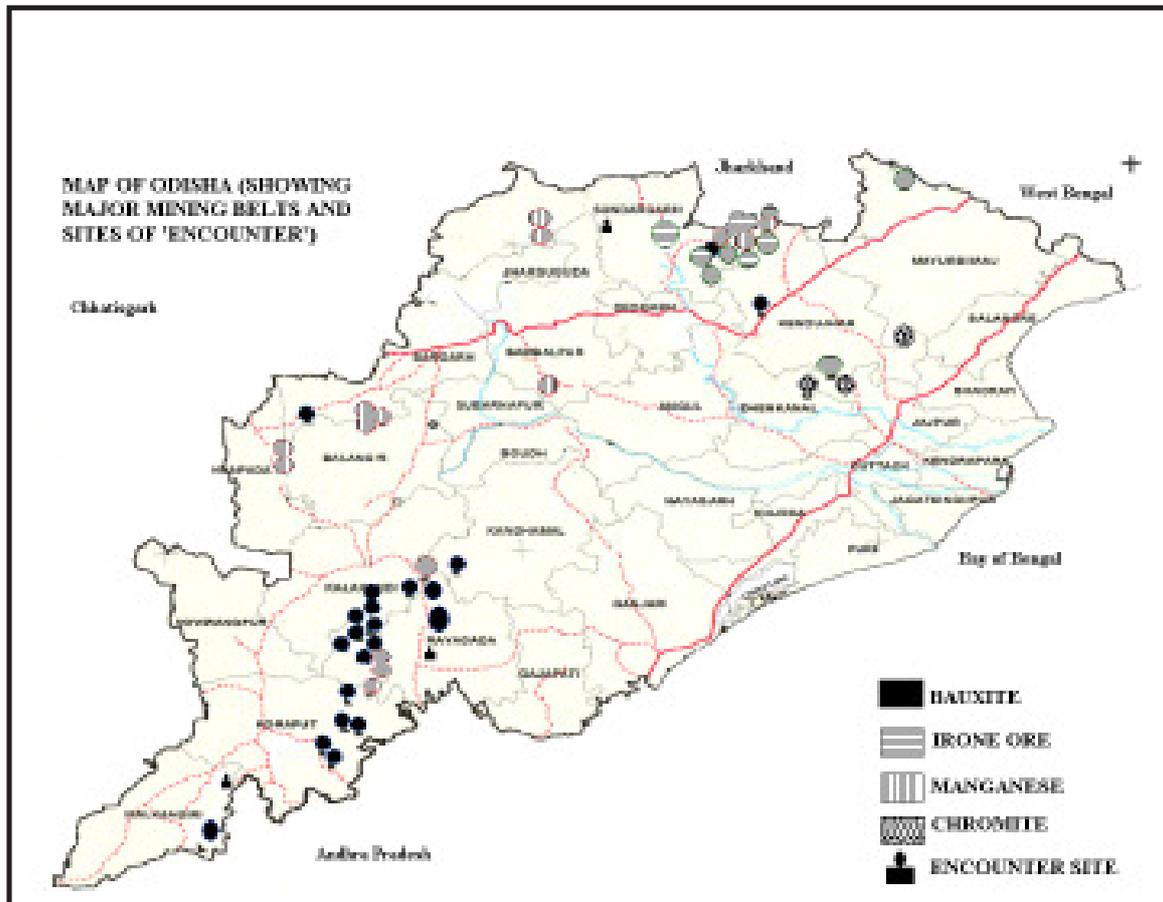


Loot of the Land, Livelihood and Life

**a joint fact finding into incidents of crime
against people in Odisha**

**People's Union for Civil Liberties (Odisha),
Organisation for Protection of Democratic Rights (Andhra Pradesh),
Association for Protection of Democratic Rights (West Bengal),
Human Rights Forum (Andhra Pradesh),
Campaign for Justice and Peace (Tamilnadu),
Andhra Pradesh Civil Liberties Committee (Andhra Pradesh)
Peoples Union for Democratic Rights (Delhi)**

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*When evil-doing comes like falling rain, nobody calls out "stop!"
When crimes begin to pile up they become invisible. When
sufferings become unendurable the cries are no longer heard.
The cries, too, fall like rain in summer.*

B.Brecht

A fact-finding committee of ten members from six rights organisations - People's Union for Civil Liberties (Odisha), Organisation for Protection of Democratic Rights (Andhra Pradesh), Association for Protection of Democratic Rights (West Bengal), Human Rights Forum (Andhra Pradesh), Campaign for Justice and Peace (Tamilnadu), Andhra Pradesh Civil Liberties Committee (Andhra Pradesh) and Peoples Union for Democratic Rights (Delhi) - visited the districts of Malkangiri, Koraput and Rayagada in South Odisha, and Sundergarh in Western Odisha for three days from 2nd to 4th May, 2011 to look into reports of human rights violations in the area since December 2010. These constitute incidents of alleged encounter and false implication of villagers in anti-Maoist operations. While Team One covered incidents in Malkangiri and Rayagada, Team Two went to Sundergarh District of Odisha. These violations are exemplified by a spate of "encounter" killings of 'Maoists' in these districts in recent times. The team spoke to local people, journalists, social activists and police officials while eliciting facts.

Introduction

Every time armed security forces besiege villages for forcible land acquisition in Odisha, an official statement is issued: “*The Government believes in peaceful industrialization*”. This has been repeated umpteen times by bureaucrats, ministers and the Chief Minister himself, when more than 13 platoons of armed police, in July 2011, have encircled Dhinkia and Govindpur, villages of Jagatsinghpur District in Odisha opposing forcible land acquisition for the POSCO steel project. This has come to mean that gun is peace in Odisha; though it sounds odd, it is true. It is the gun that silences all dissenting voices to “peaceful industrialization.”

