the Ministry of Environment and Forest objected to the renewal of environmental clearance for the mine owing to continued resistance of locals.

However, in April 2021, Hindalco's lease was extended by 50 years, and the company applied for fresh environmental clearance. Accordingly, the Odisha Pollution Control

Board in association with the Koraput district administration organized a public hearing in Kankada Amba village on September 22, 2021, and advertisements regarding the public hearing were published in several newspapers well in advance.

The mining site is covered under the Fifth Schedule, and the Panchayat Raj Extension to Schedule Areas (PESA) Act, 1996, mandates that the consent of the Gram Sabhas (village assemblies) is mandatory for diversion of land. The legal requirement for consent is also affirmed by the Forest Rights Act of 2006 and the Supreme Court judgment in the Niyamagiri Hills mining case in 2013.

Details of the incident:

About two weeks prior to the public hearing, agents of Hindalco began moving from village to village and warning Mali Parbat Surakhya Samiti activists not to oppose mining. They also threatened villagers living in affected areas not to attend the public hearing, and prevented them from travelling to the meeting venue.

On September 22, 2021, the public hearing commenced in the presence of Mr. Deben Kr Pradhan, ADM of Koraput and other officials at 9 AM, around two hours prior to the scheduled start at 11 AM. Angered by this breach of due procedure, residents of 44 villagers from four panchayats – Kanti, Sorisha Padar, Daleiguda and Pakujhola – who arrived for the hearing shouted slogans and demanded the hearing be cancelled. The authorities postponed the public hearing.

On September 22, 2021, an FIR (91/2021) was registered in Semiliguda Police Station by Assistant Sub Inspector Padma Charana Nayak against the 36 Mali Parbat Surakhya Samiti activists, including the organisation's president Mr. Bijaya Khila were named in the FIR. They were charged under Sections 147 (rioting), 148 (rioting with deadly weapon), 149 (unlawful assembly), 294 (obscene words in public place), 307 (murder), 323 (voluntarily causing hurt), 326 (causing grievous hurt), 332 (causing grievous hurt to a public servant), 379 (theft), 427 (mischief causing damage up to Rs 50), and 506 of the Indian Penal Code; Section 17 of the Criminal Law Amendment Act; Section 3 of the PDPP Act; and Sections 25, 27 of the Arms Act.

On September 24, 2021, police arrested seven HRDs including Mr. G Hemant Kumar (42), Mr. Rabi Khora (43), Mr. Mahanta Khosla (35), Mr. Samba Pangi (45), Mr. Bhikari Guntha (43), Mr. Dambaru Guntha (38) and Mr. Ratan Kadia (28). On October 5, five

more HRDS were arrested in connection with the incident, including Mr. Khila, ex-sarpanch Mr. Dasi Nandibali, Mr. Giridhar Khila, Mr. Gobardhan and Mr. Mangudu.

On October 1, at 8.30 PM, police arrested 16-year-old Mr. Bikram Khara – a student of class 9 whose father Mr. Dasa Khara is named in the FIR; although he was a minor and Section 10 of the Juvenile Justice Act mandates that an apprehended juvenile be placed under the charge of the special juvenile police unit and produced before the Board within 24 hours, these provisions were not extended to him.

None of the arrested HRDs were shown any arrest memo, or allowed access to a lawyer, in flagrant violation of DK Basu guidelines. They were all produced in court and are currently lodged in jail. Whereas other HRDs named in the FIR fear being arrested in violation of due procedure and are extremely concerned about their physical safety.

We believe that the HRDs were implicated in false cases and arrested as part of a larger attempt to muzzle opposition against the mine and curtail the freedom of expression and assembly.

Resistance to proposed mine has remained strong and peaceful for over 20 years, and Mr. Khila, Mr. Nandibali and other HRDs have played a key role in this struggle, highlighting how the proposed mine violated their environmental, religious and cultural rights, guaranteed under national and international legal frameworks.

The Constitution of India recognizes the rights to life, livelihood, equality, justice and environment as a fundamental right. International law also widely recognizes and accepts environmental rights as human rights. The Stockholm Declaration established a foundation for linking human rights and environmental protection and the International Covenant of Economic Social and Cultural rights (ESCR) provides the right to health which recognizes the need for environmental improvement. It also provides for self-determination including the right of all peoples to manage their own natural resources. The UN Human Rights Commission (OHCHR) has also adopted several resolutions linking human rights and environment like Res 2005/60 which calls on states to take all necessary measures to protect everyone's human rights when promoting environmental protection.

Whereas the right to exercise freedom of speech and expression is enshrined under Article 19(a) and the right to assemble peacefully under Article 19(b) of the Indian

Constitution. The right to freedom of opinion and expression encompasses three different aspects: 1) the right to hold opinions without interference; 2) the right of access to information; and 3) the right to impart information and ideas of all kind.

The Human Rights Council resolution 15/21 adopted in October 2010 reaffirms that everyone has the right to freedom of peaceful assembly free of restrictions that is subject only to the limitations permitted by international law, in particular international human rights law.

The UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels; (article 1). That "the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.” (Article 12.2).

When HRDs like Mr. Khila, Mr. Nandibali and others are subjected to reprisals and arrests for raising the violation of existing laws and procedures through peaceful means, these rights are grossly violated.

Appeal:

HRDA urges the Hon’ble Commission to:

- Initiate an immediate, independent, thorough, transparent, effective and impartial investigation through its investigative wing into the the fabricated charges against Mr. Bijaya Khila, Mr. Dasi Nandibali and other HRDs, and the violation of due procedures in arrests, including the arrest of the minor boy.
- Depending on the result of the inquiry, direct the Director General of Police of Odisha to take stern action policemen guilty of misusing law, muzzling freedom of speech, expression and assembly, and targeting HRDs.

- Direct the Director General of Police of Odisha to take appropriate measures to quash the false charges against HRDs.
- Direct the Government of Odisha to take immediate cognizance of the issues raised by the villagers/ advasis regarding the mine and not proceed in any manner without due and proper consultation with the villagers/ Adivasis, as also required under provisions of law.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Henri Tiphagne', with a horizontal line underneath it.

(Henri Tiphagne)

National Working Secretary