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Mining in India: Separating Growth from Development?

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Abstract

Concerns over illegal mining in India have revived following the report of a committee appointed by the Ministry of Environment and Forests (MoEF) of the Government of India on mining operations in Orissa. The report has mentioned violation of multiple forest and environment laws in securing forest land for mining. Highlighting complicity between private industry and local administration, the report has urged the MoEF not to allow the transfer of forest land for mining. Following the report, the MoEF has rejected the proposal to transfer land for mining. The paper examines the issues raised in the report and argues that growth of mining and protection of rights of local communities are conflicting objectives. India is yet to evolve a socio-economic mechanism, where these objectives can be simultaneously accommodated.

The trade-off between industrial growth and sustainable development in India is back in attention following the findings of a committee set up by the MoEF of the Government of India on mining operations in the eastern coastal state of Orissa.

Chaired by Dr N. C. Saxena, Member, National Advisory Council, the four-member Committee was mandated to examine the Government of Orissa's (Orissa Mining Corporation Ltd (OMCL)) proposal to transfer 660.479 hectare of forest land for mining bauxite ore in Lanjigarh mines in Kalahandi and Rayagada districts of Orissa.² The mining is

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² The MoEF set up the Committee on 29 June 2010. The Committee submitted its report on 16 August 2010. See 'Report of the Four-Member Committee For Investigation into the Proposal Submitted by the Orissa

to be done by Sterlite Industries (India), an organisation owned and controlled by Vedanta Resources, a mining group based in the United Kingdom. The MoEF is the final authority for allowing forest land to be used for ‘non-forest’ purposes like mining. It has put down certain conditions in this regard including recognition of rights under the Forest Rights Act (FRA) of 2006, obtaining consent of local communities and ratification of the process by the local *Gram Sabha*.³ The committee has found that these conditions were not fulfilled while proposing the transfer of the land. Accordingly, it has recommended that the MoEF should not allow the use of the land for mining.

The recommendations have far reaching implications. First, forest land is being acquired by private industry in violation of environmental guidelines. Second, such actions by industry are likely to deprive local communities of their livelihoods. Third, violation of existing guidelines and occupation and use of forest land by industry are taking place with support of local administration.

The Government of Orissa has reacted sharply to the report of the committee. Senior officials of the Orissa Government have emphasised that all actions taken in the matter have been consistent with existing laws. Orissa has officially communicated its clarifications to the Government of India.⁴ On the other hand, the Central Government has responded to the mounting outcry over illegal mining activities by setting up a Commission of Inquiry under the Commissions of Inquiry Act of 1952 for investigating illegal mining in the country. There are also talks of a National Mining Regulatory Authority being in the pipeline.⁵ The Saxena report has in the meantime been accepted by the Forest Advisory Committee (FAC) of the MoEF.⁶ The FAC recommends use of forest land for non-forest purposes in line with the provisions of the Forest Conservation Act (FCA) of 1980. According to latest reports, the MoEF has rejected the proposal to transfer the proposed land for mining.⁷

The report will undoubtedly be a much cited document in future discussions on India’s contemporary development issues. The economic and political impact of the report is

Mining Company for Bauxite Mining in Niyamgiri’, http://moef.nic.in/downloads/public-information/Saxena_Vedanta.pdf, p.13. Accessed on 19 August 2010.

³ Gram Sabha is a civic body comprising people registered in electoral rolls from Panchayat areas of villages. Article 243A of the Indian Constitution empowers Gram Sabhas with powers and functions at the village level that are comparable to legislatures at the state level. Panchayats need the approval of Gram Sabhas for levy of new taxes as well as implementation of development plans for villages. http://planningcommission.nic.in/reports/sereport/ser/bihinter/st_bihchl1.pdf. Accessed on 20 August 2010.

⁴ ‘State denies saxena committee allegations’, *Business Standard* (18 August 2010), www.business-standard.com/india/news/state-denies-saxena-committee-allegations/404853/. Accessed on 19 August 2010.

⁵ ‘Commission to probe illegal mining across the country’, *The Times of India* (17 August 2010), <http://timesofindia.indiatimes.com/india/Commission-to-probe-illegal-mining-across-the-country/articleshow/6321156.cms>. Accessed on 19 August 2010.

⁶ ‘FAC accepts report on Vedanta project’, *The Hindu* (21 August 2010), http://publication.samachar.com/pub_article.php?id=9894442&nextids=9894442|9894443|9893755|9893757|9893758&nextIndex=1. Accessed on 21 August 2010.

⁷ ‘Govt. rejects Vedanta mining plan on green worries’, *The Times of India*, <http://timesofindia.indiatimes.com/articleshow/6425009.cms?prtpage=1>. Accessed on 24 August 2010.

significant given that it addresses concerns that are directly relatable to reasons behind the growing influence of Maoist insurgents in several parts of India. This paper discusses some of the issues highlighted by the report and ponders on future outcomes for mining in India.