What is happening in Dhinkia and Govindpur is not something of an exception if one goes by recent history. Whenever and wherever people, mostly dalits and adivasis, have raised their voices against the loot of their basic sources of livelihood—land, water and forest—by the powerful, be the corporate houses or local traders and sahuikars, it is guns that have shouted them down: Chilika (30 May 1999), Mandrabaju (29 December, 1999), Gopalpur (19 March, 1997), Kashipur (December 16, 2000), Kalinga Nagar (January 2, 2006) and Narayanpatna (20 November, 2009). Other than these incidents of firing, there has been continuous presence of police and paramilitary in Jagatsinghpur, Kalinganagar and Narayanpatna. Arrests of prominent leaders representing people’s movements have also been taking place.

Since the liberalization of Indian economy in 1990s, there has been an

orchestrated campaign for ‘industrialization’ in Odisha. Not only ministers and bureaucrats, even the mainstream media and seminar-loving intellectuals are gung-ho about it. It is routinely parroted that Odisha is rich in mineral resources (ironically though a large section of the people of Odisha are abysmally poor). Thus, mineral-based industry is sold as the sole panacea for all ills – poverty, unemployment, starvation death, backwardness, malaria and diarrhea death—of Odisha. It is important to note that these minerals are mostly found in the forested land of adivasis. To extract it for industry means to uproot them, to devastate their livelihood based on nature. As ill equipped as they are to deal with this new system brought about by mining and industry, adivasis are further pushed to the corner or at best find themselves as cheap coolie. For example, in Keonjhar district, adivasis constitute 45% of its population and the district has a forest cover of 39%. It is the highest iron producing district in the country and as much as 31256 hectares of land under mining. But 60% of its population is below poverty line and infant mortality rate is 20% higher than the state average. In a recent study by the CSE, of the 50 major mining districts, 60% figure among the 150 most backward districts in the country. (Center for Science and Environment study (*Rich Land, Poor People*)).

The Govt. of Odisha instead proudly announces the number of MoUs it has signed with national and foreign corporations. It says, “There are new large-scale-level

potential entrants into steel such as Vedanta, Jindal, POSCO, Tata, Essar and Arcelor-Mittal. By the end of 2009-10, the state Government had signed 86 Memoranda of Understanding (MoU) on various industrial sub sectors with a total investment of Rs. 4,11,726 crore. ... Of the 86 MOUs, 49 have been signed with various steel promoters with an investment of Rs. 195,150 crore. ...Of these 49 MOUs, 28 projects have started partial production with an investment of Rs. 23,334.12 crore. These industries have provided direct and indirect employment of 53,495 persons". (Economic Survey 2010-2011 of Govt. Odisha).

There is another dimension to this race to industrialization. Odisha has a long history of use of armed forces to suppress resistance which the state government has viewed as 'anti-development' rather than voices of the poor who are desperately trying

to survive against all odds. At all these places tribals, dalits, fishermen and farmers are fighting against mining and steel companies, *sahukars* and the state government from forcibly taking over of their resources. Use of coercion, armed police and militia has become the modus operandi of the state to eliminate dissention and capture resources from the marginalised masses. Using draconian anti-people laws, the state is systematically incarcerating the adivasis and dalits who are resisting state and corporate takeover of their only sources of livelihood. The battle lines have become sharper with the state's grand vision of 'development' clashing with the basic survival needs of the poor. It is not considered that the very people it supposes to 'develop', oppose it; even at the cost of their lives. They desperately try to hold onto however little they have with whatever means they can afford as they no more

Some pertinent indicators of the state and its People

- In 2007-08, 28.17 percent of the state population was below poverty line.
- The ST and SC communities together contribute to 70% of the total poor in the state.
- The southern region has the highest poverty followed by the northern region. Both southern and northern regions account for as much as 85% of the poor in the state.
- Out of total families in KBK districts (Kalahandi, Nuapada, Bolangir, Subarnapur, Koraput, Malkanagiri, Nabrangpur and Rayagada), 71.4% families live below poverty line.
- According to 2001 Census, 62.4% ST and 45.5% SC are illiterate.
- Odisha accounts for about one-third of malarial deaths in India.
- 1449 died of Dysentery/ Diarrhea and 3882 of TB in 2009
- Magnitude of unemployment at the end of the year 2010-2011 is 13.98 lakh

(Source of all the data: Economic Survey 2010-11)

believe in the promises made to them. But to the state, they immediately smell of Maoists. The White Paper (2010) published by Govt. of Odisha, Department of Home testifies, “The ultra-left had provoked people affected by the mega- project to take up arms against the setting up the projects. These agitations have been confronted for the greater interest of the state.”

So, “for the greater interest of the state” which really means the interest of the corporate houses these protests are crushed, people humiliated and brutalized for raising the issue of their livelihood. Today we are witnessing it in Dinkia and Govindpur; had seen it yesterday in Kashipur and Kalinganagar. Then what happens is put succinctly by Bulka Miniaka, one of the important leaders of PSSP (Kashipur), “What can be done? Nobody is listening and no other way is credible. We tried peaceful means but the government, administration, police have been successful in breaking them and discrediting them... so young people are feeling let down, even we are feeling so. It is OK, people have found reason in Maoism.”

This statement gives an idea why Maoism is gaining popularity in tribal belts of Odisha. One finds its echo in Kalinganagar where a resistance to land acquisition for TaTa’s steel project has been brutally suppressed. Again we know what happened in Narayanpatna. People demanded to get back their land on the basis of the Regulation 2, 1956 of Odisha Scheduled Areas Transfer of Immovable Property Act and to ban liquor trade as it is a conduit for land alienation. Without

addressing these issues, the Govt. suppressed it violently, killing people and putting hundreds into jail.

Seeing the growing popularity of Maoism in the tribal pockets of India, which also happen to be the mineral-rich areas, the Govt. of India declared the maoist as biggest internal security threat. Then followed the Operation Green Hunt and thousands and thousands of para-military forces were sent to tribal-mineral rich areas of India. In Odisha, 5 battalions of Border Security Force and 7 battalions of CRPF have been deployed in Naxalite affected areas. Besides, a COBRA battalion of CRPF has been deployed in Koraput. (Source: The White Paper 2010, Govt. of Odisha, Department of Home). After this, it would not be great surprise to see “encounter killings” in tribal areas of Odisha.

