

ANALYSIS OF CASE STUDY PYGMIES: THE CONGOLESE CASE, DONGARIA KONDH: THE CASE OF INDIA

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ABSTRACT

A blind eye is turned to the violations which ensure implementation of the rights of Indigenous Peoples stands in the way of uninterrupted developmental activities like mining, urbanization, industrialization, etc.

Keywords: Pygmies: The Congolese Case, Dongaria Kondh: The case of India

INTRODUCTION

Indigenous Peoples can be understood to be peoples who have a distinctive culture, language, beliefs; customized social, economic & political systems. They have a strong connection with their territory/land and more often than not, identify themselves with their land. They also have a special affinity to different forms of natural resources, depending upon the geographical area that they live in.

Pygmies: The Congolese Case

Indigenous Peoples in the DRC are understood to be the distinct groups that have diverse ethnic and cultural identities and they are collectively called the 'Pygmies' and they constitute about 1.4 to 10 per cent of the Congolese population. The 'Bantu' is an ethnic group which is identified as distinct from the Indigenous Peoples and they constitute about 90 to 97 per cent of the Congolese population. 71.7 % of the population of the Democratic Republic of Congo (DRC) is poor and a noteworthy fact is that more than 84.6% of the Pygmies' population is poor.

Due to the exploding Bantu population, the Pygmies are facing expulsion from their own ancestral rain forest land for the purposes of the Bantu farmers and their development. The Pygmies are not equipped to lead life in a non-forest setting as they are forest people and possess only those skills which are relevant to a life and livelihood in the forest and hence this expulsion is leading to a rise in poverty levels of the Pygmies and consequently they are lagging behind on all the other socio-economic parameters.

An analysis of the legislative framework of Congo will give a better understanding of the reasons for the abovementioned situation.

Legislative Framework: Congo

The Constitution of the Democratic Republic of Congo, 2005

The Constitution says that all citizens are to be treated equally and there is no place for any type of discrimination, racial or ethnic. The Constitution also recognizes customary law and customary courts to be valid. It gives protection to individual and collective rights, whether acquired by law or custom.

The legislation specifically for Indigenous Peoples in Congo are:

Law N° 73-021 on land, 1973 promises to settle the question of ownership of land of traditional groups by way of a presidential ordinance and the Act makes the State owner of all soil and also makes provision of indemnity to the Indigenous Peoples.

The Forest Code, 2002 takes the customary rights of the Indigenous Peoples in account with regard to only forest goods and services but it does not confer any rights related to land itself.

The Mining Code, 2002 speaks about the benefits to the state accruing from the exploitation of the territory for certain materials.

Law No. 5-2011 on the Promotion and protection of the rights of indigenous peoples (Indigenous Rights Law) is a result of endorsement of the UNDRIP, 2007. More specifically, this law guarantees a broad range of socio, economic, cultural individual as well as collective rights. It gives the Indigenous Peoples the right to equal access to justice, right to land and resources saying that they have a right to own, possess, access and use the land that they have traditionally used and the state has a duty to ensure that these rights are guaranteed.

DRC has voted in favor of the UNDRIP, 2007 & made a law in furtherance of such voting.⁵² It is also a signatory to the ILO Convention NO. 169.

Dongaria Kondh : The case of India

In India, the Indigenous Peoples are notified as Scheduled Tribes (STs) and there are around 705 such ethnic groups. One of such ethnic groups is the Dongaria Kondh which lives in the Niyamgiri Hills in the eastern state of Orissa. The Kondhs are a simple people, worship the Niyam Raja, the

hill that they live on and also farm on its slopes and harvest the produce. The Niyam Raja is a bounty reserve of bauxite and the mining giant Vedanta Resources intended to exploit the reserves and in furtherance of this ulterior motive, it started activities which were a precursor to such mining without obtaining the proper and complete clearances required from the Ministry of Environment and Forests. The kondhs showed unmatched spirit and resisted against this imperialistic encroachment of their rights. The matter reached the Supreme Court. The Apex Court recognized the cultural, religious, economic and social, individual and community rights of the Dongaria Kondhs. Keeping these considerations in mind, the Court directed the Gram Sabha to take up the questions arising in this respect and also upheld the ban on the activities of Vedanta Resources until it procures all permits in the prescribed manner and also directed it to take appropriate corrective measures.

CONCLUSION

Land Rights form an integral part of the lives of Indigenous Peoples worldwide. They base their spiritual, cultural, socio-economic wellbeing on their land and its resources. Having examined the incidents of violation of the Indigenous People's rights that have occurred in the Democratic Republic of Congo and India, in the light of the legislative frameworks of these countries, it appears that legislation is not the problem but implementation of the same is the root cause of the violation of the land rights of Indigenous Peoples.