



# HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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HRDA/UA/East/OD/02/09/2023

02 September 2023

To,

Mr. Indrajeet Kumar,  
National Focal Point - Human Rights Defenders & Deputy Registrar,  
National Human Rights Commission,  
Manav Adhikar Bhawan,  
Block-C, GPO Complex, INA, New Delhi –110 023  
Email: [hrd-nhrc@nic.in](mailto:hrd-nhrc@nic.in)

Dear Sir,

**Sub: HRD Alert – Urgent Appeal for Action – Odisha – Rayagada: illegal arrest and torture of the HRDs opposing the renewal of Mining lease of Vedanta at Siji Mali.**

Greetings from Human Rights Defenders Alert!

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

We are writing to express our concern regarding the registration of a FIRs Against EHRDs for protecting against the Mining operations in Siji Mali, illegal detention and custodial torture of the three Environmental Human Rights Defenders from August 16, 2023 to August 21, 2023 by District police Rayagada.

#### **About the Human Rights Defenders:**

- Dhanful Majhi, EHRD, Rayagada district, Orissa.
- Sitaram Majhi, EHRD Rayagada district, Orissa.
- Anil Nayak. EHRD Rayagada district, Orissa.

#### **Source of Information:**

- Communication with our South Regional Co-ordinator
- Communication with the Local HRDs
- Media Reports

**Date of Incident:**

August 16, 2023 – August 21, 2023

**Place of Incident:**

Kalahandi and Rayagada District, Odisha

**Perpetrators:**

Police officials of Rayagada.

**Background of the incident:**

The Mountains namely Siji Mali and Kutru Mali are being proposed to carry bauxite mining by Vedanta and Adani group. Lease of Siji Mali was allotted to Vedantha and lease of Kutru Mali was allotted to Adani without the permission of Gram Sabha as per forest rights act, 2006. Public hearing for the environmental clearance has not been done, Hence, the HRDs allege that in order to get environmental clearance through public hearing, Vedanta and its contract firm Maitri infrastructure and mining India Pvt Ltd tried to allure the tribals with the promise of money. On August 2, 2023 the local leaders questioned them, then the people of Maitri company threatened the local leaders with the support of the police.

On August 4, 2023 G. Srinivas Rao, CEO of Maitri infrastructure and mining India Pvt Ltd came to visit the villages Sagarbarai and Sunger under Sunger Gram Panchayath along with proposed mining site at Siji Mali. Aggrieved by this the tribals gathered together at the proposed project site and held a peaceful protest against the mining activities. Aggrieved by this Kashipur PS registered a case in file no 92 of 2023, on August 5, 2023, U/s 143 (Punishment for being a member of an unlawful assembly), 341 (Punishment for wrongful restraint), 342 (Punishment for wrongful confinement), 383 (Extortion), 294 (Obscene acts and songs), 506 (Punishment for criminal intimidation) and 149 (Unlawful assembly guilty of offence committed in prosecution of common object) of IPC based on complaint given by Pitabas Nayak.

On August 7, 2023 at 11.40 AM PS Kashipur has registered FIR against the three HRDs and 100 others for alleged unlawfully assembly, conducted road blockage and staged a Dharna at Sarambhai junction for the visit of officials of Maitri infrastructure and mining India Pvt Ltd to the kantamal, Banteji, Sagabari and Sunger Villages in connection with bauxite mining in Sijimali. U/s 143 (Punishment for being a member of an unlawful assembly), 341 (Punishment for wrongful restraint), 342 (Punishment

for wrongful confinement), 283 (Obstruction in public way), 294 (Obscene acts and songs), 506 (Punishment for criminal intimidation), 147 (Punishment for Rioting) and 149 (Unlawful assembly guilty of offence committed in prosecution of common object) of IPC based on complaint given by Pradip Kumar Behera.