And we see a series of “encounters” (between December 2010 to January 2011) in Paikamal (Baragarh district), Tomka/ Kalignagar (Keonjhar – Jajpur border) and Basangmali (Rayagada) in which twenty five people, mostly tribals, were killed. Each of the areas is (or going to be – like Paikamal) a mining-industrial complex. And each of them possesses a history of resistance and repression. ***So, killing “Maoists” in “encounters” or killing agitating unarmed people are only two faces of the same coin: the repression of the state when any form of opposition is there to mining and industry.*** Of course, the encounter killings have greater media saleability and touted to be success of the police.

Equally concerning is the cycle of violence that comes into being where some

BOX-1 Despair and hopelessness of people.

During the visits wherever we could speak and the adivasis friends could answer, they expressed a despair about the role of the government, the police and judiciary which should be detailed as acts of state repression on peaceful protests of adivasis. An activist friend of the Kashipur resistance against bauxite mining expressing anguish over the sorry state of affairs in south Odisha recounted, “during the year of 2005-06, we all faced the state repression because of our resistance to the mining companies. A few activist/villagers of Khurigaon, near Basangmali hill, were arrested due to their opposition to the government’s proposal for leasing out the same hill to the mining companies. Many of our activist-friends of the struggle led by PSSP (Prakrutik Sampad Surakshya Parishad) were picked up by police from villages, from market places and from river side, at day time and at mid night. Many were tortured on the way by local police and were sent to jails for months together. In this period 62 people were arrested on different criminal cases and remained imprisoned for various durations—from 3 months to 14 months. On several occasions police resorted to severe lathi-charge and blank firing to cow down the movement. It may be recalled here that three adivasi friends were killed in police firing on the 16th December 2000. That time people were forced to leave the villages and government of Odisha won the battle.....

“Later, the Chief Judicial Magistrate, Rayagada gave judgment in most of these criminal cases as ‘mistake of facts’ and found ‘accused’ as ‘not guilty’. In no case had the police examined the ‘complainant’ and in some cases police had taken signature on blank sheets of paper, to use the same as FIR, is what the magistrate found during the process of cross-examination. So the magistrate acquitted the adivasi activists and set them at liberty. Actually, the police, the government and the company wanted to put the activist-adivasis and dalits in jail for few months so that they could take away tribal land easily and they succeeded in doing that. Unfortunately, the magistrate did not direct the government to initiate cases against such policemen to check such misuse of power in future nor did he direct the government to express apology before those adivasis and pay compensation. As if they are in this country to be put into jail for months without any fault. This misuse of position and power at different levels of the government as well as the judiciary, leaves the poor adivasis and dalits without any hopes, frustrated and enraged.....

“Not only was the position and power vested in government officials and judiciary misused deliberately for the mining company, but the constitution was also subverted. The constitutional provision of ‘protecting tribals’ was bypassed. The government transferred the land in Kashipur without any proper Gramsabha in this scheduled area (which is mandatory under PESA - a constitutional provision to protect the tribals) to Hindalco, an Aditya Birla group of company.”

He went on to say.... “Naveen Patnaik just after Koraput incident involving Maoists,

condemned the incident and had said, 'if there is any scope for peace it is through talks. I have an open mind'. Again on 2006 he had reiterated the same. Also after the abduction of Koraput Collector, Mr.Vineel Krishna, feb 2011, he repeated the same. But actually the government had adopted an aggressive and an unjust coercive/ repressive policy against the Maoists.

"After 2004 Naveen Patnaik reviewed the law and order problem of the state periodically, in a regular meeting of the home department and announced setting up of new intelligence unit in 'naxal affected areas', fortification of 'vulnerable' police stations, (which the team witnessed at many places) and raising of a second India Reserve Battalion recruiting more adivasis."

The only occasion when the government was forced to enter into a dialogue with the Maoists through the interlocutors was after the abduction of Mr.Vineel Krishna. An agreement was reached on a few critical issues such as the land of the adivasis which have been wrongly snatched away from them should be returned to the rightful owners in three months.

We met Mr.Sudhakar patnaik, senior journalist in Jaipur, who along with Prof.Radhamohan, it was part of the agreement, was meant to oversee the implementation of the clauses of the agreement.

We asked him about the implementation of the agreement. To this he replied that the "government is not serious at all (in honouring the agreement). The question of land is quite important. The people who have illegally acquired the land of the local adivasis are the traders, alcohol-sellers. They are moneyed people and can easily move the court and get a stay on whatever the administration does to restore the land to the adivasis. I had suggested the Chief secy, Odisha, why don't you acquire the land from the 'illegal' occupant, pay them and distribute the land among the landless adivasis or the aggrieved adivasis?"

The government, instead, have appointed a commission to identify the land which has been snatched from adivasis as they acknowledge that the 1962 land survey was manipulated by the powerful. Last month there was only one meeting at BBSR for the implementation of the agreement. I had made the suggestion (referred earlier) in that meeting."

He added with a sense of frustration— "We (i.e., Mr Patnaik and Prof. Radhamohan) have written 5 letters to the administration reminding the commitment they made for the release of the collector. The time frame for the settlement of the agreement was 3 months, which is almost over. Through land-struggle people have regained almost 2500 acres of land over a long period of time."

The government has not only failed to serve the poor and weak, rather, in its zeal to serve the rich it has oppressed the poor.

deaths remain a mystery. In the case of Kandri in Sundargarh district discussed in this report, the police blamed the Maoists and the Maoists blamed the police for the act. Or for instance the death in custody of one Lalit Dehury in Chamakhandi Police Station of Ganjam district that the media reported on March 1 and 2.¹ So the cycle continues.

In the aftermath of the kidnap of Vineel

Krishna, the agreement signed between the CPI (Maoists) and the Govt. of Odisha through negotiators had brought about a lull in this cycle of violence (See Box 1 and Box 2). Sadly, the lull is over and the cycle of violence has started again.

