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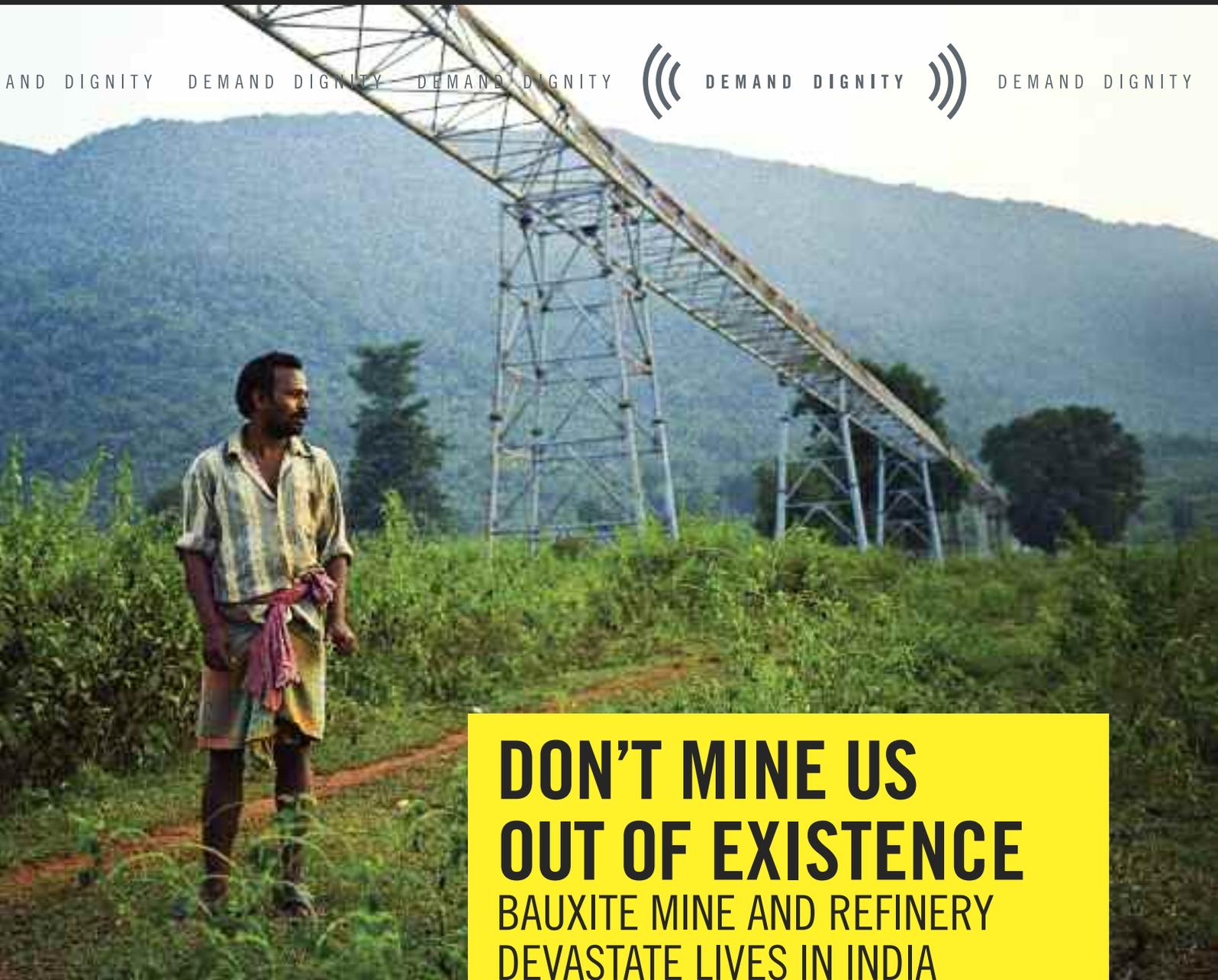
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BAUXITE MINE AND REFINERY
DEVASTATE LIVES IN INDIA

A HEALTHY ENVIRONMENT
IS A HUMAN RIGHT

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion – funded mainly by our membership and public donations.

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Front cover photo: Conveyor belt built to transport bauxite from the proposed mine in the Niyamgiri Hills to the Lanjigarh refinery. © Sanjit Das

Back cover photo: Vedanta Aluminium's refinery as seen from Kenduguda village, Lanjigarh. © Amnesty International

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LIST OF KEY ABBREVIATIONS USED

CEC – Central Empowered Committee (appointed by India's Supreme Court)

CESCR – UN Committee on Economic, Social and Cultural Rights

CERD – UN Committee on the Elimination of Racial Discrimination

EIA – Environmental Impact Assessment

FPIC – Free, Prior and Informed Consent

ICCPR – International Covenant on Civil and Political Rights

ILO – International Labour Organization

MoEF – Union Ministry of Environment and Forests

MoU – Memorandum of Understanding

MT – Million tonnes

NEAA – National Environmental Appellate Authority

OSPCB – Orissa State Pollution Control Board

SPV – Special Purpose Vehicle

UNPFII – United Nations Permanent Forum on Indigenous Issues

1. INTRODUCTION

“We have been living here for generations, how can the government now just say that it is their land and decide to allow mining without talking to us?”

L., at the Dongria Kondh hamlet of Lakpaddar



Photo 1: A meeting at Jagannathpur in Lanjigarh area to protest refinery expansion (© Sanjit Das)

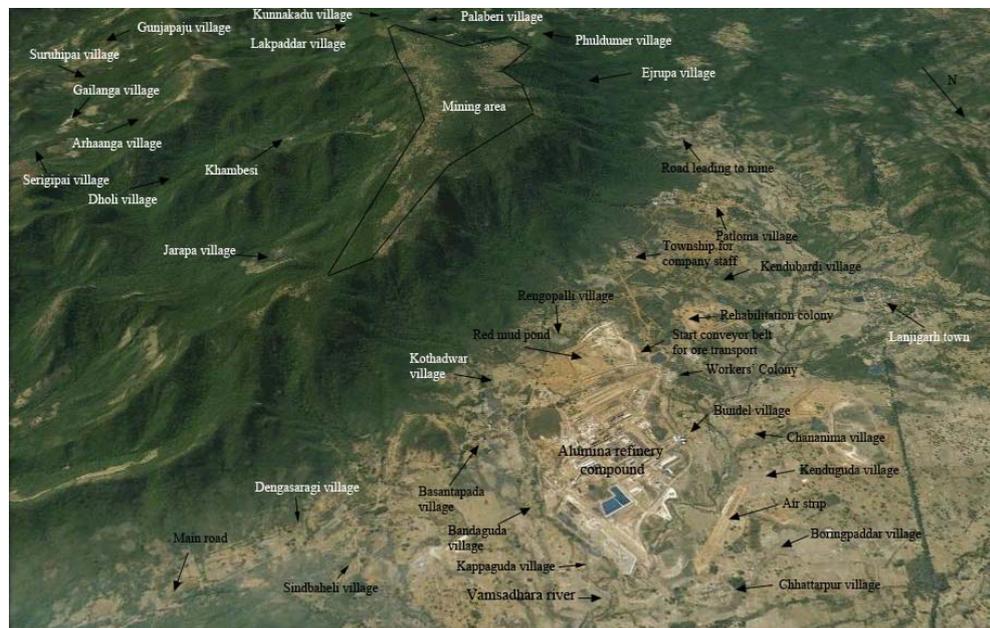
Communities living in south-west Orissa in eastern India – already one of the poorest areas of the country – are at threat from the expansion of an alumina refinery and plans for a new bauxite mining project. They have been effectively excluded from the decision-making process, and the land these people live on is or will soon be used to make profit for others. The people living next to the refinery have already suffered violations of their human rights to water and health, including a healthy environment, because of pollution and poor management of waste produced by the refinery. The mining project will be located on the traditional lands of the Dongria Kondh, an Indigenous community, which is considered

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endangered. They now live under the fear of losing their way of life and their sacred hills, as well as having their rights to water, food, livelihoods and cultural identity undermined.

In December 2008 India's Ministry of Environment and Forests (MoEF) approved, in principle, a project to mine bauxite in the Niyamgiri Hills. The Niyamgiri Hills are located in Kalahandi and Rayagada districts of Orissa and are protected by the country's forest laws.¹ In April 2009, the MoEF granted environmental clearance for this mine project.² A newly established joint venture company, the South-west Orissa Bauxite Mining Corporation, involving Sterlite Industries India Limited (a subsidiary of London-based Vedanta Resources Plc) and the state-owned Orissa Mining Corporation will carry out the project. The Niyamgiri Hills are considered sacred by the Dongria Kondh, an Adivasi³ (Indigenous) community that for centuries has depended entirely on the area for its economic, physical and cultural survival. Areas such as the Niyamgiri Hills enjoy special measures of protection under Schedule V of India's Constitution (see Box 3: Adivasis, Extraction and National Law).



Map 1: Lanjigarh refinery and the Niyamgiri Hills © 2009 Google, Map Data. CNET/Spot satellite imagery accessed via Google Earth. Image date: 5 February 2005. Identification of sites by Patrik Oskarsson/Amnesty International based on toposheets of Survey of India, Government of India, and Environmental Impact Assessment (EIA) reports commissioned by Sterlite India and Vedanta Aluminium.⁴

Plans to mine for bauxite at Niyamgiri have met with local and international opposition. Opponents of the project claim that it threatens the very existence of the local Adivasi communities and their centuries-old unique relationship with their lands.

Although the mine was given environmental clearance, the MoEF has since deferred granting forest clearance (which is a separate regulatory requirement, without which the project cannot go ahead).⁵ Some members of local communities have submitted an appeal to India's National Environmental Appellate Authority (NEAA) challenging the MoEF's decision to grant environmental clearance for the proposed mine.⁶

BOX 1: MINING AND ORISSA

Orissa occupies a key position in mineral-rich eastern India. The state has 28 per cent of India's iron ore and 50 per cent of its bauxite reserves and contributes eight per cent of India's total mineral production. In the six decades of India's independence, Orissa's annual production of minerals increased sixty-fold, from 2.8 million tonnes (MT) in 1947 to 178.6 MT, valued at 106.37 billion Indian rupees (US\$ 2.36 billion), in 2007-2008. Orissa has some 600 mine lease areas, covering 97,000 hectares, of which 370 leases covering an area of 74,400 hectares are currently in operation. In the last decade, the government of Orissa has tried to boost mineral exploitation and mine-based industries by offering companies mining rights and other concessions, including supply of power and water at discounted rates.⁷ During 2002-2008, it signed 54 agreements with different national and international companies in the extractive sector, which is estimated to represent 2.1 trillion Indian rupees (US\$ 46.3 billion) in investment.⁸

Despite the substantial investment in extractive industries, Orissa remains one of India's poorest states. About 46 per cent of Orissa's families live below the poverty line, earning less than 15,100 Indian rupees (US\$ 330) per year.⁹ The majority of these communities are Adivasis and Dalits living in rural Orissa (73 per cent of Adivasis live below the poverty line; 53 per cent of Dalits and 33 per cent of other communities). The majority of people are fully dependent on seasonal agriculture, forest produce and local crafts for their livelihoods. The extractive sector investments have largely failed to translate into improvements in the overall living standards of most people. Conversely, some mining and mineral-based projects have resulted in problems for local communities and damage to the environment and protests.¹⁰ For example, recent plans to establish an alumina refinery and bauxite mine at Kashipur in south-western Orissa and steel plants at Kalinganagar and Jagatsinghpur in northern Orissa have led to protests and reports of human rights violations.¹¹

Meanwhile, in Lanjigarh, at the bottom of the Niyamgiri Hills local communities fear the worst as Vedanta Aluminium Limited – another company within the Vedanta Resources Plc group – prepares for a six-fold expansion of its existing alumina refinery. This refinery, located in a predominantly rural area and beside one of the main rivers in Orissa, the Vamsadhara, began operating in 2006. Since then there have been periodic reports of human rights violations and environmental pollution associated with the refinery's construction and operation. Despite widespread community concerns, in October 2007, Vedanta Aluminium applied for environmental clearance to expand the refinery. This clearance is pending.

Between 4,000 and 5,000 people, including Adivasi and Dalit communities, live in the 12 villages that surround the refinery, some of them barely 150-300 metres from its boundary walls. These communities formerly used the land on which the refinery stands for farming. The land was compulsorily acquired in two phases during 2002 and 2004 (for details, see

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Chapters 2 and 4). 118 families were fully displaced and a further 1,220 families sold their farmlands to the refinery. Its six-fold expansion envisages the acquisition of an additional 1,340 hectares from 800 more families in the area.

THIS REPORT

Following numerous reports of actual and potential violations of human rights and environmental pollution associated with the refinery and the proposed mine, Amnesty International visited the area three times in 2008 and 2009, to assess the situation in the Niyamgiri Hills and the Lanjigarh area.

BOX 2: THE COMPANIES INVOLVED

Vedanta Resources Plc (Vedanta Resources)

Vedanta Resources is a metals and mining group, headquartered in London, United Kingdom. The company was first listed on the London Stock Exchange in December 2003. The group has its principal operations in India and has mines and production centres in Australia and Zambia.

Sterlite Industries India Limited (Sterlite India)

Sterlite India is headquartered in Mumbai. Sterlite India has been a public listed company in India since 1988, and its equity shares are listed and traded on the National Stock Exchange and the Bombay Stock Exchange; these are also listed and traded on the New York Stock Exchange in the form of American Depository Shares (ADSs). Vedanta Resources owns 59.9 per cent of Sterlite India and has management control of the company.

Vedanta Aluminium Limited (Vedanta Aluminium)

Vedanta Aluminium is headquartered in Lanjigarh, Orissa. Vedanta Resources owns 70.5 per cent of the share capital of Vedanta Aluminium and Sterlite India owns the remaining 29.5 per cent share capital.

Orissa Mining Corporation

Wholly owned by the State of Orissa, this company mines chrome, iron and manganese, and has joint ventures with major mining companies to mine iron ore and bauxite.

South-west Orissa Bauxite Mining Corporation

A new joint venture formed in early 2009, of which Sterlite India would hold 74 per cent shares and Orissa Mining Corporation 26 per cent, to mine bauxite in Niyamgiri for the next 25 years.

Amnesty International's findings – described in the subsequent chapters of this report – clearly demonstrate that the refinery expansion and mining project have serious implications for the human rights of local communities, including their rights to water, food, health, work and an adequate standard of living. Local communities have received little or no accurate information on the refinery, its proposed expansion or the mining project. Processes to assess the impact of the projects on local communities have been wholly inadequate, and both the state and national governments have failed to respect and protect the human rights of communities as required under international human rights law. The companies involved (for a list of companies, see Box 2) in the mine and refinery projects have ignored community concerns, breached state and national regulatory frameworks and failed to adhere to accepted international standards and principles in relation to the human rights impact of business.

The governments of Orissa and India, as well as the companies involved, must urgently address the human rights abuses caused by current refinery operations. They must ensure that independent and thorough human rights impact assessments for both the refinery and the mine are carried out. These assessments can only be valid if they involve genuine consultation with all the affected communities.

BOX 3: ADIVASIS, EXTRACTION AND NATIONAL LAW

India's Constitution contains several measures aimed at protecting the rights of Adivasis: Article 46 of the Constitution sets out the State's responsibilities in guaranteeing Adivasis protection from social injustice and all forms of exploitation. Schedule V of the Constitution lists a range of Adivasi lands and habitats as protected areas where these communities have special customary rights over land. Section 5(1) of Schedule V empowers India's President and state governors to withhold any law considered detrimental to the interests of Adivasi communities in these territories. However, Adivasis have no legal rights to minerals found on protected land. Both national and local authorities have routinely acquired land in such territories, without the consent of local communities, to set up extractive industries.¹²

Amendments made to India's Constitution in 1993-94 conferred powers in relation to local development to elected bodies of local Adivasi communities, known as *Panchayats* or village councils.¹³ As a key federal statute enacted in 1996, the Panchayats (Extension to Scheduled Areas) Act, or PESA, requires the authorities to consult the *Panchayat* (the elected village councils) or the *Gram Sabha* (which is made up of all adult members of the village - persons whose names are included in the electoral roll for the *Panchayat* at the village level), before acquisition of land for any development projects located in Adivasi territories listed under Schedule V.¹⁴ Authorities also have to consult the *Gram Sabha* or *Panchayat* as appropriate before resettling and rehabilitating persons affected by such projects.¹⁵ However, PESA does not specify the kind of information that should be provided to *Gram Sabha* or *Panchayat* on the proposed projects nor does this law have adequate provisions to ensure that consultation which is undertaken with the local communities is 'genuine'. In addition, the legislation does not specify what should happen in cases where the village councils or local communities reject a particular project proposal.¹⁶ In the decade since PESA was enacted the authorities have repeatedly overruled dissenting decisions of the village councils and gone ahead with land acquisition for mining projects.¹⁷

WHOSE RESPONSIBILITY? STATES AND CORPORATE ACTORS

States are the primary duty bearers under international law for ensuring the respect, protection and promotion of human rights. Far too often, however, governments are unwilling or unable to discharge their legal obligation to protect against human rights abuses. When a government fails to protect people's human rights against harm by non-state actors, such as companies, this amounts to a violation under international law. However, the fact of government failure to protect human rights does not absolve the non-state actor from responsibility for their operations and the impact of those operations on human rights.

The emerging consensus on corporate responsibility for human rights is that companies should – at minimum – respect all human rights. This is the position articulated by Professor John Ruggie, the UN Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises, in his 2008

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report to the Human Rights Council. The SRSG has underlined that the corporate responsibility to respect all human rights has a corresponding requirement for concrete action by companies to discharge this responsibility: companies must take steps to become aware of, prevent and address adverse human rights impacts.

METHODOLOGY

Amnesty International researchers visited the Lanjigarh area and the Niyamgiri Hills in August 2008, February/March 2009 and September 2009. While there, they carried out one-to-one interviews and focus group discussions with men and women from the Dalit and Majhi Kondh Adivasi communities across eight villages in the Lanjigarh area. They also conducted focus group discussions with men and women from the Dongria Kondh in 19 hamlets in the Niyamgiri Hills close to the proposed mining site.

Amnesty International researchers also interviewed civil society groups based in Delhi and Orissa. They visited the Lanjigarh refinery and interviewed representatives of Vedanta Aluminium. Finally, they met with various government officials, including district officials and officials of the Orissa State Pollution Control Board (OSPCB), and others. In the course of follow-up research Amnesty International requested an interview with Vedanta Resources Plc. in London, but did not receive any response from the company. Amnesty International also wrote to Vedanta Resources seeking answers to specific allegations and offering the company an opportunity to comment on two drafts of this report. No response was received.

Amnesty International thanks the local communities in the Lanjigarh area and the Niyamgiri Hills, social and environmental activists and media persons of Orissa and Delhi, members of other non-governmental organizations, various officials of the local administration, and state and national governments who shared the information they had with the organization's researchers. Names of some local community members have been kept confidential in the interests of their safety and security.

2. TAINTED HISTORY: VEDANTA'S INROADS INTO ORISSA

“The CEC is of the considered view that the use of the forest land in an ecologically sensitive area like the Niyamgiri Hills should not be permitted.”

Central Empowered Committee Report to the Supreme Court, 21 September 2005

This chapter reviews the decade-long chequered history of the Lanjigarh alumina refinery and Niyamgiri bauxite mining project in Orissa (for a timeline, see Box 4). Over this period, the companies involved in the refinery-cum-mining project appear to have repeatedly attempted to bypass or overcome regulatory requirements, seemingly with little regard for the rights of local communities or the impacts on the environment. Both national and state level authorities have repeatedly failed to take adequate action to prevent corporate operations from causing harm to human rights and the environment.

Plans for the Lanjigarh refinery and Niyamgiri mine date back to April 1997, when the state-owned Orissa Mining Corporation signed over its rights to mine bauxite in the Niyamgiri Hills to Sterlite India.¹⁸ Within three months, however, the project was stalled following a successful Supreme Court challenge to mining on protected Adivasi forest land in neighbouring Andhra Pradesh (for details of this judgement, known as Samata judgement, see Box 5). In that case, India's Supreme Court held that the provisions of Schedule V also applied to the transfer of private or government land in Scheduled areas to non-tribals.¹⁹ It ruled that the relevant Andhra Pradesh legislation read along with Schedule V of the Constitution also prohibited the transfer of land in Scheduled Areas by way of a lease for mining purposes in favour of non-tribals.²⁰ The Court ordered the establishment of a Committee, made up of senior government officials at the state level to consider the feasibility of permitting the industry to carry on mining operations and if necessary to place this before a Cabinet Sub-Committee to take appropriate action. The Court held that similar committees should be set up in other states where similar acts do not totally prohibit granting

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mining leases of the lands in scheduled areas and also suggested that it would be useful for the Central government to take a take a policy decision and enact a suitable law in light of the Court's guidelines to ensure a consistent scheme throughout the country in respect of tribal lands and mining.²¹

In July 2002, the Orissa state government announced that the decision in the Andhra Pradesh case was not relevant to Orissa, claiming that the state's laws were already sufficient to protect Adivasi communities.²² The Orissa state government proceeded with the refinery-mining project (see timeline, Box 4).²³



Photo 2: Lanjigarh refinery and Niyamgiri Hills (Amnesty International)

BOX 4: TIMELINE OF THE REFINERY-MINING PROJECT - 1997-2009

April 1997: Orissa Mining Corporation signs over its rights to mine bauxite in the Niyamgiri Hills to Sterlite India. The agreement also allows for the establishment of an alumina refinery at Lanjigarh.

July 1997: Supreme Court delivers judgement on the Samata case on protection of Adivasi territories in Andhra Pradesh.

June-July 2002: First phase of compulsory land acquisition for the Lanjigarh refinery.

August 2002: Orissa government decides that the Samata judgement is not relevant to Orissa; rapid environmental impact assessment (EIA) studies (commissioned by Sterlite India) prepared for refinery and bauxite mining project.

January 2003: Revised executive summary of the above rapid EIA report for the bauxite mining project prepared.

February-March 2003: Orissa State Pollution Control Board (OSPCB) conducts two public hearings on the refinery-mining project; Sterlite India seeks environmental clearance for the refinery-mining project.

June 2003: Orissa Mining Corporation signs a fresh agreement with Sterlite India on the refinery-mining project.

August 2004: Second phase of land acquisition for the airfield and the railway corridor for the refinery.

September 2004: Ministry of Environment and Forests (MoEF) grants environmental clearance for the refinery.

August 2004-Early 2005: Even as the MoEF processes Sterlite India's application for environmental clearance for the refinery, the company initiates another application for diversion of protected forest land. Protests commence against the bauxite mining project.

October 2004: Further compulsory land acquisition for airstrip and railway corridor near Lanjigarh for the refinery.

October 2004: Orissa Mining Corporation signs a new agreement with Vedanta Alumina, another Vedanta Resources group company, on the refinery-mining project. Construction begins on the refinery.

November 2004: Supreme Court commences hearings on three petitions against bauxite mining at Niyamgiri.

December 2004-February 2007: Supreme Court-appointed Central Empowered Committee (CEC) investigates violations of environmental and forest laws and concludes that the refinery project was given environmental and forest clearances based on "inaccurate information" and the decision "smacks of undue favour/leniency." It also recommends that bauxite mining should not be allowed in the Niyamgiri Hills, an ecologically-sensitive territory.

March 2005: Another EIA report on the mining project (commissioned by Orissa Mining Corporation) prepared.

May 2005: MoEF orders Vedanta Aluminium to stop construction work of the refinery as it violated forest laws. Vedanta Aluminium withdraws application for diversion of forest land for the refinery.

September 2005: Another EIA report on the refinery project (commissioned by Vedanta Alumina) prepared.

June 2006: Wildlife Institute of India, Dehra Dun, prepares two reports on the mining project's potential impact on wildlife habitats and the Central Mine Planning and Design Institute, Ranchi, prepares a report on its potential hydro-geological impact.

Mid 2006-early 2008: Vedanta Aluminium completes refinery construction and, after trials, commences alumina production, gradually increasing to full capacity.

Mid 2006-late 2008: OSPCB, in 16 reports, documents periodic air and water pollution and environmental damage caused by the refinery; protests from communities around the refinery.

October 2007: Vedanta Aluminium seeks environmental clearance for six-fold expansion of the refinery.

November 2007: Supreme Court stays the mining project.

January 2008: India's new legislation guaranteeing the rights of forest-dwelling communities comes into effect.

August 2008: Supreme Court clears the mining project by Sterlite India-Orissa Mining Corporation with certain conditions on sustainable development of local communities, protection of environment and conservation of wildlife.

December 2008-April 2009: MoEF grants "in principle" environmental clearance for the mining project.

January 2009: OSPCB orders Vedanta Aluminium to stop construction linked to the expansion of the refinery without proper clearance.

April 2009: OSPCB conducts public hearing on the refinery expansion and reports to the MoEF that local communities favour the project, despite significant opposition, questioning and protests.

May 2009: Local communities file petition in the National Environmental Appellate Authority (NEAA) against the MoEF decision to grant environmental clearance for the mining project.

July 2009: MoEF seeks further details from Vedanta Aluminium on refinery expansion.

August-November 2009: MoEF initiates investigations into allegations of fresh forest law violations before granting forest clearance for the mining project; local communities in Niyamgiri complain that they are unable to use the new legislation to register their rights over common and forest lands.

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In 2004, three different environmental activists filed petitions at the Cuttack High Court in Orissa and India's Supreme Court challenging the proposed mining project on grounds that it violated India's Constitutional provisions under Schedule V, the Supreme Court's order on the Samata case and the country's environmental and forest conservation laws.²⁴ The Supreme Court began hearing arguments in these cases in November 2004, following which the Court's Central Empowered Committee (CEC), an advisory body set up to advise the Court on environmental issues,²⁵ investigated aspects of the case. This investigation took place between 2005 and 2007.