On August 8, 2023 at 01.30 PM PS Kashipur has registered FIR against the three HRDs and 100 others for alleged unlawfully assembly, conducted road blockage and staged a Dharna at Sarambhai junction for the visit of officials of Maitri infrastructure and mining India Pvt Ltd to the kantamal, Banteji, Sagabari and Sunger Villages in connection with bauxite mining in Sijimali. U/s 143 (Punishment for being a member of an unlawful assembly), 341 (Punishment for wrongful restraint), 342 (Punishment for wrongful confinement), 283 (Obstruction in public way), 294 (Obscene acts and songs), 506 (Punishment for criminal intimidation), 147 (Punishment for Rioting) and 149 (Unlawful assembly guilty of offence committed in prosecution of common object) of IPC based on complaint given by Somadatta Padhan.

On August 12, 2023 at 11.30 PM PS Kasipur has registered FIR against the three HRDs and 200 others basing on the complaint of Pitabas Nayak stated that Maitri infrastructure and mining India Pvt Ltd have awarded with the operations of Sijimali Bauxite mine by Vedanta Ltd. When the company officials and office bearers to the visit of the proposed mining site accompanied by eight police staff. The FIR alleged that the 200 people from villages Banteji, Kantamal, Aliguna, Bandel, Talaamba Padar, Amarsigh gude, Khurigaon and Siadimal came in from of them and surrounded them. The FIR is registered U/s 147 (Punishment for Rioting), 148 (rioting, armed with deadly weapons), 341 (Punishment for wrongful restraint), 323 (Punishment of voluntarily causing hurt), 324 (Voluntarily causing hurt by dangerous weapons or means), 307 (Attempt to murder), 364 (Kidnapping or abducting in order to murder), 294 (Obscene acts and songs), 506 (Punishment for criminal intimidation), 353 (Assault to deter public servant from discharge of his duty), 332 (Voluntarily causing hurt to deter public servant from his duty), 427 (causing Mischief) and 149 (Unlawful assembly guilty of offence committed in prosecution of common object) of IPC, R/w Section 7 of Criminal law Amendment Act, 1932 (Molesting a person to prejudice of employment or business) and Section 25 of Arms Act.

### **Details of the Incident:**

On August 16, 2023 HRDs Dhanful Majhi, Sitaram Majhi and Anil Nayak who are leaders of the NSS were travelling from Rayagada to Bhubaneswar. On their way at Rayagada they were arrested by the District Police of Rayagada without informing their family members about their whereabouts and in violation of D.K Basu Guidelines in connection with the FIR No 93, 96, 97 and 101 in Kasipur police station.

The Other HRDs who met them in jail were informed that “They were detained by police in an illegal custody till August 21, 2023 and were subjected to brutal torture by the police”, it was only after the wide spread campaign by the other HRD and tribals these HRDs were produced before Kasipur Judicial First-Class Magistrate on August 21, 2023. Then they were remanded in the Rayagada District Jail. They are currently in Judicial custody along with 24 tribals arrested in connection with the FIR No 93, 96, 97 and 101 in Kasipur police station.

We in serious fear that the HRDs have undergone brutal custodial torture by the police officials of the Rayagada. The Abduction followed by brutal custodial torture violates a host of rights, most importantly ‘Article 21’ – Right to life and Dignity guaranteed by the Indian Constitution. A Plethora of procedural practices laid down by the CrPC, Hon’ble Supreme Court and Hon’ble commission were grossly violated and not adhered to in this case. We believe that the Jharkhand police has indulged in serious misuse and abuse of power.

Torture of any kind and under any circumstances is illegal. Torture is a serious violation of human rights law in national and international law. The Hon’ble Commission itself asked the State to criminalise torture. D.K. Basu vs. State of West Bengal, the Supreme Court of India called torture “*one of the worst crimes in a civilised society governed by the Rule of Law*”.

Section 41B, CrPC, requires every police officer to prepare, an arrest memo at the time of arrest which is to be attested by at least one witness and countersigned by the arrested person, and inform one family member of the arrest. It appears these procedures have not been followed. Section 54, CrPC, further mandates medical examination of every arrested person soon after an arrest. It prima facie appears that none of the above were followed in the case.