On a regular basis, the media has been reporting of 'combing operations' and 'encounter' killings in areas which has no prior history of armed conflict. Most of the

BOX-2 The 14 Points Agreement

The Demand placed for discussion by the Maoists through the interlocutors, appointed for the release of the Collector of Malkangiri, Mr. Vineel Krishna. These 14 key demands of the Maoists were discussed during the negotiations:

1. Declare Nookadora, kondareddy communities as Schedules Tribes
2. Stop Polavaram Project which is going to submerge villages in odisha and telangana
3. Issue pattas to the tribals of koraput, malkangiri, narayanpatna, visakhapatnam whose land have been illegally by others
4. Construct a canal from kotapalli to maneguda to provide irrigation facilities to kalimela farmers.
5. Due to torture by the koraput jail authorities and lack of provision of health care Tadangi Gangulu and Ratanu Sirike have died. Pay compensation to their families.
6. Release central committee member Sheela'di who is suffering due to ill health and padma who is in chhattisgarh jail.
- 7&8. Stop the mining operations and cancel the mining lease of Mali, Deomali Bauxite mines in Visakha district; cancel all MOUs signed with various MNCs
9. A tribal by the name of Sitanna was taken away by the police from Narayanpatna, Dusundi village in Nov. Indicate what has happened to him? If he is alive, release him.
10. Pay compensation to the farmers of cut off and submerged areas of Balimela reservoir. Since there is a possibility of the same area getting submerged in future, the farmers should be provided with alternative facilities.
11. Provide justice to the displaced persons of Nalco project in Damanjodi.
12. Immediately stop green hunt operation.
13. Withdrawing the cases, release the tribals and chasi mulia workers in koraput and malkangiri
14. Release central committee members AShtosh Send and other members Sriramulu Srinivas, Gnanayak, Jeevan Bose, Ganti Prasadam, Sirisha, Eswari, Sarita and truck drivers. They are in Malkangiri jail.

'encounters' have been done in the name of combating insurgency. But on closer scrutiny, it reveals a slightly different story.

Of the many incidents of 'encounters'/murders and violation of human rights, some

four were investigated by an all India Fact Finding team—namely the incidents of Tentulipadar (Malkangiri district); Basangamali (Rayagada district); Sagjodi and Chandiposh/Silpunji (Sundargarh district). (See Map)

Malkangiri District

Malkangiri can be introduced in many ways: people in Odisha associate it with Malyabantagiri, a place where Lord Ramachandra stayed for some period during his exile into forest: the coastal-dominated babudom sees it as a place of punishment: the media sees it as a place "infested with Maoists". Maoists see it as part of their "Dandakarnya Liberated Zone". Out of the total geographic area of 5791 sq.kms., 3356.26 sq.kms. is under forest cover. STs constitute 57.43% of the total population. In the Human Development Index ranking the district stands at the lowest. Tentulipadar village is in this district.

Village Tentulipadar

This is a small Kondh village located deep in the forest on top of a mountain in the Kudumulugumma block and falling in the jurisdiction of the Chitrakonda police station. (This area is on one corner of the Balimela Dam, a major dam project, constructed in the 1970s for both irrigation and hydro-power. The project had displaced nearly 1200 tribal families of many villages.) Tentulipadar village is located close to the Dyke 3 constructed to check water flow. The village is not in the cut-off (from the main land by water-body) zone and is certainly accessible through land. But one has to

circumvent a large section of the dam to reach the foot-hill and then trek about a kilometer and a half to reach the village of 20-23 houses.

On April 23rd, about 25-30 Maoists came to the village in the evening and camped a little distance from the main village for the night. They requested the villagers to bring them some food in the morning.

As per the villagers at about 7 am on April 24th about 40 security personnel from the SOG and the BSF came in from the northern side of the forest. About 8 to 10 villagers who were taking food to the camped Maoists saw the security men moved down a hillock and started firing without any warning. A woman Maoist was hit thrice, two bullets piercing her from the left part of her chest and exiting on the other side and one smashing three fingers on her left hand. The villagers as well as the rest of the Maoists ran for their lives. While the villagers ran back to their village and were extremely fortunate in escaping being hit by the hail of bullets from the policemen, the Maoists escaped into the thick forest cover to the south-west. There was no firing from the side of the Maoists.

The local people said the police had even lobbed a few grenades during the attack. Before leaving, the policemen beat up three Khond villagers including a woman abusing them and warning them of dire consequences if they helped the Maoists in any manner. The slain woman, who was left behind by the fleeing Maoists has since been identified by the Odisha police with the help of their counterparts in Andhra Pradesh as Ajitha alias Ratna, a native of Gangaraju Madugula in the Fifth Schedule region of Visakhapatnam district, Andhra Pradesh. However, no efforts were made by the police

of either State to sufficiently advertise this fact and contact her family members. As a result, her body remained unclaimed and was buried by the Chitrakonda police.

While these are the facts of the incident as narrated by the villagers, the police have gone on record stating that a joint operation of the SOG and DVF (District Volunteer Force) had exchanged fire with the Maoists at Tentulipadar resulting in the death of a woman Maoist of the Bodapada armed squad of the Maoists which operates in the Chitrakonda and cut-off area.

Rayagada District

Rayagada, part of the undivided Koraput district, was carved out as an independent district in the 1990. It has a geographic area 7073 sq. kms, of which 2812.33 sq. km under forest cover. Out of total population 55.76% belong to ST category. In HRD ranking it stands at 25 out of 30 districts.

In the 1980s it hit the national attention for starvation deaths. In 1987, Rajiv Gandhi, the then Prime Minister of India visited some areas of the district including Kashipur and Maikanch. Then, since 1990s attracted by its huge bauxite deposits, Aluminium Companies queued up to extract it, to set up refineries in this region. The consequent land grabbing and the threat of 'displacement' prompted people's resistance to such attempts. This was followed by unprecedented state repression on people and their resistance which have drawn the national attention, sometimes international also. Now, the local resistance at Kashipur of Rayagada district,

spearheaded by PSSP has been beaten back and construction of refinery is going on. But more land is to be acquired for Red Mud, Ash Pond, Conveyor Belt and for mining.