CIRCUMVENTING REGULATIONS

From the earliest phase of planning, the bauxite mine and alumina refinery were conceptualised as one project. The bauxite would be mined in Niyamgiri and transported to the foothills to be refined at the Lanjigarh refinery. However, by 2004 the mining and refinery project was effectively separated into two projects, a move that environmentalists strongly criticised, because not only did it mean that there was no proper assessment of the environmental impacts of the overall commercial venture, but also because, they claimed, it effectively allowed for the circumvention of regulation in some instances.²⁶

BOX 5: SAMATA JUDGEMENT AND AFTER

In July 1997, India's Supreme Court held in *Samatha v. State of Andhra Pradesh* that the provisions of Schedule V also applied to the transfer of private or government land in Scheduled areas to non-tribals.²⁷ It ruled that the relevant Andhra Pradesh legislation read along with Schedule V of the Constitution also prohibited the transfer of land in Scheduled Areas by way of a lease for mining purposes in favour of non-tribals.²⁸ The Court also ruled that 20 per cent of all profits, including past profits, accruing from privately run mines or industries set up in these territories to be "set apart" for Adivasis. It ordered the establishment of a Committee, made up of senior government officials at the state level to consider the feasibility of permitting the industry to carry on mining operations and if necessary to place this before a Cabinet Sub-Committee to take appropriate action. The Court held that similar committees should be set up in other states where similar acts do not totally prohibit granting mining leases of the lands in scheduled areas and also suggested that it would be useful for the Central government to take a take a policy decision and enact a suitable law in light of the court's guidelines to ensure a consistent scheme throughout the country in respect of tribal lands and mining.²⁹

Samata activists saw this judgement as a clear reminder to authorities to that they should protect Adivasi communities' rights over their lands.³⁰ However, during and after the Samata case, activists complained of several attempts on the part of the national authorities to dilute its impact. Senior counsel Rajiv Dhawan, who argued on behalf of Samata, informed Amnesty International that, during the court proceedings, India's Ministry of Mines had suggested a proposal to amend the Schedule V of the Constitution by a simple majority of the Indian Parliament to facilitate unfettered mining in Adivasi territories.³¹ In 2000, this Ministry circulated a note with this objective to overcome the "hurdles" created by the Samata judgement.³² A 2001 document produced by the National Planning Commission stated: "It will be necessary to make other amendments to overcome the hurdle placed in the way of private mining in notified tribal areas by the Samata Judgement..."³³ However, in 2006, a draft policy on mines and minerals, prepared by an official committee, suggested setting up a special group to work towards a sustainable development framework to carry out mining in Adivasi territories. This group, the report stated, "will have to take into consideration the obligations enjoined on miners by the Samata judgement."³⁴

There is a lack of clarity as to how exactly the refinery and mine were effectively separated. In 2003, Sterlite India had applied to the MoEF for environmental clearances for the refinery and mine, to which the MoEF, in March 2004, replied that it had decided to consider the two clearances together since the functioning of the refinery would be dependent on the mining proposal. To this, Sterlite India sent a reply seeking environmental clearance for the refinery alone "since it would take three years to build the refinery whereas it would take only one year to build the mine."³⁵ On 22 September 2004, following further correspondence between the company and the MoEF, the MoEF granted environmental clearance for the Lanjigarh refinery alone.

Sterlite India's application to the MoEF had sought only the environmental clearance and no forest clearance (which, as noted earlier, are separate regulatory requirements) for the refinery. However, on 16 August 2004 - after having made the application for environmental clearance - Sterlite India sought separate permission, under the Forest Conservation Act, for the diversion of 30 hectares of protected forest land and 29 hectares of village common property resource land for the refinery and the conveyor transportation system that was to be used to transport bauxite from the mine site to the refinery.³⁶



Photo 3: Pillars for the conveyor from the mine site at Niyamgiri Hills to Lanjigarh refinery (Amnesty International, taken in March 2009)

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OVERCOMING RULES

On 5 October 2004, the Orissa Mining Corporation signed a new agreement with Vedanta Alumina (another Vedanta Resources company) for an "integrated project" including the Lanjigarh refinery, the Niyamgiri bauxite mine, another bauxite mining at Karlapet or elsewhere in the state, and an aluminium smelter in northern Orissa³⁷ and the construction of the Lanjigarh refinery was carried out by a subsequent group company, Vedanta Aluminium.

Vedanta Aluminium also began construction on certain aspects of the mining project, although it had not obtained the required regulatory clearances: the company cleared some forest land at the foothills of Niyamgiri without permission and erected 22 pillars on non-forest land it had acquired for the proposed conveyor belt to link the mine to the refinery. In November 2004, the government of Orissa found that the company had encroached on 4.162 hectares (10.41 acres) of village common land for operations without the required regulatory clearances.³⁸ In February 2005, the MoEF had issued a notice to Vedanta Aluminium in relation to the clearing of forest land without regulatory permission. Subsequently, on 23 May 2005, it ordered construction work at the refinery to stop.

The company responded by arguing that the refinery could be built without using forest land after all, and that the MoEF's order was therefore not relevant; it withdrew its 16 August 2004 application for diversion of protected forest land for the refinery.³⁹ The subsequent investigations conducted by the Supreme Court appointed CEC revealed that the MoEF accepted this position after a recommendation from the government of Orissa and revoked its 'stop work' order. The CEC concluded that the company's decision to withdraw its application for diversion of protected forest land was to "basically circumvent the 'stop work' order" for the refinery.⁴⁰ If the MoEF had not accepted the company's request to withdraw its application, work on the refinery would have come to a halt until the Supreme Court examined the entire issue", the CEC held.

The CEC has also stated that the company had "deliberately and consciously" concealed the involvement of the forest land in the project. "This vital fact was concealed so that environmental clearance [of the refinery] is not kept pending for want of the Forest Conservation Act clearance."⁴¹ The CEC stated that the clearances for the refinery and the mining project should not be de-linked, and criticised the "casual approach, the lackadaisical manner and the haste with which the entire issue of forest and environmental clearances for the alumina refinery project has been dealt with smacks of undue favour/leniency and does not inspire confidence with regard to the willingness and resolve of both the state government and the MoEF to deal with such matters keeping in view the ultimate goal of national and public interest."⁴²

“The casual approach, the lackadaisical manner and the haste with which the entire issue of forest and environmental clearances for the alumina refinery project has been dealt with smacks of undue favour/leniency and does not inspire confidence with regard to the willingness and resolve of both the state government and the MoEF [Ministry of Environment and Forests] to deal with such matters keeping in view the ultimate goal of national and public interest.”

CEC Report to the Supreme Court, 21 September 2005

The CEC concluded, in a report to the Supreme Court that the construction work on the refinery could not have started or continued “but for the grant of environmental clearance on the wrong premise, violation of the Forest Act guidelines and the subsequent permission given in haste for the withdrawal of the forestry clearance proposal without proper examination.”⁴³ It recommended that the Supreme Court consider revoking the environmental clearance granted to the refinery and direct Vedanta Aluminium to stop work on the construction of the refinery.⁴⁴ This recommendation was not acted upon.

REFINERY EXPANSION

In 2006, Vedanta Aluminium completed construction of the refinery and commenced trial operations using bauxite brought by train and truck from Korba in the neighbouring state of Chhattisgarh and other states including Gujarat and Tamil Nadu. The refinery moved to full operation in 2007.

In October 2007, Vedanta Aluminium sought environmental clearance from the MoEF for a six-fold expansion of the refinery's capacity (for details, see Chapter 5). The company began work on the expansion, however, before receiving clearance. On 12 January 2009, the Orissa State Pollution Control Board told Vedanta Aluminium to immediately cease construction activities related to expansion of the refinery that were going on since late 2008 without the required permissions, including the environmental clearance for expansion.⁴⁵ In a report of 31 March 2009, however, the Orissa State Pollution Control Board (OSPCB) noted that the expansion activities were continuing.⁴⁶

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RECOMMENDATIONS ON MINING

The Supreme Court-appointed CEC also made a number of recommendations in relation to the plans to mine bauxite in Niyamgiri. In September 2005, the CEC stated that the use of an ecologically sensitive area like the Niyamgiri Hills should not be permitted.⁴⁷ The CEC based its recommendation on environmental concerns, issues related to wildlife protection and the need to protect the rights of Dongria Kondh, which it termed an “endangered tribe”. The CEC stated that: “Niyamgiri Hills [is] an important wildlife habitat, part of elephant corridor, a proposed wildlife sanctuary having dense and virgin forest, residence of an endangered Dongria Kondh tribe and source of many rivers/rivulets.”⁴⁸

A supplementary report of the CEC in January 2007 reiterated its recommendation against mining in Niyamgiri Hills.⁴⁹ The CEC noted however that “...the expenditure incurred by the company on the refinery reveals the certainty of their expectations to get the clearance [for the mining project] under the Forest Conservation Act since they would be presenting a *fait accompli* situation before the concerned authorities and for this scenario Vedanta alone are responsible. Such cavalier attitude towards the laws of the land needs to be discouraged.”⁵⁰

The Supreme Court's interim order in November 2007 stayed the mining project.⁵¹ However, the Court's final order in August 2008 granted clearance with certain conditions in relation to sustainable development of local communities, protection of the environment and conservation of wildlife.⁵²

3. UNDERMINING RIGHTS: THE MINE AT NIYAMGIRI

**“The hill is our god and the earth our goddess.
Between the two, we have the rains and water.
Those wanting to mine here will slowly take over
all this. Where will we go then?”**

A Dongria Kondh man from Lakpaddar, Niyamgiri Hills

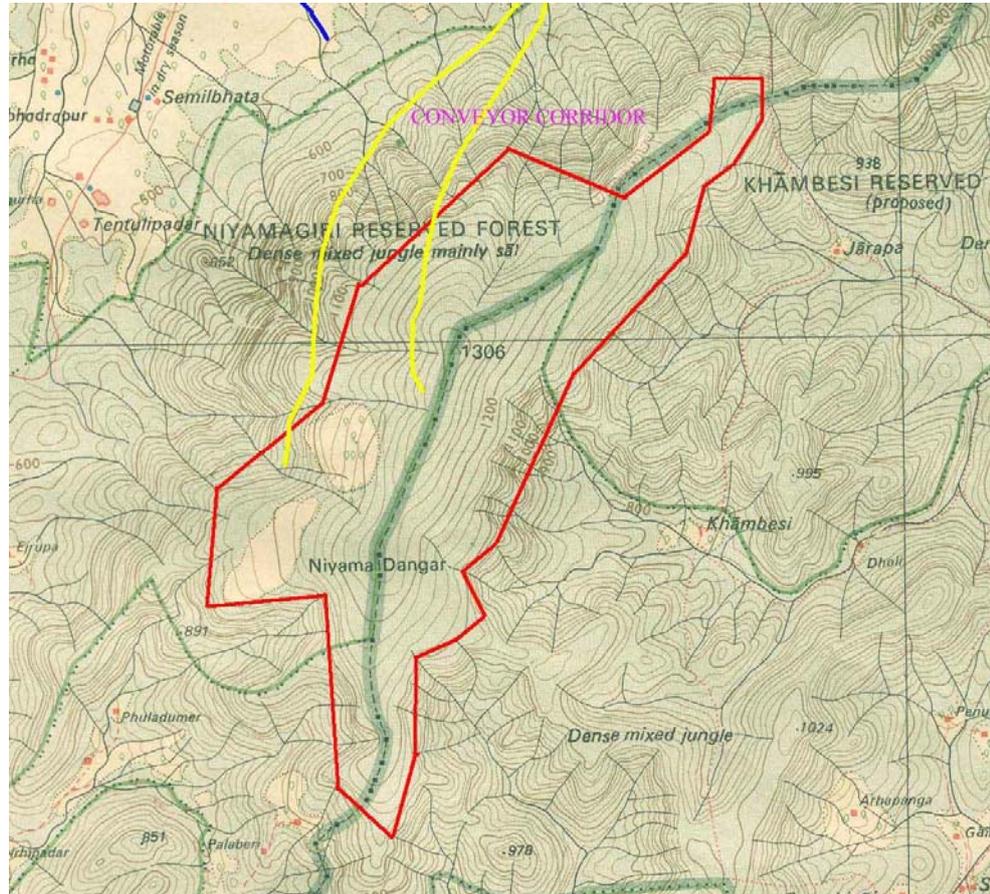
The bauxite mining project will cover 700 hectares of land on top of the north-western part of the Niyamgiri Hills and involve excavation of a large section of the hill to a depth of about 30 metres.⁵³ The Hills are home to the Dongria Kondh, an 8,000-strong Adivasi (Indigenous) community spread over 90 villages in and around the hills. The Dongria Kondh consider the Niyamgiri Hills as sacred and do not cut trees or practice cultivation on top of the Hill as they worship *Niyam Raja Penu*, who they believe lives on top of the Niyamgiri Hills. Their identity is closely tied to the Niyamgiri Hills, which they believe are essential to their culture, traditions, and physical and economic survival. In May 2009, some members of these communities submitted an appeal to the National Environmental Appellate Authority (NEAA), within the MoEF, to challenge the environmental clearance granted by MoEF's for the proposed mining project.⁵⁴ This appeal is now pending.

Following this appeal and sustained protests from the Dongria Kondh, Majhi Kondh and other local communities living in Lanjigarh, as well as international NGOs, the MoEF has deferred the forest clearance for the mine.

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However, in 2005-2006, the company commenced some aspects of the mining project construction including clearing of ground and erecting of pillars for the conveyor belt that would link the mine and refinery, but had to suspend the work following complaints of forest law violations. The MoEF has also sought details from the authorities in Orissa on the commencement of construction activities related to the mine at the foothills of Niyamgiri without full compliance of forest protection laws (see Photo 6).⁵⁵ If the MoEF grants forest clearance for the project, mining could commence within months.



Map 2: The mining site at Niyamgiri Hills (source: Toposheets of Survey of India, Government of India, mining site map drawn by Survival International based on EIAs commissioned by Sterlite India/Orissa Mining Corporation and the mining plan submitted by the Orissa Mining Corporation, November 2004, and approved by the Indian Bureau of Mines, 18 November 2004.

This chapter outlines the relationship between the Dongria Kondh and the Niyamgiri Hills and their concerns about the proposed mining project. It describes the failure of the State authorities and the companies involved in the mining project to carry out adequate assessments of the potential impact of the mining project on the human rights of the Dongria Kondh. It also describes their failure to provide information to or consult with the Dongria Kondh communities on the mining project proposed within their traditional lands.

THE DONGRIA KONDH – AN INDIGENOUS PEOPLE

In March and September 2009, Amnesty International researchers visited 19 Dongria Kondh hamlets in the Niyamgiri Hills, including Phuldumer, Palaberi, Lakpaddar and Kunnakadu, which are closest to the proposed opencast mine site.⁵⁶ Amnesty International's research with these communities confirmed that the Dongria Kondh identify themselves as an indigenous peoples. In interviews and focus groups discussions in various Dongria Kondh hamlets on and around the Niyamgiri Hills, people said that they were 'Adivasis', a term that they explained meant to them "people of the hills and forest who have lived there for many generations." They also pointed out that the word Dongria comes from the word *dongar* or mountain and that they were the people of the hills. S. M., a Dongria Kondh woman leader in her forties, said, "We have lived in these hills for so many years that we cannot count them and tell you how long we have been here."



Photo 4: Dongria Kondh women at a protest meeting, Niyamgiri Hills (Amnesty International)

The Dongria Kondh practise shifting cultivation on the Niyamgiri Hill slopes, with each family cultivating along a particular patch of the hill slope and then shifting after a decade to enable the slope to become fertile again. K., a young Dongria Kondh man, explained that though families traditionally had rights over individual patches that they cultivated, "the mountain belonged to everyone collectively." M. S., a Dongria woman, said, "We collectively own Niyamgiri - all Dongria Kondh and other Adivasis who are here."

Amnesty International held a group discussion with all the community members from Lakpaddar in which they explained that the Niyamgiri Hills are sacred to the Dongria Kondh.

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They worship *Niyam Raja Penu*, a male deity represented in the form of a sword, believed by them to be living on top of the Niyamgiri Hills. They also believe that this male deity provides water which sustains all plant, animal, human life in the hills and reaches the earth. They also worship the earth or *Dharani Mata*, a female deity embodied in a wooden structure in every hamlet. (See Photo 5).⁵⁷ This was reiterated by all the Dongria Kondh people to whom Amnesty International spoke in other and hamlets on and around the Niyamgiri Hills.



Photo 5: Dharani Mata at Lakpaddar hamlet, Niyamgiri Hills (Amnesty International)

B., an elderly Dongria Kondh woman explained that every month they do a special *puja* (prayer ceremony) for Niyam Raja. They also sacrifice animals to him. Another woman at Lakpaddar said, “Whenever we worship our Gods, the main deity is Niyam Raja. Without worshipping Niyam Raja, we cannot worship other Gods and Goddesses. He brings us everything as a people; he blesses us and makes us who we are as a people.”

The Dongria Kondh’s close ties with the Niyamgiri Hills form the fundamental basis of their culture, their spiritual life, their integrity, and their economic survival. All the people interviewed by Amnesty International emphasised that the Niyamgiri Hills are essential for their survival as a distinct people, for their culture and traditions and/or for their economic and physical survival. T. M, an elderly Dongria Kondh woman, stated: “If there were no Dongria Kondh left in the hills, we wouldn’t be Dongria any more as our culture and identity revolve around the mountain.” Another woman said, “Our songs, dances, traditions are all linked to the Niyamgiri Hills. As people leave the Hills, we slowly lose our culture.”

The hills form a biologically rich and diverse habitat, which the Dongria Kondh rely on for food, firewood and forest produce, wood, medicinal plants.⁵⁸ Many people that Amnesty International spoke to referred to the Hills as “life” or “the source of their lives.” The streams

flowing from the top of the Hills are the only source of water in many hamlets. They grow crops on the hills, including ginger, millet, turmeric, beans and other vegetables. They eat the food that they grow but also sell crops, forest produce and products that they make from natural materials found in the forests, in the villages lower down the hills and in Lanjigarh. J. L., a Dongria Kondh woman said, "We sell seeds, fruits, broomsticks that we make, honey, so many products." Another explained, "When people fall sick, we use herbs and natural medicines that we collect from the forests." T. M., the elderly Dongria Kondh woman said, "We are poor, but we are self-sufficient as we get everything we need from the Hills, it gives us everything but salt."

“Our songs, dances, traditions are all linked to the Niyamgiri Hills. As people leave the Hills, we slowly lose our culture...”

A Dongria Kondh woman, Niyamgiri Hills

Anthropologists who have studied the Dongria Kondh also confirm that they have a distinct identity, because of their specific dialect, skills, religious and cultural practices and kinship structure. For example, the Dongria Kondh communities constitute a pre-literate society; they speak two languages, called Kuyi and Kuvi, exhibiting a different structure and vocabulary than Oriya, the state's official language.⁵⁹

CONCERNS ABOUT THE IMPACTS OF THE PROPOSED MINING PROJECT

The proposed mining project threatens to undermine the traditional land rights and religious beliefs of the Dongria Kondh. It also poses serious risks to their rights to water, food, work, an adequate standard of living and their cultural rights.

WATER, FOOD AND LIVELIHOODS

In Amnesty International's discussions and interviews, major concerns emerged around the possible effects of mining on the sources of water that the Dongria Kondh have traditionally relied on for drinking, personal use, for growing crops and supporting their cattle. The streams which originate from the top of the Hills are the only source of water for communities who live on top of the Hills and a major source for others who live lower down the hill (some of these villages have tube wells), in a region that receives limited rainfall through many months of the year and is often subject to drought conditions. Any negative impacts on the streams, through pollution or disruption of water re-charging capacity and drainage patterns or any other effects on the quantity and quality of water could have disastrous consequences for the communities, most of whom are completely dependent on this water in order to continue to live on the Hills.

S. M., the Dongria Kondh woman leader, said, "What will happen when they take away the bauxite from the top of the hill? We know that our water sources are dependent on the hill. Once you make holes in the hill and take away the bauxite, water storage will be affected. All

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water will run down the mountain instead of being stored. You have walked up to here, you have seen so many streams, you have taken baths in the streams – did you see any rain? So the water comes all through the year, regardless of the rain situation. If they mine, we are worried that this water will not be available.” Another Dongria Kondh woman who lives in one of the hamlets closest to the proposed mine site said, “Water is life...if we lose our Hills, we lose our food and water.”



Photo 6: Clearing of ground en route to the Niyamgiri Hills (Amnesty International)

Concerns about the impact of mining on water were shared by some people from other communities who live on the hills and in and around Lanjigarh. They have also been echoed by environmental activists who have argued that the bauxite deposits on top of the hills are crucial for ensuring a perennial slow water supply in the low rainfall seasons because of the porous nature and high water retention capacity of bauxite. Sreedhar Ramamurthy of Academy of Mountain Environics, New Delhi, one of the organizations which had mounted the legal challenge to the mining project at the Supreme Court, explained: “In several bauxite-topped mountains in south-west Orissa and northern Andhra Pradesh, the bauxite layers are often water-rich and provide the base for the emergence of natural springs on

which grasslands thrive providing the ecological base for animal and human life.⁶⁰ Once mining proceeds, the absence of bauxite layers would lead to the eventual destruction of this groundwater recharging process and threaten this ecological base.” Other entities have also raised concerns about the potential impact of mining on the local water system.

According to the Supreme Court-appointed CEC, the protected Niyamgiri Hills constitute the “origin of Vamsadhara river and other rivulets” and there is a likelihood of “adverse effect of mining on bio-diversity and availability of water for the local people.”⁶¹ In addition, the CEC noted that the mining project could result in soil erosion, affecting the flora and fauna in the entire region and this should be studied in-depth by reputed institutions.

“Water is life... if we lose our Hills, we lose our food and water.”

A Dongria Kondh woman, Niyamgiri Hills

The Chief Conservator of Forests at the MoEF's regional office in Bhubaneswar, while inspecting the proposed mine site, also expressed concern that mining may impair the water system in the area by altering the inflow of precipitation and natural drainage systems.⁶² The Wildlife Institute of India, Dehra Dun, which carried out its own assessment of the impact of the proposed mine, stressed that mining operations might result in desiccation, reducing the flow of the Vamsadhara and Nagaveli rivers.⁶³ Operations would also cause increased erosion and pollution of the water systems, which in turn would result in a deteriorated water quality and damage to riverine habitats. The Institute study further stated: “...the threats posed by the proposed project to this important ecosystem will lead to irreversible changes in the ecological characteristics of the area.”

The mining project also poses risks to the natural environment in the region, which the communities depend on for their own food and livelihoods. The main risks are posed by the cutting down of forests for the mine site and related infrastructure, noise, blasting and other impacts of the mining operations themselves and management of waste produced as a result of the mining operations. These concerns were reflected in the testimonies collected from the communities. A Dongria Kondh man in his thirties told Amnesty International, “The mining will affect the forests, which provide us with all the wood we need and the forest produce we collectively rely on. We plant at various parts of the hills. How will the mining affect our crops? This is how we sustain ourselves and earn our livelihoods.” Another Dongria Kondh woman from one of the hamlets close to the mine site said: “We are worried that many animals will leave our forests when they begin blasting.” Another Dongria Kondh man who had visited other sites in India where mining has been undertaken stated, “We have seen what mining does to the land and we do not want that to happen here.”

RELIGION, CULTURE AND TRADITIONAL WAY OF LIFE

Many members of the Dongria Kondh communities were upset about the proposal to mine an area that they consider to be sacred and inhabited by a deity that they worship. A Dongria

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Kondh man explained: "We do not cut down trees on top of the hill, we will only ever remove some branches if needed, because we believe that the trees provide shade to Niyam Raja. If the company cuts trees at the top of the hill, this would be a problem for us." Another man said, "We do not cultivate at the top of the hill because it supports life in the rest of the hill. If you harm the brain, how will the body work?"

The Dongria Kondh also expressed concerns about how the mining project would affect their traditional way of life, culture and ability to retain their distinct identity. A Dongria Kondh man told Amnesty International: "Our language, the way we dress, songs, marriage rituals, worship of Niyam Raja, our livelihoods are all linked to these Hills and the way we live here. We have seen what happens to other Adivasis when they are forced to leave their traditional lands, they lose everything." Many expressed concern that the impacts of mining on water and forests or the noise and dust from the mine may make it impossible for them to continue to live where they currently do and force them off their Hills and traditional lands. J. M., a Dongria Kondh man, said, "Our people are not educated. If we are forced to leave these Hills because of the mine, we will end up in poorly paid jobs in towns in the plains." An elderly woman from one of the hamlets near the proposed mine site stated, "If we have lakhs or crores of [Indian] rupees, how many days will it last, but this mountain will last generations."

"We do not cultivate at the top of the hill because it supports life in the rest of the hill. If you harm the brain, how will the body work?"

A Dongria Kondh man, Niyamgiri Hills

People also expressed concerns about the possible influx of outsiders and machinery, and the impact of other arrangements that will accompany the mining, on communities living in proximity to the mine site. This was particularly seen as a concern because the people closest to the mine site live in remote locations, where they have led a secluded existence with some people having limited or virtually no contact with people outside of the hills and nearby hamlets. J. M., the Dongria Kondh man said, "The transport arrangements will create their own problems. We are also worried about the noise and the dust from the mining and vehicles that they will use." A Dongria Kondh man who had lived outside the Hills in Orissa and returned said, "People who come from outside follow a caste system, we don't have it or want it. Where will all the people who are needed for the mining stay. How big an area will they close off?" Another Dongria Kondh woman expressed her concerns about safety both in terms of the mining operations and the risk of sexual harassment of women in their communities. Many people from areas that were closest to the mine site expressed concerns about the effects on their communities if the company used dynamite for blasting.

N. S., a Dongria Kondh man in one of the hamlets near the proposed mine site told Amnesty International that the Dongria Kondh also wanted schools that were closer to them (as their children currently have to stay away from home in a hostel to attend school), a hospital, and

a small road, which would make it easier for them to travel to the plains. He said however, "We should not have to ask for or get this from the company, the government should provide us with these things as it provides for other places." He said, "The government is not doing anything for us though we pay taxes as well to the State when we buy goods."

TRADITIONAL LAND RIGHTS OF THE DONGRIA KONDH

Under international law, the Indian government is required to respect and protect the rights of indigenous peoples over the lands they traditionally occupy.⁶⁴ The United Nation Declaration on the Rights of Indigenous Peoples makes special reference to the unique spiritual relationship that Indigenous peoples, like the Dongria Kondh communities, have with their traditional lands.⁶⁵ India has also ratified the Indigenous and Tribal Populations Convention, 1957, which recognises the right of Indigenous peoples to lands they traditionally occupy.⁶⁶ These fundamental principles have been repeatedly endorsed in the decisions of the Committee on the Elimination of Racial Discrimination,⁶⁷ the Committee on Economic, Social and Cultural Rights⁶⁸, the Human Rights Committee,⁶⁹ the International Labour Organisation,⁷⁰ and the Inter-American Court of Human Rights.⁷¹

“We are poor, but we are self-sufficient as we get everything we need from the Hills. It gives us everything but salt.”

T. M., an elderly Dongria Kondh woman

INFORMATION AND CONSULTATION PROCESSES UNDER ENVIRONMENTAL LAW

India's environmental and forest laws make it mandatory for companies to obtain prior clearances for new industrial projects involving major changes in land use patterns. The MoEF evaluates applications and grants clearances. The Forest Conservation Act, 1980, regulates forest clearances, while regulation under the 1986 Environment (Protection) Act governs environmental clearances.⁷²

These laws require companies to prepare environmental impact assessment (EIA) reports. In India, as in many other countries, companies routinely commission consultants to prepare EIAs. EIAs usually contain technical data about the project's environmental impact, but there is limited reference in most EIAs to a project's likely impact on the communities, their livelihoods, their access to water and food.⁷³

Under Indian environmental laws state-level pollution control authorities are required to set up public consultations with the local communities likely to be affected by projects that will affect the environment. The authorities, after giving due notice, hold public hearings at a location close to the proposed project site and seek written responses from other concerned persons having a "plausible stake" in the project's environmental aspect. These public hearings are the only official opportunity for affected communities to obtain information about the project's potential risks and likely negative impact and make their views known.

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Prior to the public hearings local communities should have access to the comprehensive EIA report in English and its executive summary in English and the relevant local languages.⁷⁴ However, the laws do not require the MoEF or the state pollution control authorities to carry out any prior evaluation of the EIAs to assess their accuracy or completeness.