Section 50A, CrPC states that a relative or friend should be informed about the arrest and the place of detention. It is the duty of the police to inform the arrested person of this right, and also to inform the relative or friend about the arrest. This information should be entered in a designated register at the police station. While the family and friends state that the HRD was picked up by the Dhurki police at night no memo was given to any of his family.

The CrPC in sections 57 and 76 lays down that a person should be produced before the nearest Magistrate within 24 hours from the time of your arrest. The police picked up the HRDs on August 16, 2023 and produced before the magistrate on August 21, 2023. This amounts to abduction by the police and should be treated as such.

Further, we believe that this is also a case where the HRDs was abducted, subjected to illegal detention, arbitrary arrest and brutal torture because of they are tribals and fighting for environmental cause. It is in this light, important to note that prima-facie the police personnel of the Rayagada violated Section 3 (1) (p) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Every person has a the right to life and liberty enshrined under Article 21 of Indian Constitution 1950, Article 3 of Universal Declaration of Human Rights 1948, Article 6 of International covenant on civil and political rights, 1966. The Right to life includes right against arbitrary arrest or detention. These instances amount to complete violation of the DK Basu guidelines of arrest, Indian laws, Constitution of India and the fundamental right to life and personal liberty granted by **Article 21** of the Indian Constitution.

The **Article 5** of the Universal Declaration of Human Rights and **Article 7** of the International Covenant on Civil and Political Rights both provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Whereas **Article 2** of the United Nations Convention against Torture prohibits torture, and requires state parties to take effective measures to prevent it in any territory under their jurisdiction.

Declaration on human rights defenders adopted in 1998 by the UN general Assembly was Clauses 2 and 3 of **Article 12** of the declaration state: "*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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms."*

HRDA strongly believes that the arrest, detention and torture of the HRDs is an act of reprisal for their activism as Environmental human right defenders. As these three HRDs are the leaders of the NSS, they were systematically targeted by the police they were illegally arrested, detained and was subjected torture. It was only after the public appraisal and campaign of other activist/HRDs they were produced before the court.

#### **Appeal:**

We urge the Hon'ble Commission to take cognisance of the above case and urgently:

- Direct the Director General of Investigation of the NHRC to initiate a transparent, independent inquiry in the illegal arrest and custodial torture the HRDs and submit the report to NHRC within Two Weeks.
- Direct the Director General of Police of Orissa to produce within 48 hours copies of all relevant documents pertaining to the arrest and torture for an independent examination by the Hon'ble Commission.
  - Arrest memo as required under Section 41 B of CrPC, including name and designation of the police officer who prepare the arrest memo.
  - Medico-legal certificate prepared under section 53 of CrPC, as well as report of the medical examination conducted under section 54 of CrPC.
  - Inspection memo prepared at the time of arrest as required under the guidelines laid down by the Supreme Court in DK Basu vs State of West Bengal [1997 (1) SCC 416], as well as the name and designation of police officer who prepared the said Inspection Memo.
  - Names, duty records and registers of all officers involved in detention and arrest.

- Examine compliance with all the mandatory procedures on arrest and detention laid down in Sections 41 of the CrPC, particularly with Sections 41A, 41B and 41D, and Sections 50, 50A, 51, 54, 55A, 56, 57, and 60A of the Code were followed by the police.
- Examine compliance with the NHRC Guidelines on Arrest.
- Based on independent examination of abduction, illegal detention, arbitrary arrest and custodial torture, recommend strict and immediate legal action against the perpetrators, including prosecution under appropriate sections of the IPC and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
- Based on the result of the inquiry, direct the Director General of Police Orissa to immediately suspend and file a cause of torture against policemen who illegally picked up HRDs in violation of DK Basu guidelines and tortured them in custody and submit a report to the NHRC within two weeks.
- Based on independent examination of abduction, illegal detention, arbitrary arrest and custodial torture, recommend immediate interim compensation of Rs. 5,00,000 and further in accordance with the provision of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- Direct the Director General of the Police of Orissa to ensure the safety of HRD's and their family to protect them from further harassment by the police.

We hope to hear from you soon,

Yours Sincerely,



(Henri Tiphagne)

National Working Secretary