Village Basangamali

Basangamali village with 40 odd adivasi houses is on the top of the Sasubohu – Basanga hill just 10-12km from Kashipur. This hill is famous for bauxite which is being eyed by mining giant Vedanta/Sterilite. Sterilite had applied for mining lease to the government of Odisha in 2000 and since then it is under consideration by the state government.

As per the police version SOG and CRPF personnel were involved in a fierce hour long gun-battle with about 20-25 Maoists of the Kashipur dalam of Vamsadhara division which killed nine Maoist cadres including 5 women. The police say that after prior information about the presence of armed Maoists near Basangamali, 30 police

personnel, led by Bissamcuttack SDPO, Mr. R. Prakash, surrounded the area and warned the Maoists to surrender. In response the Maoists lobbed grenades and started firing at the forces which led the policemen firing back at them in self-defence.

But the narration of the incident by the villagers who were witness to the incident raises serious doubts on the police version of the 'encounter'. As per the villagers there was no exchange of fire between the camped Maoists and the armed forces. As per the villagers, about 20 Maoists, nearly half of them young women, came to Basangamali, a Khond habitation of 40 dwellings, in the early morning of January 8th. 2011, Eight of the Maoists, including two women, were armed. They requested the residents for some utensils to cook and some rice and moved down a small valley near the village where there was a water source. The Maoists came back to the village in the evening, sang songs and spoke with the villagers exhorting them to defend their land and livelihood. After dinner, they went back to their camp site at about 10 pm.

The police came down from the hills at dead of the night from the direction of Sirkuli, Gainpara and Kanjaguda villages. They surrounded the hills above the small valley where the Maoists were camping from three sides and at the break of dawn began firing down into the valley. They also used several grenades. Nine Maoists were killed in the gunfire while the others managed to escape under the forest cover towards south-east.

Soon after the firing, two policemen

came to Basangamali village. After abusing and manhandling several teenage boys, they took 17 villagers along with them down to the spot where the Maoists were killed. They made the young adivasi boys carry the bodies up to the village from where the bodies were shifted down the mountain by tractors the same afternoon.

While interviewing the SDPO Rayagada, Mr B.R.V. Rao and pursuing the FIR* filed against the Maoists including against the deceased persons, the team found certain inherent contradictions in the police version of the 'encounter'. While the SDPO maintained that no police personnel was injured during the 'encounter', the FIR stated that a few police personnel were injured in the exchange of fire. This raises serious doubts about genuineness of the encounter.

*[FIR no (crime) 2/11 registered at the Kashipur police station U/S 121,121(A), 307 IPC, section 4 and 5 of Explosives Substance Act; section 10,13,15,18,18(A) of Unlawful Activities Prevention Act and; section 25 and 27 of Arms Act.]

After learning that one of the deceased girls, namely Nirmala, aged 17/18 years, in the Basangamali incident was from Barigaon village of Kashipur, we visited Barigaon. This is a village which has been part of the Kashipur resistance against displacement and had witnessed unconstitutional state repression. People recalled how Bulka maniaka, a village elder was received with feast and fanfare in the village after being released by the court as the police had unduly detained him for the participating in the resistance. It is a large Kandho village

of 50-60 families.

We met Nirmala's mother in the village. She had lost her husband many years back. After that she gets the help of men of the village to cultivate her land and does odd jobs as gathering Sal leaves and Mahua flowers to raise three daughters. Nirmala was her eldest daughter. Nirmala had left her house about a year back and joined the 'Maoists'. She used to visit her mother and on a couple of occasions had assured that their days of hardship will go and that she was working for the country and the community. She had also given her mother 100 rupees on two occasions she visited her in the last one year. Nirmala was quite popular amongst the young girls of the

village and was also a good singer. Her body was brought back from Rayagada by the help of some villagers of Barigaon.

Nirmala's mother goes about her daily chores stoically, but the loss of a dream is writ large on her face always. The society, the state have failed in giving Nirmala the opportunity to prove herself, to realize her dream, to speak out her plans for her country and community. The society and state has accepted the version of the police and silenced her forever. That does not bode well for the society.

Along with the body of Nirmala, those of Kamala and Karuna were brought from Rayagada and cremated here in Barigaon village.

Sundergarh District

Sundargarh is the second largest district in the State accounting for 6.23% of the total area. The district is bounded by Ranchi District of Jharkhand on the North, Raigarh district of Chhattisgarh on the west and North-West, Jharsuguda, Sambalpur and Angul District of Odisha on the South and South-East and Singhbhum District of Jharkhand and Keonjhar District of Odisha on the east. About 43% of the district's total area is under forest cover and rich in mineral resources.

Demographically, Adivasis, including — primitive groups, constitute the largest social group — 50.21%. The entire district comes under the Fifth Schedule of the Constitution. A fairly industrialized district, Sundargarh is ranked 4th among the 30 districts of the state according to the Odisha Human Development Report 2006.

This is due to a high income index of the district which is due to the presence of industries. The literacy rate in the district is 65.22 %, which is a little above the state average of 63.61%. However, the vast majority of the adivasi population remain poor and high rate of land alienation due to the ongoing industrialization.