Non-compliance with Environment Laws

Niyamgiri hills, the site of the mining operations examined in the report, are particularly rich in biodiversity. Providing an uninterrupted tract of forest land by connecting Korlapat and Kotagarh wildlife sanctuaries, the area plays an important role in conserving wildlife species such as tigers and elephants. It is also home to a diverse variety of plants with medicinal properties used by local *Dongaria Kondh* and *Kutia Kondh* tribes for treating diseases. Both the Kondh tribes are ‘Scheduled Tribes’ under Schedule V of the Indian Constitution. Constitutional provisions require governments to uphold land rights of scheduled tribes. Furthermore, both tribes are classified as ‘Primitive Tribal Groups’ and are eligible for special protection.⁸

The Niyamgiri hills are an excellent example of the interdependence between a forest-based ecological system and livelihoods of local communities. The latter are critically dependent on forest resources for staple activities such as grazing and agriculture. The same resources provide them opportunities for earning income through horticulture, rearing animals and collecting and selling forest produce such as honey and mushrooms. Reorganisation of forest land for mining has implications for not only the region’s ecological balance with respect to flora and fauna, but also for economic prospects of local communities.

The rights of scheduled tribes and traditional forest dwellers over forest resources are specified in FRA of 2006.⁹ The legislation has invited criticism from certain quarters particularly wildlife conservationists on the ground that it prevents freeing up of forest areas from human presence for the larger purpose of conserving wildlife. While that is a separate issue, the Act recognises several rights of the scheduled tribes. These include title rights (ownership of land being cultivated by tribes), use rights (for collecting minor produce, grazing, etc.), relief and development rights (rehabilitation in case of illegal eviction and forced displacement), and forest management rights (protecting forests and wildlife).

In the present instance, application of the Act implies that local tribes residing in the area proposed for bauxite mining have the right to protect their habitat. The authority for protection vests with Gram Sabhas. Land belonging to scheduled tribes cannot be appropriated for non-forest activities such as mining without recognising all rights of

⁸ For more details, see ‘Report of the Four Member Committee for Investigation into the Proposal Submitted by The Orissa Mining Company For Bauxite Mining In Niyamgiri’, http://moef.nic.in/downloads/public-information/Saxena_Vedanta.pdf. Accessed on 19 August 2010.

⁹ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 was cleared on 18 December 2006 and notified on 31 December 2007.

inhabitants. The Gram Sabhas are also required to certify that the process has been executed in line with the provisions of FRA of 2006. The Saxena Committee report emphasises that the Government of Orissa has not recognised the rights under FRA and has not obtained the consent of local communities, or endorsement of the Gram Sabha, while proposing allocation of land for mining. Furthermore, the report also mentions that the mining company is in possession of 26.12 hectare of forest land in violation of the FCA of 1980 and its current construction activities amount to violation of the Environment (Protection) Act (EPA) of 1986. Thus, practically almost all binding forest and environment legislations appear to have been violated.

Repercussions on Livelihood

The mining area is located in the Kalahandi-Bolangir-Koraput (KBK) belt of Orissa,¹⁰ which is one of the poorest regions in India, notorious for starvation deaths. Other than poor road connectivity and irregular rainfall, the region is ecologically disturbed due to heavy forest degradation. Tribal communities comprise almost 40 per cent of the population and are entirely dependent on forests for livelihood. This exclusive dependence on forests implies serious economic repercussions for the communities if they are unable to access forest resources.

The Saxena Committee notes that other than agriculture, grazing and collection of minor forest produce (MFP), forest resources enable local Kondh tribes to cultivate a variety of cereals including millet, pulses, gram, pigeon pea, castor oil, linseed oil, honey and edible mushrooms. The MFP collected includes tuber, flowers, *jhunu* (aromatic resin from trees), bamboo and wood. The Kondh tribes are well-known for their horticultural skills in producing a variety of fruits such as pineapple, banana, orange, lime, ginger, jackfruit, mango and turmeric.¹¹ The tribes also rear livestock, which again yields significant economic benefits.

The local communities have an economic relationship with the forest that enables them to be self-sufficient as far as consumption needs are concerned. Over and above such needs, they are also occasionally left with marketable surpluses that help them in fetching additional incomes. As a result, the communities have hardly had to work as wage-labourers. Deprivation of access to forest resources will cripple the economic self-sufficiency of local tribes. The Saxena Committee notes that claims of mining not resulting in displacement does not take into account long-term effects of displacement from occupations.¹²

¹⁰ The undivided districts of Koraput, Bolangir and Kalahandi (KBK) now comprise eight districts: Koraput, Malkangiri, Nawrangpur, Rayagada, Bolangir, Sonepur, Kalahandi and Nuapara. See 'Special Area Development Project for K.B.K Districts of Orissa', (National Informatics Center, Berhampur), <http://kbk.nic.in/atag glance.htm>. Accessed on 20 August 2010.