**“If we are made to part with our Hills and starve,
all of you bear a responsibility.”**

G., a Dongria Kondh woman from one of the hamlets closest to the mine site at Niyamgiri Hills

MISSING FROM THE PICTURE: FAILURE TO ADEQUATELY ASSESS POSSIBLE IMPACTS

Two EIAs were carried out in relation to the proposed mine, one in 2002 and another in 2005. Analysis of these EIAs reveals serious flaws in their scope and their adequacy for determining the full environmental impacts of the proposed mine. Furthermore, as noted above, EIAs are primarily focussed on environmental impacts they inadequate as a tool to assess the potential human rights impacts of the proposed mine.

The 2002 EIA conducted for the mining project included some demographic or social data; however, this was completely inadequate in this context. While the EIA report lists the hamlets and provides demographic data for an area within a ten km radius of the mine site, it does not discuss how close some of the Dongria Kondh hamlets are to the mine site; nor does it consider how they could be impacted by the mining operations. The assessment also does not analyze the ways in which these communities currently use water, wood and other natural resources, how they grow crops and their traditional land usage in the hills, and how these could be affected by the mining project. It does not consider the damage that is likely to be caused to traditional livelihoods and the impact any such effects could have on the survival of the Dongria Kondh as a distinct peoples. It also fails to consider the impact of the influx of outsiders and machinery, or other arrangements that will accompany the mining, on communities living close to the mine site. As far as Amnesty International is aware, none of the Dongria Kondh living closest to the proposed mine site were consulted or interviewed as part of the assessment process. When asked about the EIA, N. S., the Dongria Kondh man, stated, “It is injustice that they did not even consider us.”

Another rapid EIA on the bauxite mining project was prepared in March 2005⁷⁵ at a time when the Supreme Court-appointed CEC was investigating violations of environmental and forest laws. This report, commissioned by the Orissa Mining Corporation, claimed that the hamlets close to the mine site and those at a distance of five kilometres “will receive maximum benefits”⁷⁶ including rises in literacy, employment opportunities, social status, civic amenities and health care, but it did not elaborate how this would happen. The only negative impact mentioned in this report was the influx people (estimated to increase the population of the area by 50 per cent) into the protected forest area.⁷⁷ The EIA does not consider possible impacts in terms of air quality and noise levels on the hamlets that are

closest to the mine site. Nor is any information included on possible noise emissions and dust from infrastructure associated with the mine and the proposed bauxite conveyor system.

Neither the 2002 nor 2005 EIAs refer to or analyse the religious and cultural significance of the proposed mine site for the Dongria Kondh. They do they discuss the impact that the project may have on their way of life.

The possible effects of the proposed project on the availability and quality of water, either through reducing groundwater recharging in the area or due to changes in natural drainage patterns, have also not been studied in sufficient depth.

A report prepared by the Central Mine Planning and Research Institute, Ranchi, in August 2006 for the Orissa Mining Corporation stated that “The bauxite zone up to a depth of 29 metres below ground level occurs in the zone of aeration and (is) found to be dry. The water level of the Khondolite formation occurs below the bauxite zone at a depth of 78.64 metres from the ground level after the rainfall in the month of July (20)06...” and that “the proposed mining activity... would have a negligible impact on the lower aquifer system” in the Niyamgiri Hills.⁷⁸ Sreedhar Ramamurthy of the Academy of Mountain Environics, however, said this study was an interim one and further investigations were necessary before this could be verified.

Dr. Alan Tingay, a scientist with many years experience in environmental impact assessment of mining and industrial projects, who reviewed the EIA for Amnesty International, thought that though the 2005 EIA had discussed the issue of site drainage and identified measures designed to intercept rainwater and limit run-off, it had failed to include important information such as a detailed contour plan of the Hills showing existing natural drainage channels near the mine site. It also did not describe the physical, hydrological and biological features of these channels and as a result, “it is impossible to determine the potential impacts of the flows diverted to adjacent valleys or of potential run-off of high turbidity that could occur if the drainage does not operate to expectations. It is also assumed in the documents that the drainage plan will work and there are no specific monitoring proposals for nearby natural drainage systems or for the water diverted around the gorge waste stump.” He also noted that there is no detailed description of groundwater in the area in the EIA.

In Amnesty International's view, these EIAs cannot be considered sufficient to assess or put in places measures to address the human rights impacts of the proposed mining project. Amnesty International considers that a thorough assessment of the human rights and related environmental impacts of the mining project is necessary and should be undertaken in genuine and open consultation with the Dongria communities.

DENIED INFORMATION: FAILURE TO CONSULT OR SEEK CONSENT

Though India does not formally recognise any communities within India as ‘indigenous peoples’, the Constitution of India protects Adivasi communities who are considered to fall within ‘Scheduled Tribes’ and identifies the State's responsibilities in guaranteeing them protection from social injustice and all forms of exploitation.⁷⁹ In addition, there is a long history of Adivasi participation in the international Indigenous movement. Adivasi communities have identified with the values attached to the international concept of Indigenous peoples—particularly maintenance of Indigenous traditions, and protection of

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their traditional lands and natural resources--and self-identify as such. As seen in Chapter 1, Box 3, the Constitution grants special protection to several areas where Scheduled Tribes live (described as Schedule V areas) and special provisions apply in terms of legislation, transfer of property and other areas.⁸⁰ In addition, India's PESA legislation enacted in 1996 provides that the prior recommendations of the *Gram Sabha* or *Panchayat* at the appropriate level shall be made mandatory for granting mining leases for minor minerals in the Scheduled Areas. Orissa has however modified this provision by designating the *Zilla Parishad* (a local government body at the District level) as the appropriate body, whose recommendation should be obtained and weakened the requirements set under the federal law.⁸¹ International treaties that India is a party to as well and other standards on the rights of Indigenous Peoples, however, require the government seek the free, prior and informed consent of Indigenous communities before the approval of any project that is likely to affect them.

BOX 6: RIGHT OF INDIGENOUS PEOPLES TO CONSULTATION AND FREE, PRIOR AND INFORMED CONSENT

The right to be consulted about projects that may impact on communities is reinforced by international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the United Nations Declaration of Rights of Indigenous Peoples, 2007 (the 2007 Declaration). Free, Prior, Informed Consent (FPIC) is a core right in the 2007 Declaration. It is referred to in a number of contexts, including the storage of waste on indigenous lands,⁸² the drafting of legislation affecting Indigenous peoples,⁸³ and the protection of cultural and spiritual property.⁸⁴ The right of Indigenous peoples to FPIC has been applied by the United Nations' Committee on the Elimination of Racial Discrimination and Human Rights Committee⁸⁵ as well as the Inter-American Human Rights Court.⁸⁶ In the 2007 Declaration, the most relevant standard for the Dongria Kondh communities is contained in Article 32(2), which concerns the requirement of the state to obtain FPIC prior to the approval of any development on Indigenous Peoples' lands.

Free, prior and informed consent has certain core requirements:⁸⁷

Free: Consent must be freely given without manipulation, coercion, threat, fear of reprisal, corruption, or inequality of bargaining power.

Prior: Indigenous peoples must be given sufficient time to give their free consent to a proposed activity according to their values, tradition and circumstances.

Informed consent: there must be full, clear, objective, and culturally-appropriate disclosure of a proposed activity; Indigenous peoples must be informed of their rights (including lands, resources and traditional knowledge) and have the right to obtain independent advice. The greater the impact on the Indigenous peoples – e.g. development on traditional lands, relocation, storage of hazardous materials – the greater the onus on those proposing the activity to show that the process was robust. Consent: means the right to say no; and FPIC may be required at different stages of a proposed activity.

Inclusive Indigenous peoples' decision-making: it is the consent of the *peoples* that is required through their chosen representative structures and decision-making processes. Therefore, decisions need to include all, including women and other community members who may be marginalised within the community.

A critical aspect of FPIC is the process leading to consent, especially the need for robust mechanisms of consultation to facilitate mutually acceptable agreements; and monitoring, enforcement and grievance mechanisms.

“We have been living here for generations, how can the government now just say that it is their land and decide to allow mining without talking to us?”

L., at the Dongria Kondh hamlet of Lakpaddar

The mining project is located in lands which have been traditionally occupied by the Dongria Kondh communities and which have significant cultural and religious significance to them. There has however been no meaningful effort by the government of India, the state government of Orissa and the companies involved (Vedanta Aluminium and Sterlite India, the Orissa Mining Corporation and the South-west Orissa Bauxite Mining Corporation - see Chapter 2, Box 2) to provide information to or consult with the Dongria Kondh, let alone attempt to seek their consent for the mining project.

Although authorities in Orissa had signed an agreement with Sterlite India for the Lanjigarh alumina refinery-Niyamgiri bauxite mining project in April 1997, neither the state or national governments nor the companies involved in the mining project took any steps to specifically notify or meet with the Dongria Kondh communities, including those living closest to the proposed mine site. Considering the remoteness of the locations where they live (the communities have to walk for many hours to reach a road) and the fact that most of them are not able to read, general notices published in bigger towns of Kalahandi and Rayagada districts and newspapers are inaccessible to these communities. Communities on top of Niyamgiri Hills informed Amnesty International that they had no representation in village council meetings, which the authorities were required to convene as per PESA the legislation enacted in 1996 before acquiring land for development projects in Schedule V areas.

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Photo 7: Paddy fields between Tanjihola and Kunakkadu hamlets in the Niyamgiri Hills (Amnesty International)

In February-March 2003, six years after the state government signed the above agreement with Sterlite India, the Orissa State Pollution Control Board (OSPCB) organized two public consultations, one on the refinery and the mine, and a second one on the mine alone. The first meeting, held at Lanjigarh on 7 February 2003, was the only one set up to discuss the overall mining-refinery project (as noted earlier the mine and refinery were to be linked by conveyor belt and were initially seen as one overall project). One month later, on 17 March 2003, a second meeting, on the mining project alone, was held at Muniguda in Rayagada district, some 20 km from the mine site and the Dongria Kondh hamlets in Niyamgiri Hills. This meeting was on the mining project alone.

The OSPCB only published notices of the 2003 public hearings it held in English and Oriya newspapers based in Orissa's capital, Bhubaneswar,⁸⁸ 440 km from the Niyamgiri Hills. The meetings themselves were held 20 km from the mine site, at Lanjigarh and Muniguda, but no district officials travelled to any of the communities living closest to the mine site to notify them about either the public hearings for the environmental clearance of the mine. None of the Dongria Kondh interviewed by Amnesty International had prior knowledge of these meetings. Official proceedings of the public hearings obtained by Amnesty International show that elected representatives of the local bodies, officials of the District administration and company representatives were present at these consultations, but no one from the Dongria Kondh hamlets living close to the mine site attended them.⁸⁹

S., a Dongria Kondh man said some Dongria Kondh from their hamlet went to the villages in the plains at least once a week to sell crops and products, and the authorities could have tried to reach them at these venues, but no effort was made to reach out to them. G., a Dongria Kondh woman from another hamlet close to the mine site, said she had learnt of the

public hearings in August 2003 when some company staff came to Niyamgiri to perform mineral exploration activities.

Even the limited EIAs that have been undertaken on the bauxite mining project have not been shared with the Dongria Kondh communities. Only the executive summary in English of the 2002 rapid EIA report on the mining project and its Oriya translation were made available to people ahead of the 2003 public hearings at Lanjigarh and Muniguda – and this was only available at the local government offices.⁹⁰

“[We]...could not find any record of the views of the Dongria Kondh about the construction of the bauxite mine in the Niyamgiri Hills ever having been collected and/or taken into consideration by the company.”

UK National Contact Point for OECD Guidelines for Multinational Enterprises, London, 25 September 2009

Amnesty International was informed by people who did attend the two public hearings that both public hearings dealt very briefly with the possible pollution issues, risks and possibilities of any negative impact of the mining project as well as measures being planned to mitigate the same.⁹¹

Since there have been numerous public protests by members of the Dongria Kondh communities against the project, neither the government nor the companies involved can claim ignorance of the fact that the communities are seriously concerned about the possible negative impacts of the mining project. Following the Supreme Court's order on 8 August 2008 allowing the mining to proceed, the OSPCB, in a letter dated 12 January 2009, has stated that fresh public hearing may not be necessary “if there is no change in the proposed project site and capacity provided the... Orissa Mining Corporation undertakes to fulfil the commitments made by their joint venture partners.”⁹² Given the fact that the Dongria Kondh were not informed of the earlier public consultation on the mine, and few if any Dongria Kondh attended this public meeting, the OSPCB's position that a fresh public hearing may not be needed is inexplicable. The failure to set up a genuine consultation process and to provide the Dongria Kondh with basic information is glaring omissions in this context.

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“Our message to the company and Sarkar [the government] is simple. We will sit together, us Dongria people, and decide directly.”

S. M., a Dongria Kondh woman leader in the Niyamgiri Hills

On 19 December 2008, London-based non-governmental organization Survival International made a complaint about Vedanta Resources' proposed mining operations in Orissa to the UK National Contact Point (NCP), which is the UK authority responsible for examining breaches of the Organisation for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprises. The OECD Guidelines are a set of are a voluntary guidance on responsible business practice. Adhering states undertake to encourage business to operate within the Guidelines. On 25 September 2009, the NCP released its findings,⁹³ concluding that Vedanta Resources had “failed to engage the Dongria Kondh in adequate and timely consultations about construction of the mine or to use other mechanisms to assess the implications of its activities on the community such as indigenous or human rights impact assessment.” According to the NCP, it “could not find any record of the views of the Dongria Kondh about the construction of the bauxite mine in the Niyamgiri Hills ever having been collected and/or taken into consideration by the company.”

LANJIGARH SCHEDULED AREA DEVELOPMENT FOUNDATION

In 2008 the Supreme Court of India ordered that a Special Purpose Vehicle (SPV) should be set up to ensure sustainable development of local communities, protection of environment and conservation of wildlife. Sterlite India has 49 per cent stake in this SPV, the government of Orissa has 26 per cent and the Orissa Mining Corporation the remaining 25 per cent. As per the Supreme Court order, the bauxite mining project should contribute an initial amount of Indian rupees 120 million (US\$ 2.67 million) from April 2007 and five per cent of its annual profit before tax and interest or Indian rupees 100 million (US\$ 2.22 million), whichever is higher, every year. This is meant to be used for the sustainable development of local communities. It should also contribute Indian rupees 550 million (US\$ 12.2 million) towards the net present value of the protected forests and Indian rupees 505 million (US\$ 11.2 million) towards a wildlife management plan.

In response to this ruling, the SPV establish the Lanjigarh Scheduled Area Development Foundation, which has reportedly put together proposals for the conservation and development of the Dongria Kondh. However none of the Dongria Kondh community members interviewed by Amnesty International was aware of any plans for the SPV.

At no point during 2002-2009, have the government of India or the government of Orissa or the companies involved in the proposed mine consulted with, or made any attempt to seek the consent of the Dongria Kondh to the lease of the lands or any other aspect of the Niyamgiri mining project. The communities have not been provided with adequate and timely information on the proposed mining project. They have not had the chance to participate in the decision-making processes by the relevant authorities about the bauxite-

mining proposal. Amnesty International is of the view that in the absence of these crucial steps, the mining project should not proceed and is likely to result in violations of the human rights of the Dongria Kondh to water, food, health, work, as well as their rights as indigenous communities to protection of their traditional lands, culture and identity.

N. S., the Dongria Kondh man, told Amnesty International, "Please write to Vedanta Resources and ask them to go talk to the Dongria Kondh." S. M., the Dongria Kondh woman, said, "Our message to the company and Sarkar [the government] is simple. We will sit together, us Dongria people, and decide directly."

4. REFINING THE PROCESS: MISINFORMATION AND LACK OF CONSULTATION ON REFINERY PLANS

“The company will provide jobs to every family who sell lands... The area will get electricity and water... The area will be transformed into a Bombay.”

Officials of Kalahandi District administration, village council meetings prior to land acquisition, 2002

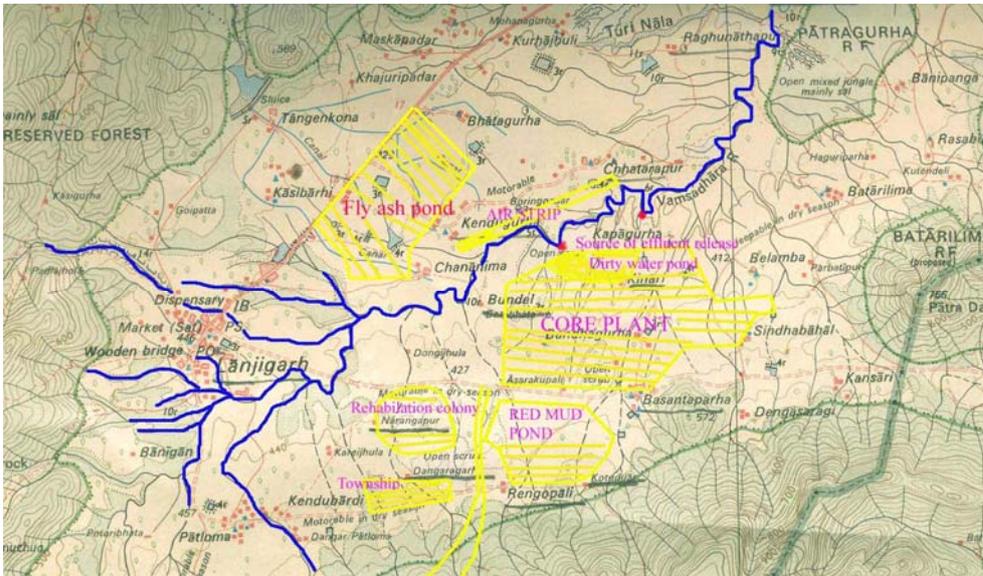
The principles of transparency, consultation and participation are embedded in international human rights law and standards. Expert bodies of the UN and regional human rights institutions have made clear the importance to human rights of ensuring that people have access to information and can participate meaningfully in decisions that affect their rights. In the case of major commercial projects both the government and the companies involved should ensure that affected people have adequate access to information and that they are consulted and their views taken into account before the project goes ahead.

Chapter 3 detailed the failure of both state and national governments and the companies to provide communities with any sufficient information; undertake adequate assessments of the likely impacts of the project; or ensure a proper consultation with affected communities. Similar failures were found in relation to the refinery, which was constructed in 2004. These failures are described in this chapter.

Although authorities in Orissa had signed an agreement with Sterlite India for the Lanjigarh alumina refinery and Niyamgiri bauxite mining project in April 1997, people affected by the

refinery only became aware of it in 2002 when some of them received notices from the Kalahandi District administration telling them that their land was to be compulsorily acquired for the refinery. National law regulating land acquisition does not require prior consultation with affected communities on projects for which land is being acquired (for details, see Box 7).

However, consultation with the local communities is required in respect of lands that are protected under Schedule V of the Indian Constitution. As noted in Chapters 1 and 3, the refinery and the proposed mining project are located on lands that are protected under Schedule V of India's Constitution, and to which special requirements apply under 1996 PESA. Under this law, local authorities are required to consult *Gram Sabhas* or *Panchayats*, before acquiring land for development projects in Schedule V areas. Authorities also have to consult these bodies before resettling and rehabilitating persons affected by such projects.⁹⁴ However, PESA does not specify the kind of information that should be provided to *Gram Sabha* or *Panchayat* on the proposed projects nor does this law have adequate provisions to ensure that consultation which is undertaken with the local communities is 'genuine' (for details, see Chapter 1, Box 3). In addition, the legislation does not specify what should happen in cases where the *Panchayat* or *Gram Sabha* rejected a particular project proposal.⁹⁵



Map 3: The Lanjigarh refinery and surrounding villages (Source: Survey of India/Amnesty International)

LAND ACQUISITION AND DISPLACEMENT FOR THE REFINERY

The Lanjigarh refinery is located in a 750-hectare complex. Land acquisition for this refinery was initiated in June 2002 when the Kalahandi district collector's office sent a letter to affected landowners in 12 villages in the Lanjigarh area – Bundel, Borbhata, Kothadwar, Bandaguda, Sindbaheli, Basantpada, Jagannathpur, Kinari, Kappaguda, Belamba, Boringpaddar and Turiguda. The letters declared that the District Administration intended to compulsorily acquire their lands - 391 hectares of private land and 628 hectares of common

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village land – for Sterlite India's refinery project. The letter also explained that the families to be fully displaced (who would lose their homes in addition to their lands) would be compensated and resettled, while the families whose lands would be taken over, would be compensated.⁹⁶ It informed people that complaints against this mandatory land acquisition notice could be filed at the Office of the Revenue Inspector at Lanjigarh by 22 June 2002 and that public consultations would take place on 26 June 2002. As per India's land acquisition legislation the letters were sent mainly to the affected landowners – who are mostly male heads of families. Landless labourers whose livelihoods would be affected by the land acquisition were not notified about the consultations.

Two public meetings were convened by the Kalahandi district administration at Lanjigarh and Baterlima on 26 June 2002. Within two weeks of these meetings compulsory land acquisition had taken place.

In September 2004, the District Administration issued compulsory land acquisition notices to acquire further land for an airstrip near Chhattarpur and a railway corridor near Harekrishnapur.⁹⁷ Again, landless labourers did not receive any notice. About 341 hectares of private land and 160 hectares of village common land – which the letters termed as government land – were to be acquired. The letters also explained that those who might be displaced would be compensated and resettled, while those whose lands were likely to be taken over would be compensated. Three public meetings were held for the second phase of land acquisition on 6 October 2004 - at Lanjigarh, Chhattarpur and Champadeipur. In all, by the end of 2004, about 750 hectares of land had been acquired and transferred to the company by the State government for the refinery.

BOX 7: THE LAND ACQUISITION ACT

Around the world, land laws are being used to move people living in poverty and other marginalized communities off land to make way for mining and other extractive industries, without adequate protection of their human rights. India's Land Acquisition Act of 1894 allows the state authorities to acquire any land in the country for a "public purpose." Under this law, first enacted by the British government during its *Raj* but retained after India's independence in 1947, land is acquired compulsorily and individual landowners are paid a fixed compensation. This law uses a broad definition of "public purpose" for any planned development of land, which, the last amendment in 1984 states, includes acquisition to be leased or sold to a private firm.⁹⁸

While the Act confers broad powers on the authorities, it does not require them to provide information to the local communities on the "public purpose" of the planned development project; it has no provisions for ensuring environment or social impact assessments are conducted prior to the commencement of land acquisition proceedings. It lacks provisions for genuine consultations with the local communities. The only opportunity for consultation is the public hearing held under India's environmental laws, but the laws do not adequately clarify whether this should take place prior to or after the commencement of land acquisition proceedings. There are no requirements in the Land Acquisition Act to consult with people who may be affected by land acquisition, such as landless labourers whose livelihoods are dependent on the land to be acquired. The law also lacks adequate safeguards to ensure that any evictions are only carried out in accordance with international human rights standards; also, the Act does not offer adequate protection to the communities from forced evictions. The Act empowers the communities only to the extent of allowing for the filing of objections in respect of land measurements, the compensation amount and the eligibility criteria for award of compensation. People can challenge the authorities' decision on these issues in court.

The Act has become a pivotal piece of legislation for acquiring lands for projects in the irrigation, extractive and infrastructure sectors in India without ensuring adequate information on the purpose of acquisition to the communities and adequate consultation with them. The government has repeatedly used the Act to acquire land for mining without such processes in contravention of both India's Constitution and its international human rights obligations, in particular, the right to adequate housing. The Act and the manner in which it is used significantly undermine communities' security of tenure and creates the legal foundations for the mining industry to operate without due regard for the impacts of their operations on human rights.

Following persistent protests by the local communities protesting against compulsory acquisition of their lands and their forced evictions, the government of India has proposed to amend the Act.⁹⁹ The proposed amendments seek to redefine "public purpose so as to restrict the scope of land acquisition to provision of land for strategic purposes vital to the State and for infrastructure projects where the benefits accrue to the general public."¹⁰⁰ The amendments empower the government to intervene, in cases of direct acquisition of land by companies for such "public purpose" as follows: "if a person or company acquires 70 per cent of the land required for a project by lawful contract, the authorities will be able to invoke the Act to acquire the remaining 30 per cent land."¹⁰¹ However, the amendments do not offer adequate safeguards of people's rights such as availability of prior information on the project plans or consultation with them, except for purposes of their rehabilitation and resettlement after acquisition of their lands.

Many villages in the Lanjigarh area are organised on caste lines and therefore people from different villages have limited contact and interaction with each other. Nonetheless, men and women of different ages and occupations gave similar and consistent accounts of the events leading to the village council meetings and its proceedings.

People interviewed by Amnesty International in Chhattarpur, Bandaguda, Basantpada, Kenduguda and Rengopalli villages stated that District officials told them before and at the

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village council meetings for land acquisition that not only would they receive Indian rupees 100,000 for each acre of land (Indian rupees 40,000 or US\$ 2,400 per hectare), “the company would provide jobs to every family who sold land.” They were also told that the “area would get electricity and water” and be transformed into a “Delhi” or “Bombay” or “Dubai” in a few years. The official record of the 2002 village council meetings notes that the district sub-collector said “the proposed refinery project would be beneficial to the residents of the area as well as the entire country and that unemployed young men and women would get job opportunities.”

“The proposed refinery project would be beneficial to the residents of the area as well as the entire country ... unemployed young men and women would get job opportunities.”

District sub-collector, Kalahandi, Village Council meetings, June 2002

Several villagers who had sold their farmlands told Amnesty International that a number of officials from the Kalahandi District administration had visited the villages prior to the public meetings to reiterate their message: that the company was willing to compensate them at higher rates than the stipulated market value of their land and that sufficient employment or training for self-employment would be offered to all those who sold their lands.

The testimonies received by Amnesty International and the official record of the village council meetings confirm that the villagers were not given detailed information of the nature and scale of the refinery or the possible impacts on the environment and people at either the village council meetings or the public consultations for the environmental clearance. The refinery is located in a very remote part of Orissa and most local people, interviewed by Amnesty International, described how they had never seen such industries before and had no idea of what they would entail.

Residents of several villages who attended the 7 February 2003 public consultation at Lanjigarh for the environmental clearance for the refinery informed Amnesty International that, prior to the public hearing, they did not have access to the rapid EIAs on the refinery or the mining project, but only to the executive summary of the rapid EIA on the refinery project and the revised executive summary of the mining project and their Oriya translations at the local government offices.¹⁰² Official correspondence between the Kalahandi and Rayagada District collectors on the one hand and the OSPCB, on the other, confirms that only the summaries in English and their Oriya translations had been kept at the local government offices.¹⁰³ The residents also stated that those present at the public hearing elected the Kalahandi District collector to chair the public consultation and he went on to detail the project's benefits.¹⁰⁴ They also claimed that the public hearing only briefly dwelt on the pollution issues of the refinery and the mining project; very little information had been

provided to them on the potential risks and likely negative impact of the refinery and the mine, by the OSPCB, the District administration, or company officials. The official record of this public consultation confirms these claims.¹⁰⁵

“The officials did not share in the *gram sabha* meeting or elsewhere that there would be so much dust, chimney smoke, noise, that our river would become dirty.”

Two women who attended the village council meetings in June 2002

Many residents of Chhattarpur, a predominantly Dalit village close to the core refinery plant, said they were told that the “factory would make aluminium.” Some thought this meant that the company was going to manufacture aluminium rods and plates. Some residents of Harekrishnapur that Amnesty International interviewed shared this impression. They explained that they thought that these products would be loaded in closed containers, trucks and freight trains and taken to Bhubaneswar, Orissa’s capital.¹⁰⁶ At no stage, they said, were they told that the refinery processes involved risks of substantial pollution.