The adivasis have been agitating against this though it does not seem to stir the conscience of the administration. The land grabbing, exclusion of poor adivasis from their sources of life continues. The most blatant instance is that of Adhunik Metaliks. Adhunik Metaliks Ltd was in news in 2007 for building a wall around the land acquired through a nexus between the company, administration and police. This company, along with OCL Ltd, has been given permission, on 4 May, 2011, to

BOX 3:

Champa Mandinga alias Aruna, a minor of about 15 years, was one of the Maoists cadre who managed to escape this massacre. A native of Pipalpadar village in Laxmipur block of Koraput district, she was hit by a bullet on the left hand. She managed to reach Barigaon village, close to Pipalpadar several days later to recuperate. Her wound, however, would not heal with the traditional medicines. On 9 February, Champa accompanied by her cousin Sindhu Mandangi aged about 18, was being taken on a two-wheeler by one Lalit Dehury (of Konkamamandi near Banigocha in Naigarh district) to a doctor when they were apprehended by the Patapur police the same night. Lalit was held in illegal police custody for over three weeks and turned up dead in the Chamakhandi police station of Ganjam district on March 1. The police said he had committed suicide by hanging himself with a blanket. Serious doubts have been raised about this version and there is strong belief that Lalit died due to custodial torture.¹

Champa was admitted to the Berhampur MKCG hospital and then shifted on 1 March after which she was shown to the media as having surrendered before the Rayagada police on 13 March. She was admitted to the Rayagada district hospital and since discharged on 24 April. Her whereabouts as well as those of her cousin are not known since then. The police have made no attempt to inform their anxious relatives at Pipalpadar about the whereabouts of these two women.

The fact-finding team is of the opinion that the 10 Maoists who died in the Tentulipadar and Basingamali “encounters” did so due to unilateral and indiscriminate firing resorted to by the police without any prior warning. There was no exchange of fire. Based on precise information about the presence of Maoists, the police went in and shot them dead. We take strong exception to senior police officials in the State trying to pass off these slayings as a case of encounter.

APUCL (People’s Union for Civil Liberties - Odisha) Report on the Custodial Death of Lalit Dehury. 12 March, 2011

increase its sponge iron capacity from 0.41 mtpa to 3.2 mtpa and 0.25 to 0.95 mtpa respectively. Along with this, iron ore mining, legal as well as illegal, has been going on. Such encroachment is affecting forest area, diverting water from agriculture, reducing inflow into Brahmani river and poses a challenge to the total volume of water available for drinking and cultivation needs

of Odisha. Local people told us that they have noticed a fall in the volume of water in the Khandadhar waterfall in last few years, by according to their reckoning, upto 50%. They claim that the Odisha Mining Corporation, Rungtas are diverting water from the upper region for their mining units and their staff quarters. Ironically, this area is the abode of Paudi Bhuyan, declared a

primitive tribe and thus protected by Fifth Schedule of the Constitution.

It is against this background that the so called Maoist activities and the below mentioned incidents have to be seen. The team looked into two incidents both falling in the forest area and related to Maoist activities.

village Sagjodi

We investigated the murder of Kandri Lohar and her 4 year old son Shiv Barua in Village Sagjodi of the Birsa block of Sundergarh District. Kandri was a young adivasi woman from Sagjodi village in Bisra block, which is divided between Odisha and Jharkhand. She came from a very poor family which ekes out a living by doing blacksmith's work in the village. In year 2005, she had joined the Maoists, who used to frequently visit the area. On her father's plea that she was betrothed to one Shankar Barua she was returned to the family. Same year in July 2005 during the 'Rath Yatra' at Jathratad market when she along with Shankar Barua were watching the festivities she was identified by one Birsa Gudia, who had surrendered to the police because he was punished for misbehaving with women Maoist cadres. The then SP of Sundergarh offered Kandri the rehabilitation package meant for surrendered Maoists and got her married. However, the police failed to provide her the promised package. Meanwhile her marriage broke down. It was only in 2009 when she went public with her complaint against the police for not providing her what they had promised that she got a job in the Home Guard with a daily wage of Rs110. She was also given a

homestead (4 decimil) under Indira Awas Yojana at Bonda Munda. However the roof of the house was destroyed in 2010 during the cyclone and she was forced to shift to her parents house in Sagjodi. She used to cycle about 27 kms to the Rourkela city where she was posted. This took its toll and her fervent plea for compensation to rebuild her house fell on deaf ears. Her friend told us she was depressed having to cycle long distance and look after her son.

On February 11, 2011 two incidents took place. In the early hours of the day Rourkela police arrested three alleged ULFA men from the railway station. And the same day, at about 11 am, three Maoists (Mohammed Muslim, Nepali Bhumij and Sushanto Mahato) were shot dead in what was purported to be an encounter. One of the Maoist killed, Mohammed Muslim, was a frequent visitor to Kandri's house and was her friend. The spot of this encounter was only a few kilometers away from Kandri Lohar's village.

The same evening at 6 pm she told her father she was going to her maternal uncle's house at Mohipani for Saraswati Puja with her son. That was the last he saw her. Next day he was told his daughter and grandson had been found dead near the railway crossing. Police claimed it was the work of Maoists and the Maoists denied their involvement.

Villagers told us they do not know who had killed the two. But what was palpably clear was the fear that prevailed in the area about the police. Though the so called 'encounter' of February 11 was witnessed by many local people, the police warned

them of dire consequences if they spoke about it. There had been several incidents in the past where villagers had been beaten or threatened. In April 2010, a villager Matias Horo was shot dead and police claimed that he was a Maoist whereas villagers had claimed that he was innocent and shot dead in cold blood and a rifle with broken trigger planted on him.

Villages Chandiposh and Silpunji

Chadiposh and Silpunji are revenue villages and there are several hamlets which fall within these revenue villages, namely Silpunji, Chandiposh, Mundatoli, Karda, Jharbeda, Bhatatoli and Barkatoli. They are inhabited by Oraon, Munda and Raotia tribes. Few kilometers from these villages in the heart of the reserved forest there is sponge iron factory in blatant violation of the Fifth Schedule, PESA and FRA. The helplessness of the villagers to prevent such encroachment and the failure of administration to prevent such illegalities tells its own story of brazen disregard for law by powers that be. There is no NREG work available here. Even families who have BPL card, such as 107 in Karda, 22 families in Barkatoli, 18 families in Silpunji etc., are unable to avail of subsidized provisions due to paucity of money. There is Aganwadi and a school in Barkatoli. Since collection of forest produce such as Sal, Mahua, Tendu leaves and selling them to purchase basic necessities and tilling small plots of land is insufficient to meet their needs, working people turn to Chandiposh Railway Siding for finding daily job handling loading and unloading. But jobs are not available everyday at the siding site for scores of

working people in the area. Siding is also a site, reportedly, for rivalry between two factions of ruling Biju Janta Dal. On 16th July 2009 at around 10 pm, a SI of Police Ajit Bardhan was abducted by the Maoists from the NH near Chandiposh. Next day on 17th July, at around 9 am, when a CRPF team was patrolling the area there was an IED explosion about 750 metres from Silpunji hamlet in which one jawan Abdul Rafiq was injured and later died of his injuries. The next day, on 18th July, dead body of SI Ajit Bardhan was found near B-Jharbeda on the road. More than a month later on 29 August 2009 police raided several hamlets of Chandiposh and Silpunji and picked up 48 persons of which 18 were released and 30 were made accused in five conspiracy cases which include abduction and killing of SI Ajit Bardhan, IED blast among other charges.

