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India: Landmark Supreme Court ruling a great victory for indigenous rights

Today's ruling by India's Supreme Court that the Indigenous (Adivasi) communities will have the final decision on plans for a bauxite mine by a subsidiary of UK-based Vedanta Resources in the Niyamgiri hills of Orissa is a landmark victory in recognizing indigenous rights in India, Amnesty International said today.

A 670-hectare bauxite mine was due to have been developed on the Dongria Kondh Indigenous community's traditional lands and habitats which they consider sacred.

"The Dongria Kondh community, whose identity is fully dependent on these hills, has been fighting for the survival of their way of life for a decade. The mine would have resulted in violation of their rights as Indigenous peoples, as well as their rights to water, food, health, work amongst others. This ruling is hugely important for the Dongria Kondh," said G. Ananthapadmanabhan, Chief Executive of Amnesty International India.

"This ruling is a clear vindication of the protests by local communities, the findings of the extensive research carried out since 2009 by Amnesty International and the sustained campaign carried out by many organisations which exposed how the communities' views had long been ignored," said Ananthapadmanabhan.

"Authorities in India must now establish a clear and transparent process to ascertain the free, prior and informed consent (FPIC) of Indigenous communities in Niyamgiri and all other contexts where their traditional lands and habitats may be affected by state or corporate projects. The participation of women and other marginal members in these communities should be ensured in such decision-making. Also, the authorities should ensure that all information about the potential negative impact of such plans is available to them in a language accessible to them prior to decision-making. The communities' decisions must be respected, and projects must not be allowed without agreement by the communities in their favour."

Lado Sikaka, a Dongria Kondh leader in Niyamgiri, told Amnesty International: "After a decade of protesting against the mine plans, we now have an official channel to voice our concerns that the mine plans will disrupt our sacred lands and also seriously impact our lives and livelihoods. We will now use this channel to press our decision."

Kumiti Majhi, a leader of the Majhi Kondh Indigenous community in the foothills of Niyamgiri, said: "We urge the authorities to conduct this process in a free and genuine way, without intimidation by the companies concerned or the paramilitary forces stationed in Niyamgiri, and in the presence of international human rights organizations – apart from the presence of a judicial officer as stipulated by the Supreme Court ruling."

The Court ruled that the gram sabhas (assemblies consisting of all adult voters) of two villages located near the proposed mine would need to decide if the mine plans, in any way, affected their religious and cultural rights, including their right to worship, and on all individual and community claims, including fresh ones, to the areas proposed to be mined. The councils should share their decision with India's Ministry of Environment and Forests within three months.

India's Ministry of Environment and Forests, in August 2010, had rejected the plans put forward by Sterlite India, a subsidiary of Vedanta Resources, and the state-owned Orissa Mining Corporation (OMC), to mine bauxite at the top of Niyamgiri hills in Orissa, after finding that the plans would extensively violate forest and environmental laws, as well as the rights of the Dongria Kondh Indigenous and other communities in the hills. Today's court ruling came on a challenge mounted by OMC to that decision.

The Court ruling stipulates that the gram sabha proceedings in Niyamgiri take place independently and completely uninfluenced, either by the project proponents or the state or central governments.

The Court's ruling also upholds the provisions of India's Forest Rights Act, 2006, which state that authorities must settle community claims over their traditional forest lands and habitats, and ensure they have the consent of the communities, before attempting to use their land for mining and other industrial purposes. The principle of free, prior and informed consent (FPIC) is recognized by the United Nations Declaration on Rights of Indigenous People, 2007, as central to the protection and realisation of the rights of Indigenous communities.

Amnesty International is urging the authorities to incorporate the FPIC principle into the proposed amendments to existing mining and land acquisition laws, which are now pending before India's parliament.

"Authorities should heed the December 2012 recommendation of India's National Advisory Council to adopt FPIC in relevant legislation," said G. Ananthpadmanabhan.

"This decision will go a long way to empowering Indigenous communities facing similar threats to their way of life from mine plans in other parts of eastern and central India. It should also act as a wake up call for Vedanta – the company has consistently failed to respect human rights in its operations at Niyamgiri, and at the associated Lanjigarh refinery, which has also blighted the lives of thousands of people."

"Systemic changes are needed to ensure state and corporate accountability to implement FPIC. Every affected community cannot be expected to take on the powerful corporate interests and take its struggle right up to the doors of the Supreme Court," said Ananthpadmanabhan.

Amnesty International is also calling for India's Ministry of Environment and Forests to order an independent audit of the Lanjigarh refinery operated by Vedanta Aluminium, another Vedanta subsidiary, to clean up pollution, and address all outstanding human rights concerns, including the impact of pollution on the local Majhi Kondh Indigenous and Dalit communities.

Today's decision follows a forced suspension of refining operations at Lanjigarh by Vedanta in December 2012. Vedanta's plans for a six-fold expansion of the refinery were also stalled by India's Ministry of Environment and Forests in May 2012.