“We were not told that they will make alumina powder and send it elsewhere,” said S. and K., two women, who attended two of the village council meetings: “We were later shocked to discover so many trucks bringing the bauxite and taking the powder away. We felt deceived, as we were not told that everything would be done here. The officials did not share in the *gram sabha* meeting or elsewhere that there would be so much dust, chimney smoke, noise, that our river would become dirty. We had never seen a refinery so had no experience or information on what life could be like staying so close to it.”

B. N., a man from Kenduguda, whose land was acquired to support the construction of the refinery’s ash pond (see Chapter 5, Photo 10) and who lives close to the pond, said, “we were never told anything about an ash pond or what living next to it would be like.” A. M., a man from Rengopalli, similarly explained that they were never given any information about the two red mud ponds (see Chapter 5, Photos 11-13), one of which is now being built right next to his village, and they had not been given any information on what the red mud was made of and if it posed any risks to them. He also said that once this red mud pond was constructed it “will close access to the public road and make it difficult for our children to go to school.” “The other road we can use is where they want to build the pillars for conveyor belt [linking the mine and refinery]. I am worried about things falling from the belt on to us.” Other residents of from Rengopalli pointed out that their village would soon be stuck between the red mud pond and the proposed conveyor belt from the proposed bauxite mine site at Niyamgiri to Lanjigarh, but had been given no choice in the matter or alternatives.

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INTIMIDATION DURING THE CONSULTATION PROCESS

Local communities have also reported some intimidated in relation to the consultation process. For example, at the June 2002 meeting to discuss land acquisition, a large number of police officers were present. It is not clear why such a large police presence was necessary. Villagers who attended this meeting told Amnesty International that they felt intimidated by the police presence and did not raise doubts and ask questions about the refinery project.¹⁰⁷ Local protests against the refinery and land acquisition were also met with police harassment on a number of occasions and a general climate of intimidation of protesters appears to have persisted during the period of land acquisition period (see Box 8).

BOX 8: PROTESTERS INTIMIDATED AND ARRESTED

During 2002-2004, activists campaigning against compulsory land acquisition for the refinery faced intimidation. Amnesty International received information alleging that the police beat up seven villagers following protests at Basantpada against land surveys in March 2003. On 1 April 2003, Lingaraj Azad of the Niyamgiri Suraksha Samiti, an organization that opposed the refinery-mining project, was arrested on charges of disrupting public order; the next day, eighteen other protesters demanding his immediate release were injured in an attack on a protest march; the attack was allegedly organized by the members of a youth club, which had supported the refinery project.¹⁰⁸ A team of People's Union of Civil Liberties (PUCI) activists, which had visited the area after the attacks, confirmed that the police had failed to take action against the attackers even ten days after the victims filed a complaint.¹⁰⁹

In March 2006, several Adivasi residents of Bandaguda staged a protest against the company's moves to acquire the common lands of their village. Local police arrested 32 young men, including a 16-year-old boy, on charges of having trespassing into the refinery premises and assaulting its employees.¹¹⁰ Of the arrested, the 31 young men were released on bail after spending three days in prison at Bhawanipatna. However, upon their release, police officers in plainclothes forcibly took them on a week-long pilgrimage to the famous pilgrim town of Puri, stating that their prison term had "polluted" the Adivasis. When the Adivasis returned to Bandaguda, they found that the refinery had annexed the land over which they had been protesting, including burial grounds, located on public land and a new boundary wall had been erected. The villagers informed Amnesty International that they saw it as a clear instance when the police colluded with the refinery project and its contractors to remove them in order to extend the boundary wall. A police officer admitted to the media that the villagers were taken to Puri, but denied the charge of collusion.¹¹¹

RESETTLEMENT AND REHABILITATION

India has no national law yet in place for resettlements and rehabilitation of local communities displaced and affected by large irrigation and industrial projects. Instead, it has a number of state-level and sectoral policies and practices. Recent protests against inadequate policies and practices, especially over the displacement of Adivasis by the construction of dams across river Narmada, resulted in the authorities framing a national level policy, which is yet to be made into a law.¹¹²

Between 2001 and 2006 the Orissa authorities undertook a review of resettlement and

rehabilitation policies. A new policy was announced in 2006.¹¹³ While this review process was ongoing, the authorities issued an order announcing a special resettlement and rehabilitation policy for the alumina refinery project.¹¹⁴ This policy included cash compensation for the 118 families fully displaced by the construction of the refinery. Officials at the Kalahandi District administration, who did not want to be named, informed Amnesty International that the cash offered, in some instances, was in excess of the market value of the land acquired. The displaced families were re-housed in a special rehabilitation colony built by Vedanta Aluminium, amidst allegations of forced evictions and improper rehabilitation, which were brought to the Supreme Court-appointed CEC, which investigated the environmental and forest law violations of Vedanta Aluminium.¹¹⁵ The CEC recommended to the Supreme Court that these should be probed "by an impartial and unbiased agency."¹¹⁶ No such probe, however, was ever held.

The resettlement and rehabilitation policy stated that one member each from fully displaced families would be provided with employment by the company. Recent information released by Vedanta Aluminium states that, as on 1 February 2009, one person each from 63 of these families has been employed in the refinery and that one person each from the rest of the families had opted for the alternatives available under the policy - a one-time additional cash compensation or technical training towards self-employment.¹¹⁷

Of the 1,220 families from whom farmlands were acquired, this policy states that one person each from the families is to be given priority in employment in the refinery depending on the extent of the land acquired out of the total land in the family's possession; if this is not feasible, one-time cash assistance, also graded on the extent of the land acquired out of the total land in the family's possession.

The villagers interviewed by Amnesty International stated that this policy was not explained to them and to the contrary promises were made by the officials at the village council meetings that "all those who lost their lands would get job opportunities" in the refinery. According to information provided by Vedanta Aluminium in 2009, 564 persons among those employed by Vedanta Aluminium's project contractors and 767 persons employed in its operation and maintenance contracts, belonged to the Lanjigarh block, but it is not clear how many of those employed are people who lost their lands to the refinery. Amnesty International was not able to verify the data provided by Vedanta Aluminium.

The 2003 policy provided for cash compensation for landless people who were practising cultivation on common lands, who were fully displaced and officially recognized as "encroachers" as per the Orissa Prevention of Encroachment Act, 1972. The policy promised them market value of land up to 0.4 hectares. However, the policy is silent on landless labourers who worked for other landowners. Local communities interviewed by the Amnesty International said an overwhelming majority of the landless labourers had to leave the area once lands that they were working on were acquired.¹¹⁸ The EIA for the refinery project carried out in 2002 acknowledged that around 300 persons would lose their home or farmlands, but did not ascertain the number of landless labourers dependent on the land;¹¹⁹ the comprehensive EIA carried out in 2005 raised this figure to 700 persons, but once again did not ascertain the number of landless labourers who were leaving the area or about to leave the area in the wake of the two phases of land acquisition.¹²⁰ The only estimates are with the local political leaders interviewed by Amnesty International who say that at least

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100 families would have left the area after the acquisition of land for the refinery.¹²¹ Because of the lack of records on or prior official assessments about landless people in the project area, it is difficult to verify these numbers.

INADEQUATE ASSESSMENT OF THE IMPACT OF COMMERCIAL ACTIVITY

To ensure human rights of local communities are respected and protected in the context of commercial activity, there must be some adequate means of assessing the likely impact of commercial projects. Only by undertaking an adequate assessment process can negative impacts be identified and mitigated or avoided. As far as Amnesty International could discover, the only process used by the government and the company to assess the likely impact was the environmental impact assessment (EIA) process.

As described in Chapter 3, four EIAs were conducted, two each for the refinery and the mining project. The two EIAs carried out for the refinery – the rapid EIA commissioned by Sterlite India and conducted by Tata AIG in 2002 and the comprehensive EIA commissioned by Vedanta Aluminium and conducted by Vimta Labs in 2005; they were inadequate to ascertain or address many of the likely impacts of the refinery on the local communities. As seen in Chapter 3, issues such as livelihoods, patterns of access to water and the importance of communal land resources to communities are either not mentioned or only referenced superficially in these EIAs.¹²² The issue of loss of access to communal resources provides one example of how the authorities and the company failed to identify and address an issue of importance to many local communities.

**“Where will they put me to rest when I die?
Perhaps you can ask the company to bury me
under their chimney. It should be able to do this
much as it has deceived us and pushed us to part
with our land.”**

K. M., an elderly woman commenting on the decision to annex the community's burial grounds on the common village land at Bandaguda for the refinery

As described at the beginning of this chapter, 59 hectares of communal land and forest land was among the land acquired for the refinery but, as the CEC report states in 2005, these have lost their utility for the villagers.¹²³ The loss of shared community resources has undermined livelihoods and disrupted traditional community practices. This has had a particularly negative impact on people who had no land, and who relied on other people's farmland as a source of labour, and on using communal land to graze their cattle and gather food.

The impact of loss of communal resources was described to Amnesty International by several of those affected:

K., who is in his early thirties from Chhattarpur, described his predicament: "I owned 6 goats, 15 cows and 2 buffaloes. They used to graze in common land where the factory stands today. It became difficult to take them for grazing, and buying fodder is very expensive so I have now sold all the cattle. We used to have home-made milk products to eat but now I have to buy milk from outside."



Photo 8: The Lanjigarh refinery at night (Amnesty International)

Another man from Bandaguda provided a similar account: "I also used to work as an agriculture labourer in a nearby field where the factory stands now. Even though I was earning 40 to 50 [Indian] rupees (around US\$ 1) daily, it was enough, as we could access vegetables, forest produce and wood freely. We had at least one vegetable every day. Now, if I earn 70 [Indian] rupees (US\$ 1.50) daily it is very difficult to eat good food as we have to buy everything from the market. There is a marked increase in the price of, say, tomatoes, which used to cost five [Indian] rupees and are now 20 [Indian] rupees due to so many new people. Life has become very hard now. I want to feed my three children regular milk but can't. I miss my life before the factory. It was more comfortable."

"It's really getting tougher and tougher," said 29-year-old woman, L. S.: "I had four cows but have sold them, as I have no access to common grazing land. Previously, my cows used to graze where the factory stands. We had some amount of milk that was used for consumption and sometimes sold. Now, if we have money [we can] buy milk; otherwise milk is no longer a regular part of my family's diet."

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The Supreme Court-appointed CEC had recommended that: "The project authorities should acquire equivalent non-forest land [to 59 hectares of common and forest land] for carrying out plantations to meet the biomass requirements of the villagers and the area be notified as village forests."¹²⁴ As far as Amnesty International could discover this recommendation has not been implemented.

The increase in food prices at the local market is another serious concern for many local people. Some blamed this on the pressures created by an influx of a large number of people into the area to support the operations of the refinery, arguing that this had led to an increase in demand and prices. Local landless labourers have seen their standard of living undermined on two fronts – loss of access to natural resources on the one hand, and an increase in food prices on the other. Despite this double negative effect, the government has made no provision of alternative grazing land or support in terms of employment opportunities for these people.

Various women in a focus group discussion in Bandaguda described to Amnesty International the difficulties that they now faced in collecting fire wood and other forest produce because of the loss of forest lands adjacent to their village and because the erection of boundary walls for refinery complex had made it much harder for them to go to Niyamgiri hills to collect fruits, forest produce and grow crops on the hills. H. D., a woman in her late sixties, said, "We used to grow crops before not just to sell but to eat ourselves, we were also able to collect firewood that we used, we now have to buy everything, which we can not afford to do. We eat less than we did before."

"We now have to buy everything, which we cannot afford to do. We eat less than we did before."

H. D., a woman at Bandaguda

These examples illustrate the effects of the failure of the government and the company to adequately assess the human rights impacts of the refinery. Such failure is not inevitable: had a genuine, open and transparent process of consultation and discussion with local community taken place, based on full information, it is likely that many of these issues would have been raised and measures could have been taken to mitigate or resolve the problems.

However, the process was extremely limited. Very little information was provided to people and some of what they were told appears to have been inaccurate. Evidence from the public consultations on land acquisition and the environment suggest that the authorities and the company were more concerned with swift progress of the refinery project than with ensuring that local communities were not harmed by the project.

5. LOCAL LIVES BLIGHTED: REFINERY POLLUTION OF AIR AND WATER

“There is so much noise all the time around us. We are constantly living and breathing dust. We had a clean flowing river, which is not safe any more.”

A Majhi Kondh woman from Bandaguda

THE REFINERY

Vedanta Aluminium's refinery is located in a relatively remote and predominately rural area. The river Vamsadhara, which originates in the nearby Niyamgiri hills, runs at a stone's throw from the plant (See Photos 9 and 15). Within the refinery complex there are a number of waste containment systems including clear water and dirty water ponds and red mud ponds. Around the refinery, there are 12 villages with an estimated population of between 4,000 and 5,000 people, mostly Majhi Kondh Adivasi and Dalit communities. Some of these villages are just 150-300 meters from the boundary wall of the refinery plant (see photos 17 and 21). As well as the local population, some 2,000 contract workers, mostly labourers from Jharkhand and Bihar states, live in informal settlements adjacent to the core refining plant.

SENSITIVE LOCATION

As noted above, the refinery has been built in a predominantly rural area and beside one of the main rivers in southern Orissa, the Vamsadhara, which flows close to the northern

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boundary of the core plant. A number of tributary streams flow all around the refinery's core plant. The majority of the local population rely on agriculture and forest products for their livelihoods. The river Vamsadhara and the streams flowing from Niyamgiri are the main sources of water for local people, as well as many villages downstream; people use it for drinking water, personal use, and irrigation and for their cattle. The people living in the villages are therefore heavily dependent on the natural environment.



Photo 9: The river Vamsadhara and the Lanjigarh refinery (Amnesty International)

A number of the refinery's waste facilities are located close to the river and streams. The two red mud ponds and the ash pond are situated at a distance of 1 km and 300 metres respectively from the river streams and the dirty water pond is just adjacent to the river. Storm water drains from the refinery also flow into the river. Because of the proximity of the refinery and its various waste facilities, including the red mud pond, to the river, proper management of waste is critical to avoid contamination of the environment, harm to human and animal health and diminishing water resources on which people depend. Red mud ponds in particular can be major sources of potential pollution if there is any failure of containment of the caustic residues, and also because of dust emissions. In September 2005, the Central Empowered Committee (CEC) of the Supreme Court of India underlined that "...the location of the pond for the red mud, which is a mix of highly toxic alkaline chemicals and contains a cocktail of heavy metals including radioactive elements and the Ash pond on the Vamsadhara

river may cause serious water pollution. The breach of the red mud and the ash pond may cause severe damages downstream. The potential of such an occurrence has not been properly assessed..."¹²⁵

“The breach of the red mud and the ash pond may cause severe damages downstream. The potential of such an occurrence has not been properly assessed...”

CEC Report to the Supreme Court, 21 September 2005

Sterlite India obtained clearances to operate the refinery in Lanjigarh on the basis that the refinery would be designed to ensure “zero discharge.”¹²⁶ When the MoEF granted environmental clearance to the refinery, it stated that the clearance was subject to strict compliance with the ‘zero discharge’ commitment and identified a list of other key conditions for management of waste from the refinery.¹²⁷ It also required that the company “strictly adhere” to the stipulations made by the OSPCB.¹²⁸ The OSPCB also set out various conditions that the company (now Vedanta Aluminium) must comply with in order to retain the “consent to operate” status granted on 29 December 2006 under India's environmental laws.¹²⁹ These include the installation of a continuous online monitoring system in the storm water drains because of the possibility of storm water contamination from the process areas, and establishing systems to prevent dust blowing out of bauxite storage and handling areas and from the red mud pond.

In the operations of the refinery between 2006 and 2009, Vedanta Aluminium repeatedly failed to adhere to these requirements. Between 2006 and 2009, the OSPCB documented numerous instances where the company has failed to put in place adequate pollution control measures and meet the conditions stipulated by the MoEF and OSPCB. The OSPCB findings indicate that the company commenced operations without putting in place all the necessary systems to adequately manage waste and pollution and that some processing and waste management systems were not built or operated in conformity with applicable regulatory requirements. This appears to have resulted in recurrent instances of leakages of highly alkaline wastewater into the Vamsadhara river or outside the refinery walls and to air pollution.¹³⁰ The company has also failed on several occasions to implement directions given by the OSPCB to carry out repairs or undertake other actions in a timely manner, increasing the potential for ongoing pollution of water and air. Below we provide a detailed summary of the key OSPCB findings over this period and follow-up actions taken by the company.

BOX 9: FROM BAUXITE TO ALUMINIUM

The Lanjigarh refinery uses the Bayer process to produce alumina from bauxite (For the Process Flow Diagram, see Flowchart 1).¹³¹ Bauxite is brought to Lanjigarh by truck and is unloaded around the clock (See Photo 18).

The unloaded bauxite is washed, crushed, ground and dissolved in caustic soda (sodium hydroxide) at high or medium pressure and temperature. The resultant liquid, containing sodium aluminate and undissolved toxic residues containing heavy metals such as iron and radioactive elements such as titanium and vanadium, gradually settles to the bottom of the tanks. The highly alkaline toxic residue, known as "red mud" (pH 12 or more), is the main solid waste generated after this process. It is discharged to the red mud pond using a high concentration slurry disposal method. The refinery currently generates approximately 1.28 million MT of red mud per year.¹³² Decanted water from the red mud pond is pumped into a process water lake to reduce the pressure in the red mud pond and the risk of seepage from it. The clear sodium aluminate solution is pumped into a huge tank called a precipitator. Fine particles of alumina are added to seed the precipitation process. The particles, which sink to the bottom of the tank, are removed and passed through the calciner at a very high temperature, over 1000° C, to drive away the chemically combined water as steam. The resultant alumina powder is packed in covered plastic sacks, loaded onto container trucks, and driven to Jharsuguda in northern Orissa for Vedanta Aluminium to extract aluminium.

The calciner produces flue gas, which contains particulate matter and an Electro Static Precipitator, installed as instructed by the Orissa State Pollution Control Board (OSPCB) in 2007 with a view to reducing the particulate matter emitted through the stack to below the standards prescribed by the OSPCB.¹³³ In addition, a power plant that provides electricity for the refinery uses a continuous coal-fired boiler. The composition of the fly ash produced varies based on the coal being used but typically contains a range of elements including arsenic and heavy metals such as chromium and lead. Fly ash slurry is disposed of in an ash pond, using high concentration slurry disposal methods.

OFFICIAL REPORTS OF WATER POLLUTION

The OSPCB has recorded recurrent instances of leakages of highly alkaline wastewater into the Vamsadhara river or outside the refinery walls, in breach of the stipulation that there should be no discharge from the refinery and in-built measures should be in place for effective collection of spillage and recycling in the system.

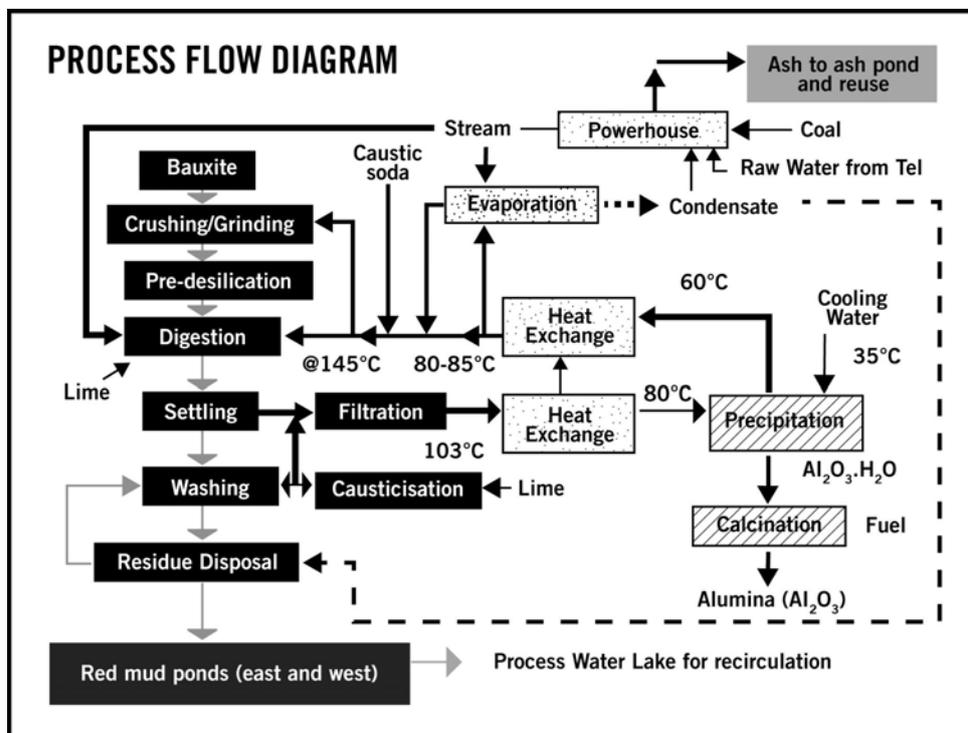
“Of all the ponds, the red mud pond, process water pond and dirty water pond pose significant risk for ground water as well as surface water contamination, since they collect and store wastes ... of high alkalinity.”

Orissa State Pollution Control Board Inspection Report on Vedanta Aluminium, 3 April 2007

COMPLAINTS BY VILLAGERS SOON AFTER THE REFINERY BEGAN OPERATIONS

In 2007, when the refinery was moving into full production, the OSPCB investigated complaints made by the villagers that Vedanta Aluminium had been discharging caustic water into the river during the night.¹³⁴ The OSPCB tested the water at various points of the river. The test results indicated that water accumulated near the boundary wall of the refinery (outside the factory) adjacent to the river had a pH value of 10.5 and 11. The following day the OSPCB carried out investigations along with the Head of Operations at the refinery and tested water accumulated outside the boundary wall. They found the water had a pH value of 12. They also found accumulated water near the storm water drain and the dirty water pond inside the boundary, which had a pH value of 12.5.¹³⁵

The OSPCB stated, based on discussions with the company's personnel, that the clear water pond and the storm water drain had been damaged due to heavy rain. It recommended that the clear water pond be repaired immediately, that the company be more vigilant in monitoring leakages, spillage and overflow of caustic, chemicals etc, inside the plant and that the company should immediately take steps to prevent any contamination of storm water with caustic water.



Flowchart 1: Process Flow Diagram of the Lanjigarh refinery (source: OSPCB Inspection Report on Vedanta Aluminium, 2-4 November 2007)

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PROBLEMS CONTINUE

In a more detailed inspection two months later, however, the OSPCB found the water in the storm water drains inside the plant, which discharged to river Vamsadhara, had a pH value of 9.46 (the normal pH range for this class of river, according to the OSPCB is between 6 and 8.5).¹³⁶ The OSPCB stated that this was possibly due to alkali contamination linked to spillages from the plant process areas. It noted that the online monitoring system for pH had not yet been installed in all storm water drains. The OSPCB's report also recorded that there was seepage from the ash pond, which would ultimately get into the river and that a recirculation system for filtrate water had not yet been constructed.¹³⁷

Wastes from the ash pond can also pose significant risks to people and animals.¹³⁸

BOX 10: CAUSTIC SODA AND PH LEVELS¹³⁹

Caustic soda (sodium hydroxide) is used in the alumina refining process. The toxicity of sodium hydroxide depends on the physical form (solid or solution), the concentration and dose. Depending on the concentration, solutions of sodium hydroxide are non-irritating, irritating or corrosive and they can cause direct local effects on the skin, eyes and gastrointestinal tracts.

The hazard of sodium hydroxide for the environment is caused by the hydroxyl ion (pH effect). The pH level of a liquid is a measure of how acidic or alkaline it is (pH ranges from zero to 14 with a pH value of 7 considered neutral). The use of sodium hydroxide could potentially result in an emission of sodium hydroxide and this could locally increase the pH in an aquatic environment. If emissions of wastewater are controlled by appropriate pH limits and/or dilutions in relation to the natural pH and buffering capacity of the receiving water, adverse effects on the aquatic environment can be avoided.

The effect of increased pH will depend on the characteristics of the specific aquatic or terrestrial ecosystem. To assess the potential environmental effect of a sodium hydroxide discharge, the pH change of the receiving water should be calculated or measured. The change in pH should be compared with the natural variation in pH of the receiving water and based on this comparison it should be assessed if the pH change is acceptable.

Drinking water about a pH level of 8.5 is not associated with any health problems though it can have a taste that people consider unpleasant. Bathing in water that has a high pH value has been associated with irritation of the skin,¹⁴⁰ while exposure to water with extremely high pH level (12 and above) can cause blistering or burning of the skin. Exposure to high pH values can also be toxic for fish and harm aquatic environments.

On 23 November 2007, the OSPCB issued a "show cause" notice on these issues to Vedanta Aluminium and also issued a direction under Section 33 of the Water Act requiring the company to immediately raise the parapet walls of the different process areas to ensure containment of alkaline waste water and prevent any spillages or leakages from the containment area.¹⁴¹ In December 2007, the company responded stating that though parapet walls had been provided around all the process units, in accordance with the OSPCB's advice, action had already been taken to raise the height further.

DELAYS IN AND LACK OF COMPLIANCE WITH OSPCB'S ORDERS

In January 2008, the OSPCB noted that though Vedanta Aluminium had partly complied with its directions by raising some parapet walls, this had not yet been done in other areas. It also observed that the clean water pond, which had been damaged in August 2007 had still not been repaired and that ash slurry from the power plant was flowing into the storm water drain and through the clean water pond into the river. The seepage from the ash pond had stopped but the recirculation system had not yet been installed.



Photo 10: The entrance to the ash pond at the Lanjigarh refinery (Amnesty International)

The OSPCB found, outside the boundary of the factory, “white patches of alkaline waste, which indicates that there has been discharge of alkaline wastewater to Vamsadhara River.”¹⁴² It also observed that there was continuous leakage of highly alkaline wastewater (pH 12) from the dirty water pond, located adjacent to the Vamsadhara River. The OSPCB stated, “the dirty water pond is lined and there should not have been any leakage/seepage. The location of this pond is highly sensitive and the industry must take immediate action for stoppage of the leakage.”¹⁴³ It also identified a risk of ground water contamination because of inadequate lining of parts of the process units. The OSPCB contacted Vedanta Aluminium directing it to explain why the OSPCB’s directions had not been complied with and indicated that it did not consider that the company had comprehensively addressed these concerns in its response.¹⁴⁴

Vedanta Aluminium sent a response to the OSPCB in July 2008 clarifying the status of issues raised by the OSPCB in their detailed inspection of January 2008. In its response, the company stated that all parapet walls in the process areas had been raised, parts of the process units were being lined with steel, the recirculation system for ash pond filtered water was ready and the clean water pond had been repaired. The company however disputed that

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there had been any discharge of ash from the storm water drains into the river. It also claimed that there had been no leakage from the dirty water pond into the river as all leakages were collected inside the plant boundary and recycled back. It further stated that a portion of the plant boundary was damaged during heavy flood and only surface or rainwater was going outside the plant boundary rather than alkaline water.