While the police made them the accused there are contradictions in the FIR. For instance the witness to abduction claimed there were 20-25 armed cadres with face masks then why did the police pick up 30 persons? How could they be identified when it was night time and faces were masked? Villagers claimed that even if SI Ajit Bardhan was taken in a vehicle through their hamlets how could they know who was sitting in the vehicle? Also, the IED explosion took place at an hour when men folk had already left for their daily work at the Chandiposh Railway Siding for loading, children had gone off to the school, and women were in the forest collecting forest produce. Barring infants and old people no one was in the village at the time of the blast.

Also no recoveries were made from any of the accused. Not even “banned literature” was found something that Indian police is so quick to cite as evidence in cases against alleged Maoists.

However, it is what fate awaited the accused that is interesting.

They were kept in Bonai jail and the case was to be heard by Additional Sessions Judge who was to come from Rourkela. Although the trial had began and two witnesses were heard, the judge went on leave for few months and citing security reasons the accused were shifted to Rourkela Special Jail. Once they were shifted the trial stopped because police

claimed they did not have sufficient personnel to escort them to Bonai and also cited that Bonai being an “affected” area it was risky to take the accused to Bonai for their trial. Few months back IG (Jail) Prana Bindu Acharya moved a proposal to shift the accused and their trial to Bhubaneswar. All this while the accused were neither produced before a Court as is required under the law every fifteenth day.

On April 21, 2011 the accused wrote to the District Judge and threatened to go on strike. That’s when the wheels of justice began to move and their trial commenced on 2nd May 2011 at Rourkela Fast Track Court.

Conclusion

In our view, both the cases of “encounter’ are those of intentional killing by the police as there was no evidence of warning by the police, or even counter firing by the ‘maoists’.

Every killing in an encounter is a killing in self-defence. At the conclusion of every alleged encounter, the police officer in charge of the police party that has participated in the alleged encounter gives a complaint in the local police station, which is registered as a crime under Section 307 of the IPC (read with other sections). This means that the crime is registered as one of attempt to murder by the now deceased as a consequence of which the police, according to the complaint, had to resort to firing in self-defence causing death.

An encounter by definition means an exchange of fire. It is our contention that in

all cases of encounter killing, a case of murder must be registered against the police who took part in it, arrests effected, proper investigation undertaken, and the case be brought to the court which is the proper authority to decide upon the veracity or otherwise of the police version. It will not do for the police to simply put out an “encounter” story and wash their hands off the matter. The police personnel responsible for gunning down the 10 Maoists in these two cases must therefore be tried as per the law in the same manner as civilians would be in such a situation.

The practice of the police in Odisha, as in other parts of the country is to register only a single FIR which is booked against the Maoists. Principally, as in these cases, it relates to Section 307 of IPC relating to attempt to murder by the Maoists along with

BOX 4: Dire consequences of the arrests

On meeting the family members of the accused, the factfinding team found the dire strait in which they live. For them the long process with delay and uncertainty has been a form of punishment. Some of them are unable to even travel to Rourkela to meet their kith and kin. Some of the children have dropped out of the school. Many a day, having lost their sole breadwinner, they survive on Mahua flower and Tendu. One can see visible symptoms of severe malnourishment among women and children. In the absence of their men folk, women earn paltry amount selling Sal leaves and “datun”. Women suffering from any kind of physical illness are finding it especially difficult to feed their children. The team met one Phulmoni Oraon who is a mother of five children – the eldest ten years old and the youngest 16 months old. The youngest one was born while the father was in jail. Phulmoni is incapable of doing hard work as she is physically challenged. She finds it extremely difficult to earn enough to pay for the 35 kilos of rice which she is entitled to get under the Antodaya scheme. She gets this rice at Rs.2/- per kilo but finds difficult even to arrange Rs.75/- every month to buy the rice. Her eldest son, Anand, who was studying in class 3 has stopped going to school after his father went to jail. There is one old couple whose three sons and one son-in-law have been arrested and the couple finds it so distressing to see the sufferings of women and children in the family. Another couple – Sapla Oraon and Khudia Oraom – have been arrested and their three children are left in the care of their old grandmother.

Overwhelming majority do not possess BPL cards and while they have Job Cards under NREGA they have not been provided any work under the scheme and their job cards are with someone called Rajesh, probably a labour contractor. In Silpunji village alone, four children and two adults have died during this period, we feel they are directly related to the dire conditions in which people live. Of the two adults who died, one was Usha Munda, wife of Jaydev Munda who is in jail. After Usha’s death, her two years old child has become an orphan and is being taken care of by the villagers. Many women told us that they do not have money even to visit their men folk in jail. After seeing the conditions of people in this village, the team fears many more children might die of starvation if steps are not taken to improve their conditions.

It is interesting to note what the women of Silpunji have to say about the State Human Rights Commission (SHRC). With a hope to get justice, the women had approached the SHRC. The women told the team that the Commission refused to meet all the women who had come to Bhubaneswar to meet the SHRC and only agreed to meet two of them. And when the two, accompanied by some activists, could meet the Commission, they were disappointed to find that the authorized official of the Commission was speaking in English. He didn’t care to find out what were their allegations. Only thing he said in Oriya was, ‘we will see’. Not surprisingly, there has not been any response from the SHRC on the issue.

various other sections of the penal code like Sections 121, 121A (waging war against State), various provisions of the Arms Act and Explosives Act as well as sections of the Unlawful Activities Prevention Act. The contention of the police is that this single FIR is sufficient for recording both the offences, namely the offence of attempt by the deceased on the life of the police and the offence of killing of the deceased by the police. This is simply unacceptable.