¹¹ As in 7, pp.27-30.

¹² Ibid., p.34.

Industry-Administration Collusion

The Committee's report points to collusion between private industry and local administration for securing land for mining. The biggest example of such collusion is overlooking the mandatory requirement of obtaining consent of the Gram Sabha. Indeed, the report cites a message from the Gram Sabha conveyed to the committee members where the Gram Sabha appeals to the MoEF 'not to allow the Vedanta company for the extraction of bauxite from the Niyamagiri reserve forest, proposed Khambesi reserve forest, proposed Nimagiri reserve forest and other adjacent forest areas'.¹³ As mentioned earlier, the Committee has also highlighted violation of provisions of FCA of 1980 and EPA of 1986 by Vedanta. Such violation would not have been possible without support of local administration.

The Saxena Committee, however, is not alone in alleging industry administration collusion in Orissa. Improper implementation of FRA of 2006 (in terms of recognition of rights of tribes) by the local administration in Orissa has been pointed out with respect to industrial activities of the POSCO as well. The Korean steel giant POSCO is building an integrated steel plant and captive port in the Jagatsinghpur district of Orissa. Complaints of non compliance of FRA of 2006 have arisen with respect to 1253.22 hectare of forest land diverted for the purpose. The MoEF has ordered Government of Orissa to stop all work being undertaken on the land.¹⁴ Other than Orissa, complaints against illegal mining taking place in collusion between industry and local administrations have been reported from the ore-rich states of Andhra Pradesh and Karnataka as well.

Thoughts for the Future

India's unexploited mining reserves attract potential prospectors. More industries like Vedanta will be keen on exploiting the untapped resources. India's industrial expansion will also increase demand for more minerals. Whether for the domestic market, or exports, mining in India is a high-return venture. India's foreign investment policies permit 100 per cent FDI (foreign direct investment) in mining and exploration of metal and non-metal ores (excluding titanium-bearing ores).¹⁵ Thus mining is an activity that India's current industrial policies definitely encourage.

Notwithstanding the encouragement, mining represents a classic dichotomy in the Indian economy. India has abundant reserves of minerals. Despite such endowments, domestic supply of minerals is often inadequate forcing industry to import. Supplies have been constrained as mining has failed to take off on a large scale due to a complex combination of

¹³ Ibid., p.6.

¹⁴ <http://moef.nic.in/downloads/public-information/POSCO.pdf>. Accessed on 20 August 2010.

¹⁵ 'Consolidated FDI Policy' (Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India), http://siadipp.nic.in/policy/fdi_circular/fdi_circular_1_2010.pdf, p.37. Accessed on 20 August 2010.

factors involving livelihoods of tribal communities, environmental concerns, poor enforcement of laws and corruption. Handled judiciously, India's mineral wealth can not only support rapid industrial expansion, but also provide occupational alternatives to local communities. This will allow the latter to withdraw from exclusive dependence on forest resources and shift to modern occupations and also have stakes in industrial projects entailing such occupations.

The Vedanta bauxite mining project highlights the inescapable conflict between policies encouraging private investment in mining and those guaranteeing rights of local communities over forest resources. Both sets of policies are correct in their aims and objectives. But can mining activities expand without affecting rights and interests of local communities? Given the provisions of FRA of 2006, obtaining forest land for mining in a consensual manner after protecting all interests of local communities is a difficult and time consuming process. Such delays and difficulties create incentives for violating the existing guidelines as observed for both Vedanta and POSCO. This is identical to similar incentives elsewhere encouraging businesses to collude with implementing agencies for bypassing circuitous processes.

The FRA of 2006 was a response to displacement of tribes and forest communities arising from aggressive mining intentions of private industries. The Act was a long-awaited move and a step in the right direction. The problem is efficient implementation of the Act, while protecting rights of forest communities, are likely to discourage investments in mining. This is obviously something that was overlooked while framing the legislation. In order to prevent 'illegal' growth of mining, it is important to conceive a mechanism where local communities become beneficiaries of mining. In this regard, there are suggestions that mining companies spend a part of their profits on local area development.¹⁶ However, 'costs' of mining extend to ecological damages as well. Thus it is probably not enough to allocate a part of profits to local development; it is essential to ensure that locals spearhead the development. It is also important for industries to convince local communities about the long term benefits of shifting to a different occupation and equip them accordingly. Failure to convince will not only antagonise the local communities, but will also make them willing allies in anti-state activities such as those led by the Maoists.

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¹⁶ 'People before profits', *The Hindu* (17 August 2010), www.thehindu.com/opinion/editorial/article576822.ece. Accessed on 21 August 2010.