A joint inspection conducted in March 2008 by the OSPCB, experts from the Indian Institute of Science, Bangalore, and the National Groundwater Research Institute, Hyderabad, found water with a pH value of 9 coming out of the ash pond. The inspection concluded that such discharge of alkaline water should be stopped.¹⁴⁵ Inspections by the OSPCB in April 2008 found no improvement in this regard, with water continuing to leak out of the ash pond, with a pH value of 9.5.¹⁴⁶ The report of the April inspection did however record that repair work was being undertaken in the ash pond and that Vedanta Aluminium personnel claimed that this would prevent any seepage in the future. The OSPCB also noted that there had been leakage of caustic water near the process water lake, which had not been reported to the Board, and no progress had been made in repairing the flooring of the process areas. In its inspection in May 2008, the OSPCB documented that there was no seepage occurring from the ash pond.¹⁴⁷

“What happened to us is unimaginable. Having given up our lands, we live in the shadow of this gigantic refinery and its wastes.”

L. T., a resident of Chhattarpur, Lanjigarh

Amnesty International asked a scientist with many years experience in environmental impact assessment of mining and industrial projects to review the OSPCB reports. He concluded: “The fact that the operators of the refinery failed to act to correct [problems] after the first inspection, which led to a Show Cause Notice for Revocation of Consent Order, does not generate confidence that the company is giving a high priority to complying with their own design criteria, to statements and commitments in the EIAs, or to operational environmental management. The impression gained from the Inspection Reports is that the existing refinery is poorly constructed and maintained. As a result, continuous off-site pollution is occurring and there appears to be a high probability that this situation will continue.”

NEW FAILURES DOCUMENTED

In December 2008 the OSPCB carried out a detailed inspection, in which it confirmed that there were no more leakages from the dirty water pond and the ash pond dyke. However it found that there was seepage from below the incoming pipe into the process water lake.¹⁴⁸ It emphasised that the bypass outlet from the process water lake needed to be blocked permanently in order to stop any seepages from passing outside the boundary and ultimately into the river.¹⁴⁹ It also found that the water coming into the clean water pond, from which Vedanta Aluminium had constructed an outlet to discharge excess water into the river, had a

pH of 8.9. According to the OSPCB, this suggested that the water coming into the pond was contaminated and was being discharged into the river. It reiterated its stipulation that there should be no discharge from this pond to outside the refinery.

The OSPCB also observed that the raw water reservoir continued to have an unusually high pH value of 9, despite steps being taken by the company to prevent contamination of the reservoir water. It noted that remedial measures taken by the company had not been foolproof and there continued to be risks of contamination of the nearby river.¹⁵⁰ The OSPCB also highlighted that despite its repeated earlier directions, all the relevant units in the processing areas had not been lined.

The OSPCB also documented the fact that Vedanta Aluminium had started construction work for expansion of the refinery without the company having obtained the necessary regulatory permissions, including the environmental clearance, to proceed with an expansion.¹⁵¹

“The expansion of the industry [refinery] without CTE [consent to establish certificate] and EC [environmental clearance] shall be stopped - immediate compliance.”

Orissa State Pollution Control Board Directive to Vedanta Aluminium, 12 January 2009

In a directive issued on 12 January 2009, the OSPCB instructed Vedanta Aluminium to take remedial action in relation to contamination from the process water lake, raw water reservoir and the clear water pond by 31 January 2009, and to halt all construction linked to the proposed expansion of the refinery.¹⁵² A subsequent report in March 2009 noted that that company had taken most the remedial actions requested by the OSPCB, including stopping contamination of the raw water reservoir and the clear water ponds, and lining of units in the process areas. It however recorded continuing seepages beneath the incoming pipes of the process water lake. The OSPCB also recorded that the company had not complied with its direction to construct an effluent treatment plant for treatment of contaminated water from the storm water drain and that the refinery continued to discharge storm water through the clean water pond into the river.¹⁵³

CONCERNS AROUND THE DESIGN AND MAINTENANCE OF THE RED MUD POND

Over the last three years, the OSPCB has also highlighted concerns around the design and maintenance of the red mud pond at the Lanjigarh refinery. As highlighted earlier, the red mud pond which stores highly alkaline waste and heavy metals from the refinery needs to be managed particularly carefully because of its close proximity to the river as well as the potential for damage to groundwater and agriculture. OSPCB officials interviewed by Amnesty International said that, given the higher groundwater levels during the monsoon season in

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and around the area where the red mud ponds are constructed, it was necessary to take additional care to avoid any seepage of red mud into the ground water and the natural streams in proximity.



Photo 11: A view of the refinery's red mud pond at Lanjigarh (Amnesty International)

SPECIFIED PROCESS NOT FOLLOWED

In December 2006, as the red mud pond was being constructed, the OSPCB noted that it was not being built as per specifications and may not be impervious. Vedanta Aluminium claimed that the ponds were constructed according to design specifications and approved by experts from the Indian Institute of Science.¹⁵⁴ This was subsequently verified by OSPCB in April 2007.¹⁵⁵ In November 2007, the OSPCB noted that water had accumulated in a corner of the red mud pond. This, it felt, was likely to affect the safety and stability of the dyke and increase the risk of seepage of alkaline water from the pond. It observed that the water level in the mud pond has almost touched the highest level of the dyke. It also found that the high-density polyethylene linings in the process water lake (which is supposed to be used to decant water from the red mud pond) were in a damaged condition and at some places they had been removed and that the construction of the recirculation system had not been completed.

The OSPCB officials documented seepage of alkaline waste water (pH of 11.06) at the bottom of the red mud pond and warned that “any seepage from the pond will ultimately find its way to river Vamsadhara passing through natural ponds, agricultural fields etc” and pointed out that a “[natural] pond is being used by local people for bathing.”¹⁵⁶

The OSPCB issued a direction to Vedanta Aluminium to immediately evacuate the alkaline

wastewater, which had collected in the red mud pond and to stop feeding bauxite for further processing until the process waste lake was ready for use.¹⁵⁷ Vedanta Aluminium responded by stating that the system was designed to contain the water up to spillway level and that the water had never crossed the spillway.¹⁵⁸

“...any seepage from the pond will ultimately find its way to river Vamsadhara passing through natural ponds, agricultural fields etc.”

Orissa State Pollution Control Board Inspection Report on Vedanta Aluminium, 2-4 November 2007

NON-COMPLIANCE WITH THE OSPCB'S DIRECTIONS

The problem continued to recur in 2008. OSPCB officials recorded that their directions to stop feeding bauxite for processing until the process water lake was ready for use and to evacuate the alkaline wastewater from the red mud pond had not been complied with. The OSPCB also recorded that highly alkaline wastewater continued to seep from the red mud pond. It stated that the high concentration slurry disposal method, which Vedanta Aluminium was supposed to utilise, was not being followed, resulting in accumulation of alkaline wastewater in the pond. The thickening of the waste prior to disposal through this method is necessary to significantly reduce the potential for pollution.¹⁵⁹

“...the seepage from the red mud pond is alarming, and the situation is expected to further deteriorate when industry will go into full production capacity.”

Orissa State Pollution Control Board Inspection Report on Vedanta Aluminium, 29-30 January 2008

In a meeting with Amnesty International on 3 March 2009 in Lanjigarh, representatives of Vedanta Aluminium stated that the refinery had always followed the high concentration slurry disposal method and disputed the OSPCB's findings in this regard.¹⁶⁰

The OSPCB also found that the pH of a natural stream was 6.9 before entering the red mud pond area but increased to 8.2 by the time the stream left the red mud pond area [from the OSPCB's description it appears that a portion of the stream flows beneath the red mud pond, the lining of which should be impervious], indicating contamination from the red mud pond. It also pointed to the presence of big boulders and shrubs in the red mud pond, which indicated that the construction of the red mud pond had not been done properly.¹⁶¹ In 2008

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the OSPCB warned: “the seepage from the red mud pond is alarming, and the situation is expected to further deteriorate when industry will go into full production capacity. Presently, the plant is operating in 30% capacity... there is clear indication of ground water contamination in the area...”¹⁶²



Photo 12: A view of the red mud pond under construction at Lanjigarh (Amnesty International)

JOINT INSPECTION BY OSPCB AND OTHER INSTITUTIONS

In February 2008, the OSPCB wrote to the Director of the Indian Institute of Science. The letter noted that there was continuous seepage of highly alkaline wastewater from the red mud pond; therefore either the Institute's hydro-geological studies, on which the Institute's recommendations for the design of the red mud ponds had been made, were incorrect or the construction of the red mud pond had serious lapses.¹⁶³ The OSPCB also issued a memo to the company seeking further explanation. Following this, on 17 March 2008, OSPCB officials and Indian Institute of Science scientists undertook a joint inspection and made recommendations to remove the shrubs from the area because, although the Indian Institute of Science did not feel they posed any immediate problem, they agreed with the OSPCB that in an area which is heavily charged with groundwater, no risk should be taken. They however felt that it would be safer to leave the boulders where they were rather than risk creating a channel for seepage. They recommended a procedure for repairing the pipe joint from which leakage was occurring and for repairing the toe of the dyke because soil was leaching out from the area. The OSPCB's inspection reports in April-May 2008 noted that shrub growths over the boulders in the red mud pond had been removed and that the company was taking steps to grout the suspect seepage points with a new material (bentonite). It also stated there was no seepage of water from the toe of the dyke.¹⁶⁴

Vedanta Aluminium contended, in its response to the OSPCB in July 2008, that the OSPCB-Indian Institute of Science joint inspection had confirmed that there was no leakage from the red mud pond. As discussed above the inspection had however found leakages from a pipe joint and had also suggested further investigation into the causes for the increasing pH of the river to take necessary remedial measures.

OSPCB officials carried out a detailed inspection in December 2008. This inspection report found that, despite the recommendation that they be removed, the bushes were still there. The report also noted that a few streams had originated from the pond itself and that the red mud pond was “charged with groundwater” as the pH of the slurry being fed into the pond was 13 but decreased to 12 when water collected at one end of the pond was measured. This report appears to indicate that groundwater was seeping into the red mud pond, which it should not if the pond is completely impervious.



Photo 13: Villagers at the red mud pond under construction at Lanjigarh (Amnesty International)

According to the OSPCB, the “presence of the stream inside the pond raises the doubt on sustainability of impervious lining made and the presence of bushes and boulders enhances the possibility of caustic wastewater seeping into the groundwater.”¹⁶⁵ The OSPCB directed that these shrubs and boulders be removed and the area made impervious. It also wanted that the sustainability of the impervious lining of the red mud pond should be studied through an expert agency. The OSPCB issued directions under the Water Act, 1974 to Vedanta Aluminium asking for these measures to be taken by 31 January 2009.¹⁶⁶ An inspection report in March 2009 noted that there were still some shrubs in the red mud pond. It also noted that the safety and stability of the red mud pond, process water lake, ash pond and dirty water pond was being monitored by Indian Institute of Science.¹⁶⁷

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Many of the more serious concerns around pollution from the refinery, detailed above, were documented by Senior Scientists of the OSPCB from Bhubaneswar, who travelled to the area to carry out inspections regularly, in addition to those undertaken by regional staff of the OSPCB. According to the latest information available to Amnesty International, no such detailed inspections of the refinery have been undertaken by any Senior Scientists of the OSPCB in 2009. The only inspections that have been undertaken have been done by regional OSPCB staff but Amnesty International has not been able to establish the reasons for this change in practice.

In Amnesty International's view, when the OSPCB's findings during 2006-2009 are taken as whole, they point to a pattern of repeated failures by Vedanta Aluminium to meet the requirements of its license to operate and discharge its responsibility to prevent pollution.

In some instances, the OSPCB's tests found leakages of water at a very high alkalinity level (pH 12 and above), which could pose serious risks to health of people and animals if they came into contact with such water. In other cases, although the pH was higher than the range considered normal for the river, it is unlikely to have posed serious risks but it could contribute to or aggravate skin problems in people who came into contact with the water soon after leakages have occurred.

Amnesty International is also concerned by the frequency with which leakages and seepages have been documented by the OSPCB and that the company has taken significant time, in many cases, to stop such leakages from occurring, despite receiving urgent directions to do so from OSPCB. In the organization's view, this points to a lack of due attention and care by Vedanta Aluminium to managing risks and meeting regulatory requirements for the operation of a refinery in such a sensitive location. The nature of the wastes processed and stored by the refinery and its location raise both short-term and long-term issues in respect of the adequate management of risks to the environment and to people. Shortcomings in the construction or management of the red mud ponds and other infrastructure of the refinery could have negative impacts on the environment and people living in the areas far beyond the life of the project.

IMPACT ON COMMUNITIES

In individual interviews as well as focus group discussions with Amnesty International, members of local communities in several villages described their concerns and fears about using water from the river, which they believed was polluted by the refinery. Some people also described witnessing the company discharge water, which they alleged was caustic water, into the river from the storm water drainpipes at the boundary of the refinery. A number of people from Chhattarpur village repeatedly said that they had witnessed this on various occasions since 2006. According to them, the incidents happened mainly at night and were more frequent in the rainy season.

BOX 11: NEED FOR COMPREHENSIVE PROBE INTO RIVER CONTAMINATION

In numerous inspections reports over the period 2006-2009, the OSPCB highlighted that their regular monitoring indicated that alkalinity of the river has been increasing downstream of the refinery, suggesting that seepages or leakages of alkaline water from the refinery were contributing to such an increase.¹⁶⁸ The river originates in the Niyamgiri Hills and there are no other industries operating in the area.¹⁶⁹

Prior to the refinery construction, the rapid EIA carried out in 2002 had recorded the pH values of surface water at Lanjigarh, upstream of the refinery site, and at Harekrishnapur, a downstream village, as 7.1 and 7.2 and the pH values of groundwater at the same locations as 6.8 and 7.1 respectively.¹⁷⁰ In 2007-2008, the rapid EIA carried out for the refinery's proposed expansion, recorded pH values of surface water at Lanjigarh, upstream of the refinery site, and at Chhattarpur, a downstream village, as 7.01-7.5 to 7.58-8.25.¹⁷¹

In November 2007, the OSPCB recorded that though the river upstream of the refinery had a pH of 7.37, downstream of the refinery this increased to 8-8.1.¹⁷² In its inspection in January 2008, the OSPCB confirmed this "trend of increasing pH", which it stated was due to seepage, leakage or discharge of alkaline wastewater from the plant and had to be addressed urgently.¹⁷³ Although the alkalinity was still within the prescribed standard for that class of river, the OSPCB raised concerns about identifying and preventing leakages to prevent the situation becoming more serious in the future.

The joint inspection conducted by the OSPCB, Indian Institute of Science and National Groundwater Research Institute experts in March 2008 noted that the pH of the river along the boundary of the dirty water pond ranged from 8.2-8.4, which was close to the upper limit of 8.5 but was unable to identify the exact cause for such an increase.¹⁷⁴ National Groundwater Research Institute was subsequently requested to undertake a study to test the soil for alkalinity to confirm contamination and to conduct a regional hydrology study. As far as Amnesty International is aware, these studies are still ongoing.

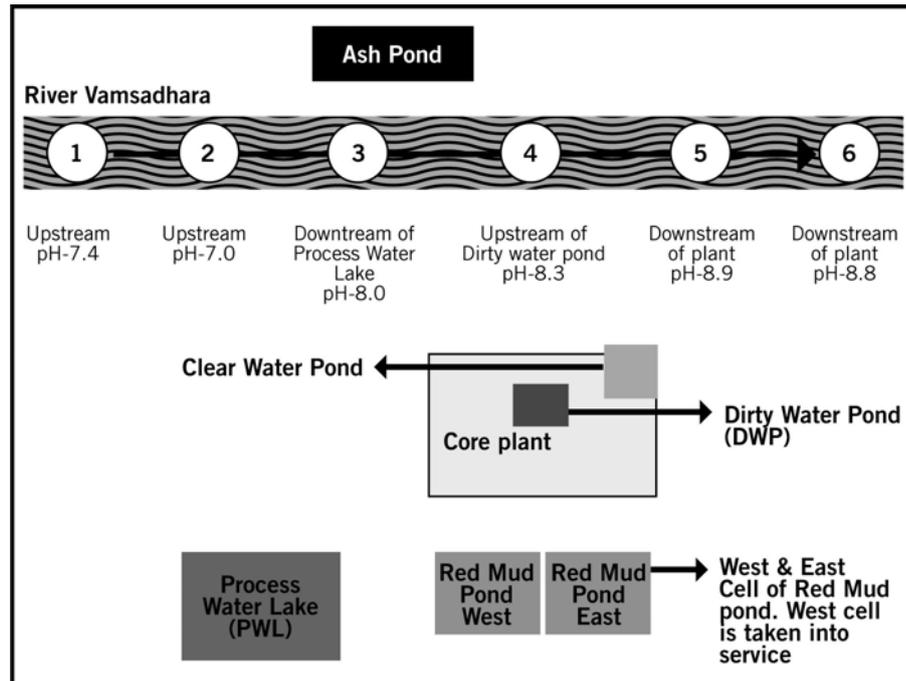
In its response to the OSPCB in July 2008, Vedanta Aluminium contended that readings taken during the joint inspection showed a variation in pH in hilly areas and fields and therefore the higher pH in the area may be due to alkaline soil or excessive use of fertilizers. However, Vedanta Aluminium provided no supporting evidence for this contention.

An inspection in December 2008 documented that the pH of the river downstream of the refinery continued to be higher than the upstream value and that it was recorded at 8.8 or 8.9 near Chhattarpur bridge (see Flowchart 2).¹⁷⁵ The dirty water pond had been repaired by the time of this inspection and the OSPCB found no seepages or leakages from it. The OSPCB therefore thought this increase may be due to leakage from process unit areas or the clear water pond. An inspection by regional OSPCB officials in March 2009 indicated that the pH values of the river downstream of the refinery were now reduced to 7.5. Vedanta officials ascribed the increase in pH values to possible increased use of fertilizer by local communities engaged in agriculture. They also informed Amnesty International that hydro-geological studies in this regard, by experts belonging to National Groundwater Research Institute, Indian Institute of Science and the Indian Institute of Technology, Kharagpur, were continuing.

While the reduction in pH values recorded in the recent inspections is a welcome development, Amnesty International is of the view that the causes of fluctuations in pH should be identified to ensure that they are not caused by any ongoing or periodic pollution by the refinery.

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Flowchart 2: pH values along the river Vamsadhara upstream and downstream of the refinery (Source: OSPCB Inspection Report on Vedanta Aluminium, 3-5 December 2008)

Villagers showed Amnesty International the discharge pipe, which came out of the northern boundary wall of the refinery, where they periodically saw water, which they believed to be caustic discharge because of its appearance and smell, pouring directly into the river. B. C., in his late thirties, stated that he knew the water was 'caustic' because he worked in the refinery and he and other people who worked there were familiar with the characteristics of alkaline water used for bauxite processing and warned as employees on precautions to take in case of contact with such water. R. K. from Chhattarpur stated that he and some other young men from the village had seen water coming out from the storm water drain in the early hours of the morning (See Photo 14). He claimed that the water had a different smell and they had subsequently seen many dead small fish floating to the surface of the river.

Amnesty International was told that people had complained about these kinds of discharges to the OSPCB and in late 2007, officials from the Board had come and tested the water. R., a woman from Chhattarpur, stated, "The [OSPCB] official told us not to drink from or bathe in the river because the water was caustic. He came back approximately two weeks later and told us it was now safe for us to use the water again." As described earlier, the OSPCB had investigated complaints by the villagers on 26-27 September 2007 and found water accumulated near the boundary wall of the refinery (outside the factory) adjacent to the river had a pH value of 10.5 and 11. The OSPCB had ascribed this, based on discussions with the company's personnel, to damage to the clear water pond and arrangements linked to the storm water drain due to heavy rain.

Other than this incident neither the OSPCB nor Vedanta Aluminium has disclosed information to the communities that live in the vicinity of the refinery and rely on the river on the nature and the extent of pollution, which has been documented by the OSPCB as described earlier. The communities have also not been provided with any information on the possible risks related to such pollution and measures that are being taken to mitigate such risks. This has created considerable uncertainty and fear amongst local communities, which have been exacerbated by instances and reports of people suffering from skin problems or falling seriously ill, and cattle dying, after bathing in river water. Some members of local communities are concerned that these effects may have been caused by exposure to caustic water, which they allege has been discharged by the refinery.

“The [OSPCB] official told us not to drink from or bathe in the river because the water was caustic. He came back approximately two weeks later and told us it was now safe for us to use the water again.”

R., a woman from Chhattarpur in Lanjigarh area

Most local people said they only became aware of the pollution through contact with the river water. Skin problems associated with such contact have been widely reported. G., a 15-year-old boy from Bandaguda, said blisters appeared on his hand after he took a bath in the river. “It was not an ordinary wound and took two to three months to heal. I try to avoid going to the river,” he added. S. P., a 28-year-old man from Chhattarpur, said he also tried to avoid using river water. In 2007-2008 he developed new skin blisters on his stomach and back after he bathed in the river. J. N., a 60-year-old woman from Chhattarpur displayed the rashes on her arms and legs, which she alleged was a direct result of taking bath in the river (See Photo 15). P., a woman from Kenduguda, told Amnesty International: “The refinery has built its walls right here making our access to the river very difficult. The water we use now is contaminated with caustic water and other wastes from the refinery. Our children have had blisters and skin problems when we tried to use the river water to bathe them and for washing purposes.” K. T, a 34-year-old woman of Harekrishnapur, said: “We used to bathe in the river but now I am scared of taking my children there. Both my sons have had rashes and blisters.” She also described how she had seen fish and crabs die in the river.

People also described pollution of a natural pond that they used. They believe the pollution is caused by the adjoining ash pond. They described people getting “boils” after bathing in the pond. They also alleged that their cattle had fallen ill or died after drinking from the ash pond itself as the gates to that compound were often left open and the cattle would wander in.

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Testimony provided to Amnesty International by people across several different villages describe the same symptoms. Local health officials and medical workers at the district government hospital in Bhawanipatna, the headquarters of Kalahandi district, confirmed to Amnesty International in March and September 2009 that caustic waste in the river water was the most likely cause of some of the skin problems experienced by local people. However, these officials, who asked not to be named, all felt that they could not openly state their concerns or challenge the company. Vedanta officials, interviewed at the Lanjigarh refinery by Amnesty International in March 2009 denied that pollution from the refinery had caused the skin problems experienced by the villagers. A medical expert consulted by Amnesty International stated that the symptoms described could be the result of high concentrations of alkaline waste in the river water, and associated high pH levels, which could occur in the immediate aftermath of a leak or spill (thereafter the waste material would likely be diluted in the river to levels that would not cause such skin problems).



Photo 14: Drainpipe at the refinery's boundary wall near the river at Chhattarpur (Amnesty International)

Although blisters and other similar skin ailments were the most frequently reported impacts of contact with the water, some deaths were also reported. The village of Chhattarpur witnessed two deaths, which they reported occurred during 2007, which the residents allege were due to contact with water that was contaminated with caustic waste. Narayan Harijan, a 30-year-old Dalit man, told Amnesty International that his father, 60-year-old Kondho Harijan, died after bathing in the river water in 2007: "He had blisters all over his body after coming out of the water. We took him to the government hospital at Rayagada for treatment, but the doctors could not save his life." Another villager, Dubla Harijan, died after bathing in the river in late 2007. "He started vomiting as soon as he returned home after the bath. He died before we could take him to the hospital," said S. K., of Chhattarpur.¹⁷⁶ Dubla Harijan's widow, Rudma, was in tears as she spoke to Amnesty International. Following her husband's

death she wrote to the company but did not get a reply. She tried to apply for a state widow's pension but was refused because she is very young. "My life has changed now and it is very hard to make a living for my family."

In both cases, the villagers said they took the bodies to the hospitals (at Rayagada and Bhawanipatna towns respectively). Doctors did not perform any post-mortem to ascertain the cause of death, but medical personnel confirmed to Amnesty International that the body of Kondho Harijan had been covered in blisters as described by his son.

Despite widespread reports of skin problems following contact with water and the reports by the OSPCB of seepage or leakage of alkaline wastewater into the river, the local authorities have not conducted any health monitoring or studies of potential impacts of the pollution on the local communities. They have also not provided any information to the communities on health risks that may arise due to the pollution or measures being taken to mitigate these risks, thereby leaving people in considerable uncertainty and fear about using the water resources upon which they have traditionally relied. This has undermined their right to water.

“My life has become difficult. It is difficult to get drinking water and to collect water. We are often forced to collect water from a Harijan [Dalit] farmer who lets us take water from his fields.”

K. V., a young Dalit woman at a village in the Lanjigarh area

Although most villagers living close to the refinery's boundary walls had previously relied on the river for drinking water, they repeatedly told Amnesty International that they no longer felt safe doing so. This has limited the availability of drinking water, particularly in the summer months. Between 2006 to 2008, Vedanta Aluminium constructed boreholes and hand pumps in the majority of the villages surrounding the refinery: some of the villagers said the construction of hand pumps in their villages took place after they had complained of pollution of river water. These boreholes have alleviated the need for people to drink the river water. However, some villagers told Amnesty International that often in the dry season water is not available at all or in sufficient quantities from the pumps because the water table is too low. The water from the bore wells is also not sufficient in quantity to meet all their personal needs as well as to provide for their cattle, so many people said that there were still forced to use the river for bathing and washing clothes and for their cattle but were very worried doing so. Women from Dalit communities who live in close proximity to the river and bear the responsibility of collection of water for drinking, washing clothes and dishes told Amnesty International how the situation had become much harder for them now that they could not collect all the water that they needed from the river. As they are not 'allowed' to collect water from the same sources as communities of other castes, they cannot use tube wells in surrounding villages. K. V, a young Dalit woman, stated, "My life has become difficult. It is difficult to get drinking water and to collect water. We are often forced to collect water from a Harijan [Dalit] farmer who lets us take water from his fields."

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Photo 15: The river Vamsadhara at Chattarpur and the Lanjigarh refinery (Amnesty International)

BOX 12: A WALK BY THE RIVER

A group of women from Chhattarpur walked along the Vamsadhara river with Amnesty International researchers, describing the impact of the refinery on their lives. V. V., described how she sometimes found that after she had washed clothes in the river they had a fine white powder on them and her skin itched after putting on those clothes. "I am scared to bathe in the river but where else can I go?" she asked. "Vamsadhara is our life line," another woman said. "We used it for drinking, bathing, washing, but also it was a place for socializing with other women in the community. We have lost some sense of privacy, as there are workers from outside working in the factory who are often passing by or sometimes using water."

As the women tried to show Amnesty International one of the areas where they alleged the company was discharging wastewater, the group was confronted by a security guard from the refinery. He demanded to know who they were and told the Amnesty International researchers that they were not allowed to take photos, although they were on public land outside the refinery. As the group moved on the guard shouted at them and could be heard calling for reinforcements. The local women said that it was not unusual for the guards to shout at them or threaten them when they tried to come near the refinery's boundary walls.

AIR POLLUTION

The main sources of air pollution from the refinery are dust from the bauxite, coal and lime handling areas, fly ash from the coal-fired boiler, particulate matter and other emissions from the calciner stack and boiler.¹⁷⁷ The refinery can also act as a source of noise pollution for

adjacent communities as it operates continuously through the night and day, seven days a week. As highlighted earlier, the refinery has been set up in a manner where there is a very small buffer zone between the refinery boundary walls and the communities that were living in the area before the refinery was built. Some communities (in Bandaguda, Basantpada and Bundel) are located approximately 150–300 metres from the refinery's boundary wall (see Photo 17 and 21), while others live within a 500 metre radius.