It is our considered view that such an incident must be registered as two crimes under Section 307 and 302 respectively. The first is a crime of attempt to murder by the now deceased and the other a crime of culpable homicide amounting to murder by the police purportedly in self-defence. The burden of establishing a preponderance of probabilities in favour of the exception relating to self-defence to a competent court rests upon the police personnel who have fired causing death. Investigation must be done into the case of killing by the police in purported self-defence. To come to the conclusion that there is no sufficient reason to investigate is to accept at face value the killer's version. This is impermissible in our view since it would not meet the requirement of just, fair and reasonable procedure under Article 21 (Right to Life) of the Constitution.

Thus every alleged encounter, as the ones of January 9 and April 24, have to be registered as a crime under Section 302 of IPC (read with other appropriate statutes) against the police, and the concerned police personnel have to be put on trial for culpable homicide amounting to murder. The burden of raising sufficient presumption in favour of the plea of self-defence then rests

with the accused police officer/personnel. Importantly, the case must be investigated by an agency as independent as possible of the perpetrators of the offence. This lawful procedure is not being followed by the concerned police of Chitrakonda and Kashipur.

The final decision on whether the plea of self-defence stands and life has been taken in permissible circumstances that would exonerate the police has to be taken by a competent court and not the executive, which is the police themselves, much less the killers themselves, in other words members of the police party that participated in the said "encounters". The procedure being followed by the police now makes for a mockery of the law and the Constitution.

What is unfolding in the districts of South Odisha is a systematic campaign of brutal counter-insurgency by a combination of State instrumentalities like the SOG, BSF, DVF and CRPF. This is causing immense injury to the common people, a majority of who are adivasis and leading to an unacceptable violation of right to life and liberty. The Central and State governments claim that the issue of Maoism is not to be viewed only as a law and order problem but as one having strong socio-economic roots. However, in practice Maoism is being treated as nothing but an outbreak of mere criminality and killer security forces are being set upon them. This policy of brutal suppression must end. The police must carry out the task of prevention and investigation of crime but they must do so fully respecting people's rights and must function within the ambit of the law.

The presence of police and new police stations, newly built jails, and large number of camps of various para-military forces all around the place announces, as the local people perceive this, the approaching threat of the eviction of the adivasis and other marginalized people for the exploitation of the minerals. That is the 'truth' that the "Maoists" had been propagating in Basangamali village, the villagers had said. And the eviction, violent and forcible eviction to be more precise, is most certainly and explicitly meant for the profits of private houses and not in "national interest" as has been claimed all the time.

More than that, as our investigation points out, we witnessed 'intentional killing by the forces of the state who have been assembling there in those police stations and camps. Fact of the matter is that in the midst of a dirty war India's constitutional democracy does not reign supreme in the war zone and has failed to offer protection against arbitrary powers of the state. Contrary again to the assertion that there are enough correctives in the system beginning with supremacy of civil over military, where "national security" is invoked

parliamentary scrutiny and judicial redressal ceases to act effectively and is unable to ensure that people's right to live in dignity is not violated. There is, thus, a hiatus between theory and practice. It is not only the Rule of Law which is taken for granted but the spirit of the Geneva Convention ,(see BOX-5) to which India is a signatory, has also been disregarded.

While we did not investigate the circumstances surrounding the killing of K.Arjun, leader of one of the faction of Chasi Mulia Adivasi Sanghatana, by members of CPI(Maoist), under the charge that he was acting in connivance with state authorities. The accusation notwithstanding, as civil liberties groups we can not remain oblivious to summary killings in struggle areas, as in this case. We, unequivocally condemn such killings, because they neither help advance the cause for which the CPI(Maoist) are committed to fight nor help people to put up an united struggle. We therefore appeal to CPI(Maoist) to cease such acts which create divisions and differences among forces resisting loot of land, forest and river water by corporations and settlers.

Demands

1. The police officers/personnel who participated in the Basangamali and Tentulipadar killings of January 9 and April 24 of 2011 respectively must be charged under Section 302 of IPC relating to murder as well as other relevant provisions of the penal code and prosecuted.
 2. The investigation into these cases must be handed over to the CBI or a criminal investigation team under the aegis of the National Human Rights Commission (NHRC).
 3. The relatives of Champa and Sindhu Mandinga at Pipalpadar must be immediately informed about their whereabouts and well-being. The Rayagada SP must make a public statement in this regard.
 4. The government must stop the ongoing policy of brutal suppression of the Maoists and address that movement politically.
 5. Now that the trial has begun, it must be conducted in a time-bound manner, in order to ensure that the process does not become punishment.
 6. The government must provide immediate relief to the children, women and old people who are left to fend for themselves in the absence of men as in case in Sundergarh district.
 7. A judicial inquiry must be conducted into the brutal killing of Kandri Lohar and her young child.
 8. A magisterial inquiry must look into the 'encounter' of the three Maoist cadres killed near Sagjodi on February 2011.
-

Box 5: Geneva Convention

The seven fundamental rules which are the basis of the Geneva Conventions and the Additional Protocols.

1 - Persons *hors de combat* and those who do not take a direct part in hostilities are entitled to respect for their lives and their moral and physical integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.

2 - It is forbidden to kill or injure an enemy who surrenders or who is *hors de combat*.

3 - The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power.

Protection also covers medical personnel, establishments, transports and equipment. The emblem of the red cross or the red crescent is the sign of such protection and must be respected.

4 - Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.

5 - Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he has not committed. No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.

6 - Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.

7 - Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. **Attacks shall be directed solely against military objectives.**

*Their peace and their war
Are like wind and storm.
War grows from their peace.*

B.Brecht

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