Photo 16: Dust settled on leaves of a tree at Bandaguda (Amnesty International)

Effective dust control measures are necessary to reduce the impact of dust from bauxite refineries on workers and surrounding communities. Excessive dust emissions can cause health hazards such as respiratory diseases, irritation to eyes, ears, nose and throat, and skin problems.¹⁷⁸ Management of dust and airborne contaminants is a recognised challenge within mining, including bauxite mining, and in the alumina refining process. Dust can be generated from a number of sources, including waste storage facilities (such as red mud disposal areas), residue drying areas, stockpiles, roads, and drains. As dust generated may be a public health risk and cause environmental impacts from airborne particulates and contaminants,¹⁷⁹ leading practice in the mining industry is to prevent dust emissions as much as possible, implement dust control measures and regularly monitor and test the effectiveness of those measures. Testimonies from people living in the vicinity of the refinery and the red mud and ash ponds, as well as findings by the OSPCB, however, indicate that Vedanta Aluminium has failed to set up and maintain effective dust management systems.

Amnesty International conducted focus group discussions and individual interviews with a number of communities who live close to the refinery. All the people that Amnesty International spoke to complained about the negative effects of dust, emissions and noise from the refinery on their day-to-day lives.

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The effects of the dust are wide-ranging. Daily exposure to dust, which is inhaled and ingested on food and in drinking water, has caused extreme discomfort for the people around the refinery. Villagers around the refinery, in numerous interviews and group discussions, described to Amnesty International how dust emanating from the refinery settles in people's homes and on their clothes, leaves deposits on their trees, fruits, paddy crop, water and even prepared food (see Photo 16) and undermines their quality of life. Many people also complained of ongoing respiratory problems.

People at Chhattarpur, Bandaguda, Kappaguda and Rengopalli explained how they have to constantly rub their eyes due to the fine bauxite dust from the loading and unloading operations and the boiler's stack and fly ash emissions. Amnesty International researchers were able to verify the impacts of dust from the refinery directly in several locations during visits to the area. Researchers felt physically uncomfortable and experienced burning sensations in their nose and throat after conducting interviews in villages adjacent to the refinery. Researchers also left glasses of water and tea standing inside a hut in Bandaguda for 30 minutes to verify villagers' claims that dust quickly settles on any food or drink left uncovered. Amnesty International researchers observed that within 30 minutes there was a visible layer of dust on the surface of the liquid, making the water unpalatable.

“This dust from the factory is killing me... My throat is constantly sore as I inhale so much smoke and dust... Even though I am hard of hearing, it is impossible to sleep with the noise from factory. It is really a mental torture. I want to get away from this noise and dust; I cannot take it any more.”

K. M., a 70-year-old woman at Bandaguda in the Lanjigarh area

In numerous interviews and focus group discussions, people not only described the impacts of noise, dust and other emissions, but also were visibly physically uncomfortable. K. M., a 70-year-old woman from Bandaguda, interviewed in February 2009, kept rubbing her eyes throughout the interview. “This dust from the factory is killing me,” she said. “I was finding it hard to see before and now this constant dust from the refinery is making it even harder for me to see. My throat is constantly sore as I inhale so much smoke and dust. Even though I am hard of hearing, it is impossible to sleep with the noise from factory. Throughout the day and night it doesn't stop for a minute, I'm not sure what, and for whom they are producing. It is really a mental torture. I want to get away from this noise and dust; I cannot take it any

more.” Her grandson, who was on her lap during the interview, also kept rubbing his eyes and coughing. “Most of the children in the village have sticky eyes when they get up in the morning,” she explained. “This is a new phenomenon and we are a bit worried.”

In a focus group discussion near Basantpada, people living in a cluster of huts close to the boundary wall described various respiratory problems that they were experiencing, which they felt were caused by the dust and other emissions from the refinery. Most people complained of coughing and dry throats, some complained of headaches and that their spit had red residues in it. H. D., a woman in her sixties, said that she could not sleep because of the constant noise from the refinery. She said, “it sounds like the beating of drums all night.”

People also complained about ash blowing in from the ash pond and dust from the red mud ponds. S. M. from Rengopalli said that red dust from the red mud pond flies into their homes and settles on their faces and eyes. He complained of “his eyes burning.” Another woman said, “It is like sunset in the morning with the red dust.”



Photo 17: The Lanjigarh refinery's boundary wall, barely 150 metres away from Bandaguda village (Amnesty International)

Many people from Chhattarpur had petitioned Vedanta Aluminium and the District administration to be relocated to another area because they felt that their proximity to the refinery and the pollution from it had made living in their village impossible.¹⁸⁰ Villagers at Basantpada and Bandaguda also expressed concern over the reports that another stack could be built soon just inside the refinery's boundary wall which adjoined their village.

The OSPCB inspection reports have documented air pollution caused by the refinery. In September 2007, a few months after the refinery started production, the OSPCB carried out an inspection of air pollution, following complaints by villagers in Chhattarpur that dust from the refinery was settling on their homes and food. In a report dated 26-27 September, the OSPCB stated that the refinery could have emitted fine alumina particles during the trial operation of the calciner and reprimanded the company for not informing the villages of possible problems during start-up operations.¹⁸¹ Two months later, in a more detailed inspection, OSPCB officials found that particulate matter emitted from the boiler was

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recorded to be 795 mg/Nm³, more than five times the stipulated limit of 150 mg/Nm³. They stated: "such high emission within a valley has the potential to cause atmospheric pollution in the vicinity and health hazards."¹⁸² The OSPCB issued a direction under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 requiring Vedanta Aluminium to immediately stop the operation of Boiler No. 3. The company was also issued with a 'show cause' notice, which it responded to stating that the plant was on start up mode and during the inspection the emission level was higher due to continuous pipe choking problem, which has since then been rectified.¹⁸³



Photo 18: Trucks transporting bauxite to Lanjigarh (Amnesty International)

However, in another inspection, one month later, the OSPCB found that the particulate matter emission from Boiler No. 3 was 385 mg/Ncubic metres, which was still far above the stipulated limit. The report noted that the OSPCB's direction to stop operation of Boiler No. 3 had not been complied with. The OSPCB also stated that an online monitoring system for measurement of particulate matter in both the boiler and calciner stack had not been installed. It anticipated that the emission would in fact increase when the refinery switched to using local coal.¹⁸⁴

In another inspection in December 2008, the OSPCB found that dust was being generated from the lime handling plant and the coal handling areas. It also found that the emission of particulate matter was still marginally higher than the prescribed standard and that the ESP of Boilers 2 and 3 had not been modified. It noted that these boilers had been operated for many months without making any of the required modifications. The OSPCB, when monitoring the ambient air quality in areas surrounding the refinery, found that the concentration of suspended particulate matter exceeded the standard prescribed for residential areas in Bandaguda and Chhattarpur villages.¹⁸⁵

In a directive dated 12 January 2009, the OSPCB set a deadline of 31 January 2009 for corrective action to be taken on these issues.¹⁸⁶ In its March inspection, it noted that Vedanta Aluminium had carried out the required action.¹⁸⁷

Local health officials and medical officials at the Kalahandi District government hospital in Bhawanipatna told Amnesty International that the refinery's dust emissions were the most likely cause of the respiratory illnesses and discomfort experienced by the local communities. However, as stated above, these officials did not want to be named, as they felt that they could not openly state their concerns or challenge the company.

During the meeting with Amnesty International in Lanjigarh, staff from Vedanta Aluminium claimed that there was no noise or dust pollution from the refinery. The Rapid Environmental Impact Assessment (EIA) for the expansion of the refinery also stated that noise levels and air pollution levels measured by them were within permissible levels. It appears however that none of the communities living in proximity to the refinery were interviewed or consulted about their concerns in relation to noise levels or dust and emissions emanating from the refinery as part of the rapid EIA.¹⁸⁸



Photo 19: Protesters at Ambadola against bauxite unloading and alumina powder loading (Amnesty International)

CONCERNS LINKED TO THE TRANSPORTATION OF BAUXITE

Villagers around Lanjigarh interviewed by Amnesty International also complained of noise and air pollution due to the high volume of trucks carrying coal and bauxite. The coal and bauxite arrive by rail and are unloaded at Dahikal, 13 km from Lanjigarh, and transported by truck to the refinery along narrow, bumpy roads close to villages. An estimated 200 trucks arrive by road at the refinery daily (arriving throughout the day and night); an estimated 70-90 container trucks carrying alumina powder in containers also leave the refinery daily (see Photos 18 and 20). Amnesty International researchers witnessed the volume of traffic

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associated with the refinery. Large trucks carrying bauxite kept arriving at Lanjigarh, struggling along the narrow, battered roads. Although the OSPCB has stipulated that all bauxite-laden trucks should remain covered,¹⁸⁹ trucks are often left uncovered, leading to air pollution from the exposed piles of bauxite. The fact that many trucks carrying bauxite are left uncovered was reported by numerous villagers and witnessed by Amnesty International researchers during visits to the area.

The local communities have held several protests against air pollution and the deterioration of roads caused by the transportation of bauxite. The latest round of protests were held in April, May and July 2009, when residents of Kesinga, Rupra Road and Ambadola launched protests against Vedanta Aluminium's decision to unload bauxite and coal arriving by rail right from the track adjacent to their villages and transport it in large trucks through narrow village tracks (See Photo 19). In April 2009, after conducting investigations, the OSPCB asked Vedanta Aluminium to stop loading and unloading operations which were being carried out without significant air pollution control measures affecting the local residents at Kesinga and, in July 2009, it asked the company to stop such unloading and unloading operations without proper clearances.¹⁹⁰

Neither the nature nor the extent of the air pollution that has occurred as a consequence of the refinery at Lanjigarh has been disclosed to communities living around the refinery. Despite repeated failures by Vedanta Aluminium to comply with conditions to monitor and regulate emissions, the authorities have not enforced their own directions to the company to stop operating equipment until regulatory requirements were complied with. Similarly, there has been a lack of effective enforcement of conditions identified by the OSPCB in relation to transport of bauxite. Many communities living in the vicinity of the refinery and transport routes have reported experiencing levels of discomfort because of dust and other emissions, which could seriously undermine their right to a healthy environment as a component of the right to health.

The government's obligation to protect the right to health requires it to enforce pollution laws and also to investigate and monitor the possible health impacts of pollution. However, despite widespread concern among the communities about the health effects of pollution, no health monitoring of the affected villages has been carried out, which has exposed people to health risks, including potentially long-term health problems. Amnesty International consulted a medical expert who said stated that long-term exposure to dust could cause a range of health problems, including respiratory problems. Vulnerable members of the community would be particularly at risk.

REFINERY AND EXPANSION

Despite the significant pollution problems associated with the current refinery, in October 2007, Vedanta Aluminium sought environmental clearance for the six-fold expansion of the refinery's capacity (see Chapter 1). As seen above, the OSPCB, in its 12 January 2009 memo, had asked the company to immediately cease construction related to expansion of the refinery as it had not obtain the required permissions, including the environmental clearance for expansion.¹⁹¹ A subsequent OSPCB report dated 31 March 2009 however notes that the expansion activities were continuing.¹⁹²

The proposal for the refinery's six-fold expansion envisages an increase in the capacity to refine bauxite from 1.0 MT to 6.0 MT per year and would involve the construction of additional refining facilities including additional red mud and ash ponds, a dedicated railway corridor and additional township housing. The Rapid EIA conducted for the expansion estimates that the expanded refinery would produce 7.5 MT of red mud per year but states that due to process improvements this will be reduced to roughly an additional 2.5 MT per year.¹⁹³ It also estimated that the expanded refinery would produce 2,388 tonnes of ash per day.¹⁹⁴ The proposed expansion would require the compulsory acquisition of an additional 1,340 hectares of land from about 800 families, largely from Majhi Kondh and Dalit communities in the area. A large amount of this land would be used for construction of new red mud and ash mud ponds to handle the increased waste produced by the expanded refinery.¹⁹⁵



Photo 20: Container trucks waiting at Lanjigarh to load alumina powder (© Sanjit Das)

In light of the OSPCB findings of pollution discussed earlier in this chapter and the negative impacts already experienced by the surrounding communities, such a massive expansion could greatly increase the risks to local communities and the environment. The environmental impact assessment commissioned by Vedanta Aluminium for the proposed expansion completely fail to evaluate or even refer to the OSPCB reports documenting instances of pollution and the concerns raised by local communities.¹⁹⁶ It therefore fails to adequately assess how any future expansion would be managed so as to prevent a recurrence of the problems that have been documented in relation to the past and current operations of the refinery. The EIA for the expansion did not assess data linked to air pollution in a number of sites which are in close proximity to the refinery, though these would be of obvious interest in terms of assessing impact of any emissions by the refinery. Dr. Alan Tingay, a scientist with many years experience in environmental impact assessment of mining and industrial projects

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who reviewed the EIA for Amnesty International, also pointed to the omission of specific analysis of dust emissions from the red mud ponds in the EIA as particularly noteworthy because, from the experience of other refineries, he regarded these kinds of emissions as a major concern to communities close to the red mud ponds. He also noted that the EIA does not provide much information on how actual performance would be monitored.

As with previous EIAs discussed in Chapter 4, the EIA for the refinery expansion does not assess the risks posed by the proposed expansion to the rights to water, health, food and work of the local communities and how any such risks would be mitigated and managed. As noted in Chapters 3 and 4, because EIAs give only limited attention to socio-economic issues and none to human rights, many issues of critical importance to the well-being and the human rights of affected individuals and communities are not captured in EIAs. Unless the company and the government take specific action to identify, assess and address the human rights implications of major projects such as the alumina refinery, it is likely that negative impacts will occur.

Concerns about the proposed expansion have also been heightened by the lack of information and a wholly inadequate consultation process, both of which have left many people in the dark about the project's impacts.

The OSPCB called a public hearing on the refinery expansion at Belamba on 25 April 2009. The documents made available to the local communities prior to this public hearing were the executive summaries of the rapid EIA (in English and Oriya) and the rapid EIA (in English) commissioned by Vedanta Aluminium for the proposed expansion.¹⁹⁷ Although regional OSPCB staff were present at the meeting, they did not share any of the OSPCB's findings on water and air pollution with the affected communities during the April meeting, leaving them with very little information on the risks to which they had already been exposed.¹⁹⁸ Video footage of the meeting, obtained by Amnesty International, also showed that the OSPCB staff present did not answer questions about pollution raised by local people during the meeting.¹⁹⁹

Despite the fact that a significant number of people highlighted serious concerns or were opposed to the expansion, the official written record of the public hearing prepared by the OSPCB states: "the overall opinion of the public about the project was favourable provided the proponent [Vedanta Aluminium] takes care of their [public] issues."²⁰⁰

Amnesty International regards the process of the public hearing to be deeply flawed because of the failure to provide the communities with crucial information on pollution problems, documented by an official state body, in relation to the operation of the current refinery. There was also a lack of information on the nature and likely impact of the proposed expansion. The failure to answer questions and the inaccurate recording of the outcome is also clear evidence of the government's failure to protect the human rights of the affected communities.

In Amnesty International's view, the proposed six-fold expansion of the refinery poses very serious risks to the human rights of the communities living in the area.

“...the overall opinion of the public about the project was favourable provided the proponent [Vedanta Aluminium] takes care of their [public] issues.”

Orissa State Pollution Control Board, on the 25 April 2009 public hearing at Belamba

As discussed above, the OSPCB has reported serious concerns about water contamination and air pollution associated with the refinery on several occasions over the three-year period between 2006 and 2009. The OSPCB has also recorded repeated failures by Vedanta Aluminium to comply with OSPCB directions to address problems in a timely manner. Despite the sensitive location of the refinery and the concerns raised by local communities, the company has repeatedly delayed carrying out repairs or taking other actions required by the OSPCB. The OSPCB has also reported failures by the company to comply with conditions to monitor and regulate emissions. The company has failed to meet fundamental requirements for its license to operate the refinery; the requirements to ensure that there is “zero discharge” from the refinery and to adequately design and maintain its processing and waste management systems to prevent pollution.

Despite these failures by the Vedanta Aluminium, and the risk to which they expose local communities, the authorities have not strictly enforced their own directions to the company, including directions to stop operating equipment until regulatory requirements were complied with. This failure of government authorities to effectively and adequately regulate industry has undermined protection of the environment and human rights.

Not only has the government failed to take adequate action to protect people from the negative impacts of the refinery, it has failed even to provide them with information gathered by the state authorities. Neither the nature nor the extent of both the actual and potential water and air pollution associated with the refinery has been disclosed to the local communities. Although over 20 reports have been prepared by the OSPCB between 2006 and 2009, neither the reports nor their substantive content has ever been shared with communities by the authorities. Amnesty International obtained the reports under India's 2005 Right to Information Act.

The pollution documented by the OSPCB, along with the repeated and consistently expressed concerns of the communities about dust and water contamination raise significant concerns about the health impacts of pollution on the local population. Testimonies recorded by Amnesty International indicate that people's access to the water resources that they have traditionally relied on has been diminished because of their fears about the pollution of water and effects on their health. People have reported adverse health impacts and that that they experience the environment that they live in as extremely uncomfortable because of dust and other emissions from the refinery.

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Photo 21: The Lanjigarh refinery, as viewed from Kenduguda village (Amnesty International)

Although some local health officials have expressed the view that the refinery is causing some of the health problems that communities complain of, no action has been taken by the government to investigate or monitor health concerns. Nor has Vedanta Aluminium taken any steps to investigate or even meaningfully discuss the communities' health-related concerns. The EIAs prepared for the refinery expansion contain no mention of community health concerns, or of OSPCB data that would give rise to health concerns.

The testimonies of local people, together with the pollution documented by the OSPCB, raise serious concerns about negative impacts by the refinery's operations on the rights to water, health and livelihoods of the communities living in proximity to the refinery, which have not been adequately addressed by either the company or the government.

Vedanta Aluminium has repeatedly denied that pollution has occurred or that its operations are having a negative impact on local people. Amnesty International acknowledges that the company has taken action in relation to many of the problems identified by the OSPCB, but – as noted above - often only after significant delays and repeated warnings. Moreover, some key issues remain unaddressed and others still await the results of studies that are being undertaken by other bodies.

Amnesty International considers that all of the factors outlined above point to failures on the part of both the government and company to discharge their responsibility to ensure that the operations of the refinery do not harm the environment and the human rights of local communities. The company needs to take urgent measures to address this situation, including through disclosure of information on all waste process, including any leakages or other emissions, urgently amending or ceasing practices that give rise to pollution, and

remediating any damage caused. The authorities need to strictly and transparently enforce regulations, ensure information on the impacts of the refinery is made accessible to communities and should also carry out systematic health monitoring on the possible health effects of the documented pollution. The company and OSPCB should also implement a monitoring program in areas close to the refinery and red mud lake with continuous assessment of alkalinity levels in the river and representative streams and ponds and suspended particulates in the air.

Given the existing problems associated with the refinery it is imperative that these measures are taken before any expansion is considered. Moreover, a necessary pre-condition for considering a proposal for expansion would be a thorough assessment of the risk to human rights and the company's capacity and plans to manage such risks, considering the concerns that have arisen over the last three years. The process of identifying risks to the population should involve genuine consultation with the communities themselves and must take their views and knowledge into account. The time given to this process should be adequate to enable an effective assessment of the potential human rights impacts and to develop plans to address any risks identified.

6. HUMAN RIGHTS, STATES AND COMPANIES

“The human right to water is indispensable for leading a life in human dignity.”

UN Committee on Economic, Social and Cultural Rights

THE RIGHT TO WATER

As a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), India is under an obligation to ensure the availability of sufficient, safe, acceptable water for personal and domestic uses.²⁰¹ The human right to water has been recognized as a component of the right to an adequate standard of living guaranteed under Article 11 of the ICESCR but is also closely linked to the rights to health (article 12), adequate housing, and food (Article 11.1).²⁰² The UN Committee on Economic, Social and Cultural Rights, the expert body that monitors the implementation of the Covenant, has stated, “the human right to water is indispensable for leading a life in human dignity.”²⁰³ While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:²⁰⁴

(a) Availability: The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene;

(b) Quality: The water required for each individual's personal and domestic use must be safe, and therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health;

(c) Accessibility: Water and water facilities and services have to be accessible to everyone without discrimination, within the state's jurisdiction. Water, and water adequate water facilities and services must be physically and economically accessible. Accessibility also includes the right to seek, receive and impart information concerning water issues.

The right to water includes the right to maintain access to existing water supplies necessary for the enjoyment of the right and to be free from contamination of water supplies.²⁰⁵ The Committee has stressed that States should take steps to ensure that "Access to traditional water sources in rural areas" and "Indigenous peoples' access to water resources on their ancestral lands" is "protected from unlawful encroachment and pollution."²⁰⁶

“Water is a limited natural resource and a public good fundamental for life and health ... Water is required ... to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work)”

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The obligation to protect requires States to prevent third parties, including companies, from interfering in any way with the enjoyment of the right to water.²⁰⁷ A failure by a State to take all necessary measures to safeguard persons within its jurisdiction from infringements of the right to water by third parties would lead to a violation of the Covenant.²⁰⁸ The obligation to protect includes, "adopting the necessary and effective legislative and other measures to restrain, for example, third parties from... polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems."²⁰⁹ The Committee has stressed that a failure to enact or enforce laws to prevent the contamination of water would constitute a violation of the right to water.²¹⁰

Pollution of water can also undermine the enjoyment of other human rights. The Committee on Economic, Social and Cultural Rights has clearly expressed the relationship between water and other human rights, stating:

“Water is a limited natural resource and a public good fundamental for life and health. ..Water is required ...to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work)...”

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The Committee has also identified, in line with the requirement under the Covenant that a people may not “be deprived of its means of subsistence”²¹¹, a duty on States parties to ensure that “there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.”²¹²

The Committee has also clarified the international obligations of States and stated, “Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries.”²¹³

THE RIGHT TO HEALTH

Article 12.1 of the ICESCR guarantees “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including the creation of conditions which would ensure to all medical service and medical attention in the event of sickness.” The Committee on Economic, Social and Cultural Rights has clarified that:

*“the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as access to safe and potable water ...and a healthy environment.”*²¹⁴

“... development-related activities that lead to the displacement of Indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbolic relationship with their lands, has a deleterious effect on their health.”

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Article 12.2 of the ICESCR further provides that, “The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include

... (b) The improvement of all aspects of environmental and industrial hygiene.”

The Committee on Economic, Social and Cultural Rights has clarified that a State's obligation under Article 12.2(b) extends to “the prevention and reduction of the population's exposure to harmful substances such as... harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.”²¹⁵ Violations

of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. "This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others; ... and the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries."²¹⁶

The Committee has also stated that it considers "that development-related activities that lead to the displacement of Indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbolic relationship with their lands, has a deleterious effect on their health."²¹⁷

THE RIGHTS TO INFORMATION AND PARTICIPATION

The collection, analysis and publication of information is critical to ensuring human rights are protected in many contexts. The Committee on Economic, Social and Cultural Rights has recognized the importance of information in relation to the rights to health and water, amongst others.²¹⁸ The Committee has affirmed that access to health-related education and information is an important component, and an underlying determinant, of the right to health.²¹⁹ The Committee has also emphasised that "Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties."²²⁰ Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which India is a party to, also guarantees the freedom to seek, receive and impart information as a component of the right to freedom of expression.

Article 25 of the ICCPR recognizes and protects the right of every citizen to take part in the conduct of public affairs. The Human Rights Committee has clarified that the "conduct of public affairs ... is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels."²²¹ The Committee on Economic, Social and Cultural Rights has also highlighted the right of individuals and groups to participate in decision-making processes, which may affect their development or the exercise of the right to water and that this right must be an integral part of an integral part of any policy, programme or strategy concerning water or to discharge governmental obligations in relation to the right to health.²²²

THE RIGHTS OF INDIGENOUS PEOPLES

As a party to the ICCPR, ICESCR, International Convention on the Elimination of All Forms of Racial Discrimination and the International Labour Organization's Indigenous and Tribal Populations Convention (Convention no. 107), India is under an obligation to protect the rights of Indigenous peoples over the lands and territories they traditionally occupy. The United Nations Declaration on the Rights of Indigenous Peoples, 2007, (the Declaration) affirms the right of Indigenous peoples to the lands, territories and resources, which they have traditionally owned, occupied or otherwise used or acquired and requires that States give legal recognition and protection to these lands, territories and resources.²²³ It also states:

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“Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”²²⁴

“Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”

UN Declaration on the Rights of Indigenous Peoples, 2007

Various international human rights bodies have also recognised the central importance of Indigenous peoples' relationship with their lands for the realisation of their other human rights. The Human Rights Committee has stated in relation to State obligations to protect the rights of Indigenous peoples to practice their own culture,

“... culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.”²²⁵

The Committee on Economic, Social and Cultural Rights has also recognised this relationship and emphasised,

“The strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately their cultural identity.”²²⁶

The Declaration therefore requires States to “consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”²²⁷ The obligation of States to seek the free

and informed consent of Indigenous peoples has also been reinforced by various human rights bodies, while clarifying governmental obligations under the ICCPR, ICESCR and ICERD, all treaties that India is a party to.

The Committee on the Elimination of Racial Discrimination has called on States to ensure that “no decisions directly relating to their [Indigenous] rights and interests are taken without their informed consent.”²²⁸ The Committee on Economic, Social and Cultural Rights has emphasised, “State Parties should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights.”²²⁹

VIOLATIONS OF HUMAN RIGHTS BY THE GOVERNMENTS OF INDIA AND ORISSA

The government of India has breached its obligations to respect and protect the human rights of the Dongria Kondh and other communities affected by the mining and refinery projects.

The government of Orissa, in contravention of India's obligations under the ICESCR, ICCPR and ICERD as well as standards enunciated in the Declaration, has not made any attempt to seek the free, prior and informed consent of the Dongria Kondh before granting a lease to mine bauxite in the lands they have traditionally occupied and which they consider sacred. The government of India has also failed to ensure that such a process has been set up before granting regulatory clearances to the mining project.

In relation to both the mining and refinery project, both state and national level authorities have failed to provide adequate information to communities, failed to adequately assess the potential impacts of the projects on the human rights of affected communities and failed to set up a genuine process of consultation with them. The government of India has granted clearances to the projects, without taking all necessary measures to ensure that the activities of the company do not infringe the rights of the communities affected by the projects.

“State Parties should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights.”

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Though the OSPCB has undertaken regular monitoring of the refinery, it has failed to enforce laws to prevent the contamination or pollution of water and air, leading to violations of the right to water and health of the affected communities. The nature and extent of pollution as well as potential health and other impacts have not been disclosed to the communities living near the refinery. Neither state level nor national level authorities have undertaken any kind of health monitoring of the communities, despite significant health concerns being raised by the communities. The government of India has therefore failed to protect the rights to water and health of the affected communities, in breach of its obligations under the ICESCR.

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CORPORATE RESPONSIBILITY FOR HUMAN RIGHTS

Governments are responsible for protecting human rights – including when these rights are threatened by business operations. But government failure to protect human rights does not absolve companies of responsibility for the impact of their operations on human rights. The emerging consensus on corporate responsibility for human rights is that companies should – at minimum – respect all human rights. This is the position articulated by Professor John Ruggie, the UN Special Representative of the Secretary-General on business and human rights, in his 2008 report to the UN Human Rights Council.

Policy commitments on human rights are not enough; companies must actively seek to understand and prevent violations of human rights that may occur as a consequence of their operations. Professor Ruggie has described this as human rights due diligence. Due diligence encompasses the steps a company must take to become aware of, prevent and address adverse human rights impacts.

Assessment of human rights impact is increasingly seen as vital for businesses, particularly in sectors that are highly physically invasive, such as extractive industries. According to Professor Ruggie, “While these assessments can be linked with other processes like risk assessments or environmental and social impact assessments, they should include explicit references to internationally recognized human rights. Based on the information uncovered, companies should refine their plans to address and avoid potential negative human rights impacts on an ongoing basis.”²³⁰

The principles of corporate human rights due diligence are reflected in globally accepted tools developed and used by companies. For example, the Equator Principles are a set of environmental and social benchmarks for project financing established by a number of private banks in 2003.²³¹ These Principles require a social and environmental assessment for all projects which are categorized as medium or high risk. The assessment covers a range of critical issues including sustainable development, protection of human health, socio-economic impacts, land acquisition, impacts on Indigenous peoples and communities, and the cumulative impacts of projects. Based on the assessment, Equator banks make agreements with their clients on how they mitigate, monitor and manage those risks.

Many of the world's major mining companies have made commitments to proactively assess risk and prevent harm to human rights. The Sustainable Development Principles of the International Council on Mining and Metals (ICMM) include commitments to uphold fundamental human rights and respect cultures, customs and values in dealings with those affected by mining activities. The ICMM Sustainable Development Principles also commit mining companies to effective and transparent engagement and communication with stakeholders on the issues.²³²

CORPORATE FAILURE TO RESPECT HUMAN RIGHTS

From the preceding evidence it is clear that Vedanta Resources and its subsidiaries, Vedanta Aluminium and Sterlite India, have failed to respect the human rights of the people of Lanjigarh and the Niyamgiri Hills.

Pollution associated with Vedanta Aluminium's refinery has seriously undermined human rights, including the right to health and a healthy environment, and the right to water. Vedanta Aluminium has not taken adequate steps "to become aware of, prevent and address adverse human rights impacts" of its operations. The refinery fails to meet accepted national and international standards in relation to its environmental, social and human rights impact. Without addressing the existing problems, any move to expand the refinery could result in serious human rights abuses.

The proposed bauxite mining project, involving Sterlite India and the state-owned Orissa Mining Corporation, threatens the survival of a protected Indigenous community. In particular, the proposed mine could have grave repercussions for the Dongria Kondh communities' human rights to water, food, health, work and other rights as an Indigenous community in respect of their traditional lands. However, these risks have been largely ignored and consultation with and disclosure of information to affected communities have been almost non-existent.

BOX 13: VEDANTA'S RESPONSE TO THE ISSUES

Vedanta Resources and its subsidiary companies, Vedanta Aluminium and Sterlite India, have repeatedly denied that their operations in Orissa are causing serious harm to local communities. On the contrary, Vedanta Resources and its subsidiaries have argued that the company's operations are beneficial.

In August 2008, responding to concerns about the possible impact of the mine on protected forests, including depletion of water sources and flora and fauna, the Supreme Court of India ordered the Government of Orissa, the Orissa Mining Corporation and Sterlite India to establish a Special Purpose Vehicle (SPV) to undertake development work in the region. The SPV has reportedly put together proposals for the conservation and development of the Dongria Kondh and other Adivasi communities. No details of the proposals have been disclosed to these communities and they were not involved in the design of this development programme.

Vedanta Resources has made public commitments to sustainable development. However, the approach taken by both the SPV and Vedanta Resources appears to focus only on the potential benefits associated with the mining and refinery projects and on corporate-sponsored development activities, while ignoring the negative impacts of the mine and refinery on local communities. Initiatives such as assisting with local medical care can be very beneficial; however, they do not give licence to continue with practices that cause harm to human health and well-being.

Sustainable development is an important concept, but it cannot be used to justify human rights harms caused to communities by mining operations.²³³ Plans to "develop" communities that are drawn up without their involvement or consent, and which appear to be used to justify significant changes to their traditional way of life, constitute a fundamental abuse of human rights. Sustainable development must be community driven. Development cannot be sustainable if the people are not involved and their choices not respected. The development approach taken at Orissa is fundamentally flawed – both in terms of human rights and sustainability.

7. RECOMMENDATIONS

RECOMMENDATIONS TO GOVERNMENTS OF INDIA AND ORISSA

IN RELATION TO THE REFINERY

Take action to address the negative environmental, health, social and human rights impacts of the refinery, in full consultation with the affected communities. This should include:

- Ensuring that Vedanta Aluminium undertakes a comprehensive clean-up of the pollution it has already caused and reports on this publicly and regularly in a manner accessible and available to the local communities.
- Ensuring that any person whose human rights have been violated have access to justice and to an effective remedy and reparations.

Take prompt action to prevent any further contamination of the river and to address existing problems. If necessary suspend operation of the refinery until pollution problems are addressed.

Ensure that all applicable regulations, including those related to water and air pollution are enforced consistently and transparently.

Carry out systematic health monitoring on the possible health effects of pollution associated with the refinery and take appropriate action to address negative health impacts.

Undertake an independent and impartial human rights and environmental impact assessment of the proposal for expansion of the refinery; ensure genuine consultation with communities and individuals who may be affected by the proposed expansion.

Ensure information on the nature and extent of the pollution and associated risks are made accessible to communities.

Ensure respect for and protection of the rights to freedom of expression and peaceful assembly; the policing of protest actions should be fully consistent with human rights law and standards, including in relation to the rights to freedom of expression and assembly and the use of force.

Ensure that no expansion of the refinery is allowed to proceed until:

- Action has been taken to adequately address existing problems in a manner that respects human rights
- A human rights impact assessment has been carried out as detailed above and all appropriate action taken in light of this assessment to protect human rights.

IN RELATION TO MINING IN THE NIYAMGIRI HILLS

Establish a process to seek the free, prior, informed consent of the Dongria Kondh in relation to the bauxite mine. This process must include:

- Providing communities with accessible and adequate information, including to those who are not formally literate, about the mining project.
- A comprehensive human rights and environmental impact assessment of the bauxite mining project, undertaken in genuine and open consultation with the Dongria Kondh communities. Appropriate procedural safeguards should be established to ensure the Dongria Kondh can participate in the assessment process and that their knowledge and perspectives are given due weight and respect. The time given to this process should be adequate to enable an effective assessment of the potential human rights impacts and to develop plans to address any risks identified.

Ensure the Dongria Kondh's free, prior and informed consent is obtained prior to any continuation of the proposed project and respect their decision if they do not provide it. It is clear that the Niyamgiri Hills are of vital importance to the Dongria Kondh, and essential to their survival as a distinct people, and maintenance of their livelihood, culture and way of life.

Ensure respect for and protection of the rights to freedom of expression and peaceful assembly; the policing of protest actions should be fully consistent with human rights law and standards, including in relation to the rights to freedom of expression and assembly and the use of force.

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RECOMMENDATIONS TO VEDANTA RESOURCES AND ITS SUBSIDIARIES

Urgently and fully address the existing negative environmental, health, social and human rights impacts of the Vedanta Aluminium refinery at Lanjigarh: this should be done in genuine and open consultation with the affected communities.

Proactively disclose to the affected communities information on the existing refinery, the proposed expansion and the mining project; ensure that this is done in a manner that is accessible to them and cooperate fully with any state process on such disclosure.

Cooperate with an independent and impartial human rights and environmental impact assessment of the proposal for expansion of the refinery.

Make a public commitment not to expand the refinery or begin mining until existing problems are addressed; full, impartial and adequate assessments of the human rights implications of the proposed projects are carried out; and effective plans are developed and action taken to ensure that human rights are respected and protected.

Ensure the Dongria Kondh's free, prior and informed consent is obtained prior to any continuation of the proposed project and respect their decision if they do not provide it. It is clear that the Niyamgiri Hills are of vital importance to the Dongria Kondh, and essential to their survival as a distinct people, and maintenance of their livelihood, culture and way of life.

RECOMMENDATIONS TO VEDANTA RESOURCES' BANKERS AND INVESTORS

Express concern to Vedanta Resources about the impact of its operations in Orissa on human rights and call on Vedanta Resources to implement the recommendations above.

Ask Vedanta Resources to report regularly on progress by the company to address the risks and human rights concerns surrounding its operations in Orissa.

Call for a suspension of all plans to mine or expand the refinery until the human rights issues are properly addressed.

Call on Vedanta Resources to publicly commit to ensuring that adequate human rights impact assessments are carried out for all its operations; that such impact assessments are taken fully into account in decision-making processes which respect human rights; and that the information is made accessible and available to the affected communities.

RECOMMENDATIONS TO THE GOVERNMENT OF THE UNITED KINGDOM

Ensure that any form of state support to Vedanta Resources, such as through export credit guarantees, is contingent on the company, its subsidiaries and its joint venture partners respecting human rights across all their global operations, including in Orissa.

In light of Vedanta Resources' refusal to recognize the authority of the UK National Contact Point (NCP) of the Organisation for Economic Cooperation and Development, and the company's reluctance to engage with the NCP, the UK should review its approach to ensure UK companies do not contribute to or cause human rights harm as a consequence of their operations or those of their subsidiaries and joint venture partners, in any country.

Establish a UK Commission on Business, Human Rights and the Environment, as proposed by the Corporate Responsibility (CORE) Coalition of NGOs, which would have powers to promulgate and enforce standards, investigate complaints and take remedial action, where appropriate.²³⁴

Press the OECD to put in place stronger human rights provisions and more robust compliance mechanisms within the context of the current review of the OECD Guidelines for Multinational Enterprises,

Review implementation of Section 172 (1) of the Companies Act 2006²³⁵, which requires company directors to give proper consideration to the impact of the company's operations on the community and the environment, and strengthen this provision as appropriate to ensure that it becomes mandatory for companies to report on their human rights impacts.

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END NOTES

1. MoEF, Government of India, Project for Bauxite Mining in Orissa, Press Release, 27 November 2009.

<http://pib.nic.in/release/release.asp?relid=54712>

2. Letter No.J-11015/221/2005-IA.II (M), MoEF, Government of India, to Orissa Mining Corporation, 28 April 2009.

3. The term Adivasi is used to describe India's indigenous communities, numbering more than 360 speaking more than 100 different languages and dialects and amounting to 8.2 per cent of the country's population, according to 2001 census. Most of them are engaged solely in traditional subsistence economies and lifestyles. India's Constitution lists a majority these communities in the official list of Scheduled Tribes and enumerates special provisions to protect their rights. However, recent research using official data from the United Nations' Human Development Index and the Government of India's Planning commission, sheds sufficient light on the levels of marginalization experienced by India's Dalit communities, who have historically suffered caste discrimination, and Adivasi communities. While the caste system discriminates against the Dalits, the levels of poverty among Adivasis is deeper, despite the protection offered to them by India's Constitution. See, Sandip Sarkar, Sunil Mishra, Dev Nathan, Development and Deprivation of Scheduled Tribes in India: What the Figures Tell, Insitute of Human Development, New Delhi, 2006. Orissa has 62 Adivasi communities of which 13 including the Dongria Kondh are listed as further endangered communities.

4. The four EIAs are as follows:

On the refinery: Tata AIG Risk Management Services Ltd, Rapid EIA Report for 1.0 MPTA Alumina Refinery and 75 MW captive power plant proposed by Sterlite Industries India Limited, August 2002; Executive Summary of the Rapid EIA Report for 1.0 MPTA Alumina Refinery and 75 MW captive power plant proposed by Sterlite Industries India Limited, August 2002; Vimta Labs, Comprehensive EIA for Vedanta Aluminium Limited's 1.0 MPTA alumina refinery and captive power plant at Lanjigarh, Kalahandi district, Orissa, September 2005.

On the bauxite-mining project: Tata AIG Risk Management Services Ltd, Rapid EIA Report for bauxite mine proposed by Sterlite Industries India Limited near Lanjigarh, Orissa, August 2002. Revised Executive Summary of Rapid EIA Report for Lanjigarh Bauxite Mining Project, Kalahandi, January 2003; Vimta Labs, Rapid EIA Report for the proposed bauxite mine at Lanjigarh, Kalahandi District, Hyderabad, March 2005.

5. MoEF, Government of India, Project for Bauxite Mining in Orissa, Press Release, 27 November 2009.

<http://pib.nic.in/release/release.asp?relid=54712>; Letter No. 7(28) 2009 – FCE, From Deputy Conservator of Forests, MoEF, Bhubaneswar, to Principal Secretary, Department of Environment and Forests. Government of Orissa, 3 August 2009. Also Letter from Prafulla Samantara to Chief Conservator of Forests, MoEF, Bhubaneswar Office, 20 June 2009.

6. Appeals to NEAA by Kanu Sikaka and 23 other Dongria Kondh community members, 27 May 2009. Amnesty International and several other organizations have written to the NEAA in this regard. See, Amnesty International, Open Letter to NEAA to withdraw the clearance granted to the Niyamgiri bauxite mining project at Niyamgiri, AI Index: ASA 20/004/2009, 15 May 2009.

7. Order No. 26115/I, XIV-HI-26/2001, Department of Industries, Government of Orissa, 3 December 2001. Order No. 19873/I, XIV-HI-08/2004, Department of Industries, Government of Orissa, 18 October 2004. Gazette Notification No. 3391, Department of Industries, Government of Orissa, 2 March 2007.

8. Compiled by Outreach and Promotion Group, Team Orissa, Industrial Investment Promotion Corporation of Orissa Limited, Bhubaneswar, 19 December 2008. See [http://www.teamorissa.org/MoU%20Projects%20-Orissa-%20\(as%20of%20Dec08\).pdf](http://www.teamorissa.org/MoU%20Projects%20-Orissa-%20(as%20of%20Dec08).pdf)

9. Arjan de Haan and Amaresh Dubey, Poverty in Orissa: divergent trends? With Some Thoughts on Measurement Issues, paper presented at the Workshop on Monitoring of Poverty in Orissa, Bhubaneswar, 26-27 February 2003; Arjan de Haan and Amaresh Dubey, Poverty, Disparities, or the Development of Underdevelopment in Orissa, Economic and Political Weekly, Mumbai, 28 May-4 June 2005, p. 23-26; Manoj Panda, Economic Development in Orissa: growth without inclusion, Working Paper No. 25, Indira Gandhi Centre for Development

Research, Mumbai, 2008.

10. State Scan: Orissa - the year of triumph and tragedy, India Today, 25 December 2009; Pollution Control Board lacks powers to prosecute violators?, The Hindu, 2 January 2010.

11. Indian People's Tribunal on Environment and Human Rights, An Enquiry into Mining and Human Rights Violations at Kashipur in Orissa, Mumbai, October 2006. Robert J. A. Goodland, India: Orissa, Utkal bauxite and alumina project: human rights and environmental impacts, Washington, March 2007; Amnesty International, Kalinganagar police firing one year on – Orissa must ensure speedy justice for Adivasi victims and address their concerns over displacement, AI Index: ASA Index 20/001/2007; Amnesty International, India: Avoid forced evictions in Jagatsinghpur, Orissa, AI Index: ASA 20/022/2007, 30 November 2007.

12. Guidelines were established for this purpose in 1974. See, A Note on the preparation of Integrated tribal development projects, Ministry of Home Affairs, Government of India, 1974.

13. Article 243(B) of India's Constitution defines the village council as a governmental organ at village level consisting of persons included in the electoral rolls of the villages in a district (Panchayat). According to this and the 73rd amendment to the Constitution, the village council may "exercise such powers and perform such functions of the village level as the Legislature of a State may, by law, provide."

14. PESA was enacted with the aim of extending the effects of these above amendment to these protected territories. The Government of India set up a parliamentary committee to recommend steps towards this end (One of the committee's recommendations was that prior consent of local bodies should be made mandatory while drawing up of development projects and grant of leases for mineral extraction. However, the final legislation did not include these provisions for prior consent of local communities). Also, in 1998, the Indian government enlarged the consultation process to include all village councils in the lands, which could be affected by the projects.

15. Section 4 (i) of the PESA, 1996.

16. Samata, A Study on Process of Acquisition of Land for Development of Mining Industry in Schedule V Areas with a Focus on Violation of PESA in the light of the Mining and Industrialisation Process in the Schedule V Areas, Hyderabad, October 2003; Bhubneshwar Sawaiyan, An Overview of the Fifth Schedule and the Provisions of the Panchayats (Extensions to Scheduled Areas) Act, Paper submitted at Indigenous Rights in the Commonwealth Project South & South East Asia Regional Expert Meeting, New Delhi, 11-13 March 2002.

17. This was the case at Kashipur, Orissa, during 1998. See Robert J. A. Goodland, India: Orissa, Kashipur: Utkal bauxite and alumina project: human rights and environmental impacts, Washington, March 2007; also, Indian People's Tribunal on Environment and Human Rights Kashipur: An Enquiry into Mining and Human Rights Violations in Kashipur, Orissa, October 2006. Another instance was in 2001 when the Bastar District administration in Chhattisgarh state acquired land in a Scheduled Area for the Government of India-owned National Mineral Development Corporation. See, An investigation into land acquisition and state repression in Nagarnar, Report by the Indian People's Tribunal on Environment and Human Rights, Mumbai, 2002. For a third instance involving mining by a private firm in a Scheduled Area in Orissa, see Panchayat Raj Institution, Gram Sabha in Sundargarh district, refuses to pass resolution to hand over tribal land for industrial use: a case study, Bhubaneswar, 2004.

18. Memorandum of Understanding (MoU) between the Orissa Mining Corporation and Sterlite India, 3 April 1997.

19. *Samatha v. State of Andhra Pradesh*, para 108.

20. *Ibid.*, para 115.

21. *Ibid.*, paras 128 – 130.

22. See Department of Steel and Mines, Government of Orissa, Proceedings of the meeting of the Orissa cabinet sub-committee held on 8 July 2002 in the conference room of Chief Minister, Orissa, to consider issues pertaining to the judgement in the case *Samata vs. State of Andhra Pradesh*, 1 August 2002. The sub-committee decided that relevant law in Andhra Pradesh which prohibited transfer of lands under Schedule V to non-Adivasis "may not be replicated in Orissa as adequate care has been taken to protect the tribal interests in the existing laws of the state." It also decided that "mining or mineral-based industries coming up in the Scheduled Areas should mark five per cent of their equity towards preferential equity shares of the company, for the displaced tribal persons, based on the value of their land acquired for

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the project and 15 per cent of the project's annual profit should be spent on health, education, communication, irrigation and culture of the said Scheduled Area within a radius of 50 km."

23. MoU between Government of Orissa and Sterlite India, 5 July 2003.

24. Interim Application 1324 & 1474, Writ petition (Civil) No. 202 of 1995, with Interim Application Nos. 2081-2082 at Writ Petition (Civil) No. 549/2007. Interviews with petitioners Sreedhar Ramamurthy of Academy of Mountain Environics and his counsel Ritwick Datta, New Delhi, August 2008 and March 2009; interview with petitioner Prafulla Samantara of the Orissa unit of the National Association of People's Movement, Bhubaneswar; interview with Biswajit Mohanty, Wildlife Society, Cuttack, August 2008 and March 2009.

25. The Supreme Court had, in May 2002, appointed the CEC, consisting of former judges and civil servants. The CEC submitted, to the Court, two reports dated 21 September 2005 and 22 February 2007 after investigating the environmental and forest law violations of the companies involved in the Lanjigarh refinery and Niyamgiri bauxite mining project.

26. Interviews with Ravi Rebbapragada, Executive Director, Samata and K. Bhanumathi, Director, Samata, Visakhapatnam, March 2009.

27. *Samatha v. State of Andhra Pradesh*, para 108.

28. *Ibid.*, para 115.

29. *Ibid.*, paras 128 – 130.

30. Interviews with Ravi Rebbapragada, Executive Director, Samata and K. Bhanumathi, Director, Samata, Visakhapatnam, March 2009; also, Samata, A Study on Process of Acquisition of Land for Development of Mining Industry in Schedule V Areas with a Focus on Violation of PESA in the light of the Mining and Industrialisation Process in the Schedule V Areas, Hyderabad, October 2003.

31. Rajiv Dhawan, Mabo and Samata, *The Hindu*, 9 March 2001. Interview with Rajiv Dhawan, New Delhi, August 2008.

32. Memo No. 16/48/97-M.VI, Ministry of Mines, Government of India, 11 July 2000.

33. Draft Approach Paper, Tenth Five-Year Plan (2002-2007), Section 3.58, Planning Commission, Government of India, May 2001.

34. Anwarul Hoda, Report of the High Level Committee on National Mineral Policy, Ministry of Mines, Government of India, New Delhi, 2006, p. 72-74.

35. Cited in Vedanta Aluminium's affidavit filed before the Supreme Court-appointed CEC, 16 February 2005.

36. See CEC report to the Supreme Court, 21 September 2005. The CEC report concluded that "...though forest land was required for the project, the environmental clearance was sought stating that no forest land was required and during the pendency of the application for the environmental clearance, a proposal for the use of the forest land for the same project was submitted for seeking the approval under the Forest Conservation Act;" CEC Report to the Supreme Court, 21 September 2005, para 30 (iv).

37. As per this agreement, Vedanta Aluminium would set up an integrated complex which would include the bauxite mine at Niyamgiri and the alumina refinery at Lanjigarh with a dedicated 75-megawatt power plant, a bauxite mine at Karlapet in the neighbouring hills or elsewhere in the state and an aluminium smelter plant and a captive power plant, both at Bhukhamunda in northern Jharsuguda district of the state. See Preamble, Agreement between Vedanta Alumina Limited and Orissa Mining Corporation, 5 October 2004.

38. CEC Report to the Supreme Court, 21 September 2005, para 8(vii)

39. CEC Report to the Supreme Court, 21 September 2005, paras 23 and 31. See also CEC Supplementary Report to the Supreme Court, 22 February 2007.

40. CEC Report to the Supreme Court, 21 September 2005, para 30 (xvii).

41. CEC Report to the Supreme Court, 21 September 2005, para 31.

42. CEC Report to the Supreme Court, 21 September 2005, para 32. Following this, in May 2007, the Norwegian Pension Fund withdrew its investment from Vedanta Resources. See Council on Ethics for the Government Pension Fund – Global, Recommendations to the

Norwegian Ministry of Finance, 15 May 2007.

43. CEC Report to the Supreme Court, 21 September 2005, para 33.

44. CEC Report to the Supreme Court, 21 September 2005, para 33.

45. OSPCB Memo to Vedanta Aluminium, 12 January 2009.

46. OSPCB Inspection Report on Vedanta Aluminium, 31 March 2009. This refers to the compliance letter No. VAL/HSE/Env/2009/172 dated 29 January 2009 submitted by the company in this connection.

47. CEC Report to the Supreme Court, 21 September 2005, para 33.

48. CEC Report to the Supreme Court, 21 September 2005, para 33.

49. CEC Supplementary Report to the Supreme Court, 22 February 2007.

50. CEC Supplementary Report to the Supreme Court, 22 February 2007.

51. Supreme Court interim order, 23 November 2007, and final order, 8 August 2008, on Interim Application No. 2134 of 2007, Writ Petition (Civil) NO. 202 of 1995.

52. Supreme Court order, 8 August 2008, on Interim Application No. 2134 of 2007, Writ Petition (Civil) NO. 202 of 1995.

53. Mining Plan prepared by Engineers India for grant of approval for undertaking mining operations at Lanjigarh prepared by the Orissa Mining Corporation, November 2004, and approved by the Indian Bureau of Mines, 18 November 2004, Section 3.3.

54. Appeals to NEAA by Kanu Sikaka and 23 other Dongria Kondh community members, 27 May 2009. Amnesty International and several other organizations have written to the NEAA in this regard. See, Amnesty International, Open Letter to the NEAA to withdraw the clearance granted to the Niyamgiri bauxite mining project which could threaten Dongria Kondh indigenous communities, ASA 20/004/2009, 15 May 2009.

55. MoEF, Government of India, Project for Bauxite Mining in Orissa, Press Release, 27 November 2009.

<http://pib.nic.in/release/release.asp?relid=54712>; Letter No. 7(28) 2009 – FCE, From Deputy Conservator of Forests, MoEF, Bhubaneswar, to Principal Secretary, Department of Environment and Forests, Government of Orissa, 3 August 2009. Also Letter from Prafulla Samantara to Chief Conservator of Forests, MoEF, Bhubaneswar Office, 20 June 2009.

56. Focus group meetings at the Dongria Kondh hamlets of Phuldumer, Palaberi, Lakpaddar, Kunnakadu, Gunjapaju, Suruhipai. Gailanga, Dholi, Sutangun, Serigipai, Jharapa, Arhaanga, Salpajhola, Gundwavu, Monda, Kucheli, Kaleripata, Denguni and Gorta, Niyamgiri, 4-6, 21-24 March and 26-29 September 2009.

57. This is illustrated by a Dongria Kondh tale collected by Felix Padel, anthropologist, Bissamcuttack: "... There were five brothers and the youngest one is Niyam Raja... He wondered what to do and decided to become the guardian of the streams and mountain range. So he decided to stay on the top of the mountain, and created mango, jackfruit, pineapple, orange, banana, and seeds. He said to us: 'Now live on what I have given you.'"; Interview with Felix Padel, Bissamcuttack, March 2009.

58. A Wildlife Institute of India report, commissioned by the MoEF, corroborates this. Wildlife Institute of India, Dehra Dun, Studies on impact of proposed Lanjigarh bauxite mining on biodiversity including wildlife and its habitat, 2006-2007, Chapter 4, p. 11.

59. P. S. Daspattnaik, Ownership Pattern, Land Survey and Settlement and its impact on the Dongria Kondhs of Orissa, Adibasi, Journal of Anthropological Research, Vol. XXIII, No. 4, January 1984, p. 23-26; C. Maheswaran, Descriptive Grammar of the Kui Language, 2008; Interview with Felix Padel, anthropologist, Bissamcuttack, India, March 2009.

60. Interview with Sreedhar Ramamurthy, Academy of Mountain Environics, New Delhi, March 2009.

61. CEC report to India's Supreme Court in IA No. 1324, 21 September 2005, para 30 (xiii).

62. Cited in Wildlife Institute of India, Studies on impact of proposed Lanjigarh bauxite mining on biodiversity including wildlife and its

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habitat, Dehra Dun, 2006. See chapter 4.

63. Wildlife Institute of India, Studies on impact of proposed Lanjigarh bauxite mining on biodiversity including wildlife and its habitat, Dehra Dun 2006, See Chapter 4.

64. See in particular, article 11 of the Indigenous and Tribal Populations Convention, 1957, ratified by India on 29 September 1958, and articles 26-28 of the United Nations Declaration on the Rights of Indigenous Peoples.

65. Art 25, United Nations Declaration on the Rights of Indigenous Peoples.

66. Article 11: The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised

67. See UN Committee on the Elimination of Racial Discrimination, "General Recommendation XXIII: Indigenous Peoples" (18 August 1997) A/52/18, annex V, para 5: calls upon States parties to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands, territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

68. The U.N. Committee on Economic Social and Cultural Rights has recognized the need for secure rights to traditional land in order to ensure that indigenous way of life is maintained. See Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 6 and 17 of the Covenant: Paraguay, pp. 29, 34 U.N. Doc. E/C.12/PRY/CO/3 (Jan. 4, 2008); Consideration of Reports Submitted by States Parties Under Articles 6 and 17 of the Covenant: India, p. 44, U.N. Doc. E/C.12/IND/CO/5 (May 10, 2008); Consideration of Reports Submitted by States Parties Under Articles 6 and 17 of the Covenant: Bolivia, pp. 23, 36, U.N. Doc. E/C.12/BOL/CO/5 (Aug. 8, 2008); Consideration of Reports Submitted by States Parties Under Articles 6 and 17 of the Covenant: Kenya, PP 12, 31, U.N. Doc. E/C.12/KEN/CO/1 (Dec. 1, 2008).

69. See *Lansmann et al v Finland* No 1 Comm No 511/1992. Views adopted 26 October 1994, Report of the Human Rights Committee, Vol. II, GAOR 50th Session No 40 UN Doc A/50/40, pp 66-76, and *Apirana Mahuika et al v New Zealand* Comm No 547/1993; Report of the Human Rights Committee (15 November 2000) CCPR/C/70/D/547/1993.

70. See, the observation of the ILO Committee of Experts on the Application of Conventions and Recommendations in relation to India and the Sarovar Hydro Project, 1988 Report 3 (Part 4A)(75th session).

71. Inter-American Court of Human Rights, *Awas Tingni Mayagna (Sumo) Indigenous Community v. Nicaragua*, Series C (No. 79) (2001); *Moiwana Community v. Suriname*, Series C (No. 124) (2005); *Yakye Axa Indigenous Community v. Paraguay*, Series C (No. 125) (2005); *Sawhoyamaya Indigenous Community v. Paraguay*, Series C (No. 146) (2006). *Saramaka People v. Suriname*, Series C (No. 172) (2007); *Mary and Carrie Dann*, Case 11.140 (United States), (27 December 2002) Inter-American Commission of Human Rights, Report 75/02.

72. The EIA notification, 1994, as per the Environment (Protection) Act, 1986, and updated in 1997, 2000, 2002 and 2006, governs the issue clearances.

73. The 2006 amendment to the EIA notification requires the EIA to include social impact assessment in the additional studies to be done.

74. While the notification as amended in 2002 require the communities to have access to the full EIA in English and its summary in advance of the public hearing, both in English and the respective local language/s, the 2006 amendment limits the mandatory access to the draft version of the EIA in English and the respective local language/s.

75. Vimta Labs, Rapid EIA for the proposed bauxite mines at Lanjigarh, Hyderabad, 2005,

76. Vimta Labs, Rapid EIA for the proposed bauxite mines at Lanjigarh, Hyderabad, 2005. See Section 4.9.

77. Vimta Labs, Rapid EIA for the proposed bauxite mines at Lanjigarh, Hyderabad, 2005. See Section 4.10.

78. Central Mine Planning and Design Institute, Ranchi, Interim Report on Hydro-geological Investigations on Lanjigarh Bauxite Mines, August 2006, paras 10 and 13.
79. Article 46 of the Constitution of India.
80. Article 244 and Fifth Schedule to the Constitution of India.
81. Samata, A Study on Process of Acquisition of Land for Development of Mining Industry in Schedule-V Areas with a focus on Violation of PESA In Light of the Mining and Industrialisation Process in the Schedule-V Areas, Samata, October 2003, p. 68.
82. Article 29(2) (no storage of waste without Free, prior and informed consent).
83. Article 19 (Free, prior and informed consent before legislation etc adopted).
84. Article 11(2) (redress for taking of intangible property without Free, prior and informed consent).
85. See, UN Committee on the Elimination of Racial Discrimination, "General Recommendation XXIII." See also, UN Human Rights Committee decision, *Ángela Poma Poma* 27/3/2009, Communication No. 1457/2006.
86. See, Inter-American Court of Human Rights, *Saramaka People v. Suriname*, Series C (No. 172) (2007).
87. For guidance from the United Nations on the content of the right, see: Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples, UN Permanent Forum on Indigenous Issues, E/C.19/2005/3. See also, the Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples, Promotion and protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, A/HRC/12/34 (15 July 2009).
88. OSPCB, Notice IND-II/PH-21/02, cited in Prafulla Samantara and Kumati Majhi's appeals before the NEAA, 29 July 2009.
89. Proceedings of the public hearing conducted in respect of Sterlite Industries India Limited for its proposed alumina refinery and bauxite-mining project at Lanjigarh, 7 February 2003; Proceedings of the public hearing conducted in respect of Sterlite Industries India Limited for its proposed alumina refinery and bauxite-mining project at Muniguda, 17 March 2003.
90. Official correspondence between the OSPCB and the district collectors' offices at Bhawanipatna and Rayagada and the official record of proceedings of the two public hearings also confirmed that, prior to the public hearings, only the executive summary of the rapid EIA and its translation in Oriya were made available at the local government offices. Letter No. 25904, From the Member-Secretary, OSPCB, to the Rayagada district collector, 25 December 2002 and Letter No 25910, From the Member-Secretary, OSPCB, to the Kalahandi district collector, 21 December 2002.
91. The official record of the proceedings of the public hearings also confirms that the hearings only briefly dwelt on pollution issues and that the information presented to the people about the negative impact of the bauxite mining was minimal.
92. As quoted in the Summary record of the 24th meeting of Expert Appraisal Committee for environmental appraisal of mining projects constituted under EIA notification, 2006, New Delhi, 18-20 March 2009.
93. See Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises, 18 September 2009; Also, Survival International, Complaint to the UK National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises, 17 December 2008. For Vedanta Resources' reply to the NCP, see Letter from Vedanta Resources to NCP, 29 December 2009.
94. Section 4 (i) of the PESA, 1996.
95. See Samata, A Study on Process of Acquisition of Land for Development of Mining Industry in Schedule V Areas with a Focus on Violation of PESA in the light of the Mining and Industrialisation Process in the Schedule V Areas, Hyderabad, October 2003; Bhubneshwar Sawaiyan, An Overview of the Fifth Schedule and the Provisions of the Panchayats (Extensions to Scheduled Areas) Act, Paper submitted at Indigenous Rights in the Commonwealth Project South & South East Asia Regional Expert Meeting, New Delhi, 11-13 March 2002.

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96. Letter No. 205 (400), Office of the District Collector, Kalahandi, at Bhawanipatna, 6 June 2002.
97. Letter No. 672, Office of the District Collector, Kalahandi at Bhawanipatna, 10 September 2004.
98. Clause 3(f) (iii) of the Land Acquisition Act states that authorities could legally acquire "land for planned development of land from public funds in pursuance of any scheme or policy of government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned."
99. Sections 4 and 5 of the Statement of Objects and Reasons of the Land Acquisition Amendment Bill No. 98 introduced in Lok Sabha (the lower house of India's Parliament) on 6 December 2007.
100. Section 4 of the Statement of Objects and Reasons of the Land Acquisition Amendment Bill.
101. Clause 5 (v) and 5 (vi) of the Land Acquisition Amendment Bill.
102. Focus group meetings at Chhattarpur, Rengopalli and Bandaguda, 26 February-3 March 2009.
103. Letter No. 25904, From the Member-Secretary, OSPCB, to the Rayagada district collector, 25 December 2002 and Letter No 25910, From the Member-Secretary, OSPCB, to the Kalahandi district collector, 21 December 2002.
104. Focus group meetings at Chhattarpur, Rengopalli and Bandaguda, 26 February-3 March 2009.
105. Proceedings of the public hearing conducted in respect of Sterlite Industries India Limited for its proposed alumina refinery and bauxite-mining project at Lanjigarh, 7 February 2003.
106. Focus group meetings at Harekrishnapur, Bandaguda and Kappaguda, 26 February 2009.
107. Focus group meeting at Kenduguda, 1 March 2009.
108. Interview with Lingaraj Azad, Niyamgiri Suraksha Samiti, Rupra Road, 28 September 2009.
109. People's Union for Civil Liberties (Rayagada & Bhubaneswar), A fact-finding report on physical attack on the villagers agitating against their displacement due to the proposed Sterlite Alumina Project in Lanjigarh Block of Kalahandi district, 2003.
110. Interview with residents of Bandaguda, February-March and September 2009.
111. In March 2007, an Indian television news channel had documented this: See. Village vs. corporate in Orissa.
<http://ibnlive.in.com/videos/38376/village-vs-corporate-in-orissa.html>
112. Bill No. 97 introduced in the Lok Sabha on 6 December 2007. <http://164.100.24.209/news/whatsnew/Rehabandsettlementbill.pdf>.
113. Four policy drafts were prepared on 25 February, 25 April, 4 June and 25 June 2005. A final draft was approved by the Orissa cabinet in April 2006 and officially released in May 2006. See Manipadma Jena, Orissa: Draft Resettlement and Rehabilitation Policy, 2006, Economic and Political Weekly, 4 February 2006.
114. Letter No. 39159/R, Rehabilitation and Resettlement Policy for the Displaced and other Project-affected Families for establishment of alumina refinery by Sterlite India at Lanjigarh, Kalahandi, Orissa, Department of Revenue, Government of Orissa, 8 August 2003.
115. CEC Report to Supreme Court, 21 September 2005, para 3 (xvi)
116. CEC Report to Supreme Court, 21 September 2005, para 31.
117. Employment details released by Vedanta Aluminium as on 1 February 2009
118. Focus group meetings at Chhattarpur, Kenduguda, Harekrishnapur, Bandaguda, Kappaguda and Rengopalli, 25 February-3 March 2009; focus group meeting at Bundel and Belamba, 27-28 September 2009.
119. Tata AIG Risk Management Services Ltd, Rapid EIA Report for 1.0 MPTA Alumina Refinery and 75 MW captive power plant proposed by Sterlite Industries India Limited, August 2002 (Executive Summary of the Rapid EIA Report for 1.0 MPTA Alumina Refinery and 75 MW

captive power plant proposed by Sterlite Industries India Limited, August 2002). See Section 2.7.1 for demographic data.

120. In 2005, Vedanta Aluminium had commissioned Virmta Labs to conduct the comprehensive EIA for the refinery (Virmta Labs, Comprehensive EIA for Vedanta Aluminium Limited's 1.0 MPTA alumina refinery and captive power plant at Lanjigarh, Kalahandi district, Orissa, September 2005). See Section 4.2.7.1

121. Interviews with Bhakta Charan Das, Former Member of Parliament, Green Kalahandi, Bhawanipatna, February and September 2009.

122. The EIA notification, 1994, as per the Environment (Protection) Act, 1986, and updated in 1997, 2000 and 2002 and, does not make detailed references to such issues. The 2006 amendment to the EIA notification requires the EIA to include social impact assessment in the additional studies to be done.

123. CEC Report to the Supreme Court, 21 September 2005, para 7 (v).

124. CEC Report to the Supreme Court, 21 September 2005, para 7 (v).

125. CEC report to the Supreme Court, 21 September 2005, para 30 (xxviii).

126. Tata AIG Risk Management Services Ltd, Rapid EIA Report for 1.0 MPTA Alumina Refinery and 75 MW captive power plant proposed by Sterlite Industries India Limited, August 2002 (Executive Summary of the Rapid EIA Report for 1.0 MPTA Alumina Refinery and 75 MW captive power plant proposed by Sterlite Industries India Limited, August 2002). See p. 4.

127. MoEF, Government of India, Letter No. J-11011/81.2003-IA/II, 22 September 2004.

128. Ibid., B (i).

129. OSPCB Memo No. 7149 to Vedanta Aluminium, 31 March 2007.

130. See OSPCB Inspection Reports on Vedanta Aluminium, 26-27 September 2007, 2-4 November 2007, January 29-30, 2008, 3-4 December 2008, Joint Inspection Report by OSPCB, NGRI and Indian Institute of Science, 17-18 March 2009.

131. As described in the OSPCB Inspection Report on Vedanta Aluminium, 3 April 2007.

132. Rapid Environmental Impact Assessment and Environmental Management Plan Report of expansion of Alumina Refinery from 1 MMTPA to 6 MMTPA Capacity Of M/s Vedanta Aluminium Limited, Lanjigarh, Kalahandi, Orissa, p. 175.

133. OSPCB Inspection Report on Vedanta Aluminium, 2-4 November 2007.

134. OSPCB Inspection Report. 26-27 September 2007, pp. 1 – 2.

135. OSPCB Inspection Report. 26-27 September 2007, pp. 1 – 2.

136. OSPCB Inspection Report on Vedanta, 2-4 November 2007, Table 3b.

137. OSPCB Inspection Report on Vedanta Aluminium, 2-4 November 2007.

138. Suneeta Patnaik, The Scorched Earth: A deluge of fly ash from the Nalco plant ash toxifies Angul, Orissa, Outlook, 29 January 2001.

139. UNEP/OECD SIDS Initial Assessment Report on Sodium Hydroxide. See: <http://www.chem.unep.ch/irptc/sids/OECD/SIDS/NAHYDROX.pdf> (last accessed on 9 January 2002)].

140. World Health Organization, Guidelines for safe recreational waters, Volume 1, 2003, p. 169.

141. Memo No. 27417 and Memo No. 27420 from OSPCB to Vedanta Aluminium, 23 November 2007.

142. OSPCB Inspection Report on Vedanta Aluminium, January 29-30, 2008.

143. Ibid.

144. Memo no. 4127 from OSPCB to Vedanta Aluminium, 23 February 2008.

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145. Joint Inspection Report by OSPCB, NGRI and Indian Institute of Science, 17 - 18 March 2009.
146. OSPCB Inspection reports on Vedanta Aluminium, 7- 8 and 26 April 2008
147. OSPCB Inspection Report on Vedanta Aluminium, 24 May 2008.
148. Though Vedanta Aluminium had made provision to collect any water seeping out and pump it back into the lake, the OSPCB stated that such seepages needed to be stopped or they might ultimately weaken the dyke.
149. OSPCB Inspection Report on Vedanta Aluminium, 6 November 2008, para 9.
150. OSPCB Inspection Report on Vedanta Aluminium, 3 - 5 December 2008.
151. OSPCB Inspection Report on Vedanta Aluminium, 3 - 5 December 2008.
152. OSPCB Memo to Vedanta Aluminium, 12 January 2009.
153. OSPCB Inspection Report on Vedanta Aluminium, 31 March 2009.
154. OSPCB Inspection Report on Vedanta Aluminium, April 2007, para 5(i).
155. OSPCB Inspection Report on Vedanta Aluminium, 16 January 2007, para 7; OSPCB Inspection Report on Vedanta Aluminium, April 2007, para 5 (iv).
156. OSPCB Inspection Report on Vedanta Aluminium, 2-4 November 2007.
157. Memo no. 27417 from OSPCB to Vedanta Aluminium, 23 November 2007.
158. Letter from Vedanta Aluminium to the OSPCB, 20 December 2007.
159. OSPCB Inspection Report on Vedanta Aluminium, 29-30 January, 2008
160. Interview with Vedanta Aluminium staff, Lanjigarh, 3 March 2009.
161. OSPCB Inspection Report on Vedanta Aluminium, 28-30 January 2008.
162. OSPCB Inspection Report on Vedanta Aluminium, 29-30 January, 2008.
- 163 Orissa State Pollution Control Board letter to Director, Indian Institute of Science, Bangalore, 23 February 2008.
164. OSPCB Inspection Reports on Vedanta Aluminium, 26 April and 5 May 2008.
165. OSPCB Inspection Report on Vedanta Aluminium, 3-5 December 2008.
166. OSPCB memo to Vedanta Aluminium, 12 January 2009.
167. OSPCB Inspection Report on Vedanta Aluminium, 30-31 March 2009.
168. OSPCB Inspection Report on Vedanta Aluminium, 2-4 November 2007.
169. Tata AIG Risk Management Services, Rapid EIA of 1.0 MT alumina refinery and captive power plant of Sterlite at Kalahandi, Mumbai, August 2002, Section 2.7.1.6.
170. Tata AIG Risk Management Services, Rapid EIA of 1.0 MT alumina refinery and captive power plant of Sterlite at Kalahandi, Mumbai, August 2002, Section 2.1, Tables 2.2.1, 2.2.2, 2.2.3, 2.2.4 and 2.2.5.
171. Global Experts, Rapid environmental impact assessment/environmental management plants report for expansion of alumina refinery plant from 1 MMPTA to 6 MMPTA of Vedanta Aluminium Limited, Lanjigarh, Orissa, August 2008.
172. OSPCB Inspection Report on Vedanta Aluminium, 2-4 November 2007
173. OSPCB Inspection Report on Vedanta Aluminium, 29-30 January 2008.

174. The inspection concluded that the reasons for this could be not be concluded with limited information but possibilities for this increase included cracks in the dirty water pond or sumps in the process area or dumping of caustic material in some area during the construction or initial operation phases. In addition to investigating the dirty water pond and repairs to the process area units.
175. OSPCB Inspection Report on Vedanta Aluminium, 3-4 December 2008.
176. Focus group meeting at Chhattarpur, 26 February 2009.
177. OSPCB Inspection Report on Vedanta Aluminium, 2-4 November 2007.
178. US Department of the Interior Bureau of Mines, Dust Control Handbook for Minerals Processing (1987), available at http://www.osha.gov/SLTC/silicacrystalline/dust/dust_control_handbook.html
179. Australian Government Department of Industry Tourism and Resources, Leading Practice Sustainable Development Program for the Mining Industry: Tailings Management (2007) (Leading Practice Tailings), p. 43.
180. Letter from Senapathy Naik, former village council chief, and 93 others, Chhattarpur, to Vice-Chairman, Vedanta Aluminium, Lanjigarh, 8 October 2008; Focus group discussion at Chhattarpur, September 2009.
181. OSPCB Inspection Report on Vedanta Aluminium, 26-27 September 2007.
182. OSPCB Inspection Report on Vedanta Aluminium, 2-4 November 2007.
183. Response from Vedanta to Member Secretary, OSPCB, 20 December 2007.
184. OSPCB Inspection Report on Vedanta Aluminium, 29-30 January 2008.
185. OSPCB Inspection report on Vedanta Aluminium, 3-5 December 2008.
186. OSPCB memo to Vedanta Aluminium, 12 January 2009.
187. OSPCB Inspection Report on Vedanta Aluminium, 31 March 2009.
188. Global Experts, Rapid environmental impact assessment/environment management plans report for expansion of alumina refinery Plant from 1 MMPTA to 6 MMPTA of Vedanta Aluminium, Lanjigarh, Orissa, August 2008. Section 6.11 proposes a plan for socio-economic development as part of Vedanta's corporate social responsibility goals based on a socio-economic survey of 81 villages. Annexure III details the impact of Vedanta's initiatives on health, education and sustainable livelihood projects, but the impact of the existing refinery on the livelihoods is not discussed in the EIA.
189. OSPCB Inspection Report on Vedanta Aluminium, 19 August 2006, p. 12
190. On Rupra Road protests, see OSPCB memo to Vedanta Aluminium, 31 July 2009; and on the Ambadola protests, see OSPCB internal letter, 6 August 2009; on Kesinga protests, see OSPCB Memo to Vedanta Aluminium, 18 April 2009.
191. OSPCB Memo to Vedanta Aluminium, 12 January 2009.
192. OSPCB Inspection Report on Vedanta Aluminium, 31 March 2009. This refers to the compliance letter No. VAL/HSE/Env/2009/172 dated 29 January 2009 submitted by Vedanta in this connection.
193. Global Experts, Rapid environmental impact assessment/environment management plans report for expansion of alumina refinery Plant from 1 MMPTA to 6 MMPTA of Vedanta Aluminium, Lanjigarh, Orissa, August 2008, p. 175.
194. Global Experts, Rapid environmental impact assessment/environment management plans report for expansion of alumina refinery Plant from 1 MMPTA to 6 MMPTA of Vedanta Aluminium, Lanjigarh, Orissa, August 2008, p. 179.
195. Ibid.. Currently the red mud pond and green belt occupy 182.94 hectares, this will increase to 1073.29 hectares after the expansion, six times the size of the area currently used. An additional ash pond area of 218.94 hectares will also be constructed.
196. Global Experts, Rapid environmental impact assessment/environment management plans report for expansion of alumina refinery Plant

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from 1 MMPTA to 6 MMPTA of Vedanta Aluminium, Lanjigarh, Orissa, August 2008. Section 6.11 proposes a plan for socio-economic development as part of Vedanta's corporate social responsibility goals based on a socio-economic survey of 81 villages. Annexure III details the impact of Vedanta's initiatives on health, education and sustainable livelihood projects.

197. Global Experts, Rapid environmental impact assessment/environment management plans report for expansion of alumina refinery Plant from 1 MMPTA to 6 MMPTA of Vedanta Aluminium, Lanjigarh, Orissa, August 2008; Global Experts, Executive Summaries of Rapid environmental impact assessment/environment management plans report for expansion of alumina refinery Plant from 1 MMPTA to 6 MMPTA of Vedanta Aluminium, Lanjigarh, Orissa (in English and Oriya), August 2008.

198. Although the OSPCB's documents including inspection reports and memos were not made public, Amnesty International and others secured them under India's right to information laws. However, people affected by the issues should not have to sue under the law simply to access basic information on the impact of the refinery on their environment. Moreover, the documentation is not accessible to many local people as it is in English, which most people in the area cannot read.

199. Interviews with Mohammad Ashlam and Prashant Mishra, local journalists representing KBK Samachar, a local television news broadcaster, who attended this public hearing, 26 April 2009.

200. Proceedings of the public hearing of Vedanta Aluminium for its expansion of alumina refinery from 1.0 MTPA to 6.0 MTPA on 25 April 2009 at Belamba, p. 6.

201. Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E./C.12/2002/11, 20 January 2003.

202. Ibid., para 3.

203. Ibid., para 1.

204. Ibid., para 12.

205. Ibid., Para 10.

206. Ibid., paras 16 (c) and (d).

207. Ibid., para 23.

208. Ibid., para 44 (b).

209. Ibid., para 23.

210. Ibid., para 44 (b).

211. Article 1 (2).

212. Committee on Economic, Social and Cultural Rights, General Comment No. 15, para 7.

213. Ibid., para 33.

214. Committee On Economic, Social And Cultural Rights, General Comment No. 14 (2000) on the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Rights), E/C.12/2000/4, 11 August 2000, para 4.

215. Ibid., para 15.

216. Ibid., para 51.

217. Ibid., para 27.

218. Committee on Economic, Social and Cultural Rights, General Comment 14 on the right to health, para 11, General Comment 15 on the Right to Water, para 48.

219. Committee on Economic, Social and Cultural Rights, General Comment 14, para 11.

220. E/C.12/2202/11, 20 January 2003, General Comment 15 on the Right to Water

221. Human Rights Committee, General Comment 25 on the The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25), Fifty-seventh session, 1996, available at: <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/d0b7f023e8d6d9898025651e004bc0eb?Opendocument>, para 5.

222. Committee on Economic, Social and Cultural Rights, General Comment 14 on the right to health, para 54, General Comment 15 on the Right to Water, para 48.

223. Article 26.

224. *Ibid.*, see also Committee on the Elimination of Racial Discrimination, General Comment No. 23: Indigenous Peoples, 18 August 1997, para 5 where the Committee called on State parties to “recognize and protect the rights of Indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.”

225. Human Rights Committee, General Comment No. 23: The rights of minorities (Article 27), 8 April 1994, para 7.

226. Committee on Economic, Social and Cultural Rights, General Comment No. 21: Right of everyone to take part in cultural life (Article 15. 1 (a)), para 36.

227. Article 32, United Nations Declaration on the Rights of Indigenous Peoples.

228. Committee on the Elimination of Racial Discrimination, General Comment No. 23: Indigenous Peoples, 18 August 1997, para 4 (d). See also para 5 where the Committee called on State parties to “recognize and protect the rights of Indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.”

229. Committee on Economic, Social and Cultural Rights, General Comment No. 21, para 37.

230. Protect, Respect and Remedy: a Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HCR/8/5, 7 April 2008

231. See: <http://www.equator-principles.com/principles.shtml>

232. See: <http://www.icmm.com/our-work/sustainable-development-framework>

233. The UN has taken the view that the international human rights legal framework must be seen as the baseline commitment on sustainable development. See: Office of the High Commissioner on Human Rights, “Claiming the Millennium Development Goals: A human rights approach”, 2008.

234. This Commission would regulate UK companies with the power to control or direct the activities of foreign companies and contractors in other jurisdictions. No legal obligations would be imposed on foreign entities directly. This proposal is based on the ‘nationality’ jurisdiction that the UK enjoys over companies incorporated within the UK. It is a ‘parent-based’ form of regulation that is permitted under established international law principles relating to the use of extraterritorial jurisdiction.

235. Relevant aspect of Companies Act 2006:

1. Section 172(1) of the Companies Act 2006 requires directors to act in the way that they consider in good faith most likely to promote the success of the company for the benefit of its members as a whole. For this purpose they must:

“have regard among other matters to ... (d) the impact of the company’s operations on the community and the environment and (e) the desirability of the company maintaining a reputation for high standards of business conduct.”

2. The Minister who steered the Bill through Parliament said that “to have regard to” means:

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"to think about; [this is] absolutely not about just ticking boxes. If "thinking about" leads to the conclusion, as we believe it will in many cases, that the proper course is to act positively to achieve the objectives in the clause, that will be what the director's duty is. In other words "have regard to" means "give proper consideration to"."



WHETHER IN A HIGH-PROFILE
CONFLICT OR A FORGOTTEN
CORNER OF THE GLOBE,
AMNESTY INTERNATIONAL
CAMPAIGNS FOR JUSTICE, FREEDOM
AND DIGNITY FOR ALL AND SEEKS TO
GALVANIZE PUBLIC SUPPORT
TO BUILD A BETTER WORLD

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BAUXITE MINE AND REFINERY DEVASTATE LIVES IN INDIA

Plans to mine bauxite and expand a refinery in Orissa, eastern India, have thrown the lives of local communities into turmoil.

In April 2009, the Indian authorities approved a joint venture to mine bauxite in the Niyamgiri Hills for the next 25 years. The mine is sited on land considered sacred by the Dongria Kondh, an Adivasi (Indigenous) community who have lived exclusively in and around the hills for centuries. The companies involved are Sterlite Industries (a subsidiary of the UK-based Vedanta Resources) and the state-owned Orissa Mining Corporation.

Adivasi and other marginalized communities in nearby Lanjigarh are already struggling with the harsh environmental effects of living next to Vedanta's refinery. Having seen their rights ignored, they are bracing themselves for an even more uncertain future with the refinery set to expand its operations to six times its current capacity.

This report demonstrates how local communities have been systematically denied information about the proposed mining and refinery expansion projects, and have not been adequately consulted. Their rights to water, health and their way of life have been seriously compromised as a result.

Poor and marginalized communities are often the most vulnerable to exploitation in the context of mining and other extractive industry operations. Without robust governmental action to protect human rights, local communities can be driven deeper into poverty and deprivation.

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