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Executive Summary of Report: Don't Mine Us out of Existence: Bauxite Mine and Refinery Devastate Lives in India (Index: ASA 20/001/2010)

“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

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. Both the refinery and mine involve subsidiaries of UK-based company Vedanta Resources Plc. *Don't Mine Us out of Existence: Bauxite Mine and Refinery Devastate Lives in India*, a new report from Amnesty International, describes how local communities 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. Despite these concerns and the environmentally sensitive location of the refinery near a river and villages, the Indian government is considering a proposal that would allow the refinery to expand its capacity six-fold.

The mining project will be located on the traditional lands of the Dongria Kondh, an Indigenous community, which is considered 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. This project was approved, in principle, by India's Ministry of Environment and Forests (MoEF) in December 2008. The MoEF has since deferred granting forest clearance (which is a separate regulatory requirement, without which the project cannot go ahead).

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 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.

Amnesty International is calling on the Government of India and Vedanta Resources to ensure that there is no expansion of the refinery and mining does not go ahead until existing problems are resolved. Amnesty International is also calling for full consultation with local people and for the

Indian authorities to set up a process to seek the free, prior and informed consent of the Dongria Kondh.

TAINTED HISTORY

The Lanjigarh alumina refinery and Niyamgiri bauxite mining project have a decade-long chequered history. 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.

The Supreme Court's Central Empowered Committee (CEC), an advisory body set up to advise the Court on environmental issues, investigated aspects of the case when a complaint was filed at the Court. In its report to the Supreme Court 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." (CEC Report to the Supreme Court, 21 September 2005, paras 31 and 32)

“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



Photo1: Dongria Kondh women at a protest meeting, Niyamgiri Hills (Amnesty International)

UNDERMINING RIGHTS: THE MINE AT NIYAMGIRI

The proposed bauxite mining project will cover some 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. 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. For centuries the indigenous Dongria Kondh have lived in these Hills; they consider them sacred and their culture, traditions, and physical and economic survival are closely tied to the Hills. They worship *Niyam Raja Penu*, who they believe lives on top of the Niyamgiri Hills.

In March and September 2009, Amnesty International researchers visited 19 Dongria Kondh hamlets in the Niyamgiri Hills, including those closest to the proposed opencast mine site. Testimony of Dongria Kondh community members provides compelling evidence that the mining plans threaten to undermine their traditional land rights and religious beliefs. The plans also pose severe risks to their rights to water, food, and work, to an adequate standard of living, and to the community's cultural rights. The communities also fear the potential negative impact of mining on the perennial streams – their only source of water – that run through the Hills, and the effect that an influx of people and equipment into this remote area will have on their way of life

MINE: NO ASSESSMENT, NO PROCESS TO SEEK CONSENT



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.

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. However, Amnesty International found serious failures on the part of the government to discharge their responsibility to protect the rights of the

Dongria Kondh.

Neither the government nor the companies involved in the mining plans have carried out adequate assessments of the potential impact on the mine on the Dongria Kondh's human rights. The two environmental impact assessments that have been done failed to examine the possible impacts on communities living in close proximity to the site of the mine, despite the fact that these communities are clearly highly dependant on the Hill's for water, food and livelihood.

Contrary to international human rights standards, Indian authorities did not obtain the free, prior and informed consent of the Dongria Kondh before approving this project. In February and March 2003, the Indian authorities held public hearings on the proposed mine, but the Dongria Kondh communities living in and around the hills were not told about these meetings, let alone invited to participate.

In August 2008, the Supreme Court of India allowed the mining project to proceed, but responded to concerns about its possible impact on protected forests by ordering the Government of Orissa, the Orissa Mining Corporation and Sterlite India to undertake development work in the region via a mechanism called a "Special Purpose Vehicle" (SPV). The SPV reportedly put together proposals for the conservation and development of the Dongria Kondh and other Adivasi communities in Niyamgiri Hills, but no details of the proposals were disclosed to these communities, and they were not involved in the design of the development programme.

REFINERY: MISINFORMATION AND HARSH EFFECTS

“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

Vedanta Aluminium Limited's alumina refinery at Lanjigarh has led to water and air pollution, seriously undermining the quality of life and threatening the health of nearby communities, some of whom live only a few hundred yards from the refinery's boundary walls. The reality of conditions since the refinery opened in 2006 stands in stark contrast with the glowing promises of employment and local development which authorities made to communities when they acquired their lands for the project.

In 2003, the Orissa government ordered the compulsory acquisition of farmlands in Lanjigarh to enable the construction of the refinery. During the land acquisition process government officials misinformed local communities about the possible benefits of the project, promising that the company would provide jobs to every family who sold their lands. They also claimed that the area would be transformed, with the provision of electricity and water, into a 'Bombay', 'Delhi' or 'Dubai'. In reality, only people from families that were fully displaced were guaranteed jobs. Others were only entitled to priority in employment and some other benefits under the relief and rehabilitation policy for the project.

The processes used to refine alumina from bauxite produce wastes, which require careful management. These include a highly alkaline waste known as red mud, as well as waste water, dust from the bauxite, coal and lime handling areas and fly ash from the coal-fired boiler. At the public consultation for the environmental clearance for the project, people were not provided with any information on these issues, or on the waste management structures that would be set up right next to their villages. Nor was information provided on the associated risks for the environment

and human health and well-being.

LOCAL LIVES BLIGHTED: REFINERY POLLUTION OF AIR AND WATER

The refinery is built at a sensitive location, beside one of the main rivers in southern Orissa, the Vamsadhara. The river Vamsadhara is the main source 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 Ministry of Environment and Forests granted clearance for the refinery on the basis of a commitment made by the company involved that the refinery would be designed to ensure “zero discharge”.

Vedanta Aluminium has repeatedly failed to adhere to these requirements. Between 2006 and 2009, the Orissa State Pollution Control Board (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. 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.

Of particular concern to people interviewed for the report was the leakage of highly alkaline wastewater into the river Vamsadhara, which is the lifeline of the area. 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. 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. Residents who previously relied on the river for drinking water, bathing, and for their cattle, no longer considered the water safe. This has undermined the availability of clean drinking water, particularly in the summer months.

Residents told Amnesty International that since mid-2007 – when the refinery began operating – they have been suffering from a range of health problems. These include skin conditions like blisters and boils after bathing in the river, and respiratory discomfort, including coughing and breathlessness, which they believe are linked to inhaling of dust and other emissions from the refinery.

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.

REFINERY EXPANSION: WHAT’S AT STAKE?

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. In light of the OSPCB findings of pollution 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 however completely fail to evaluate or even refer to the OSPCB reports documenting instances of pollution and the concerns raised by local communities.

In April 2009, officials of the Orissa government held a public hearing on the refinery expansion plans. However, official documents including the findings of the Pollution Control Board in relation to the current operations of the refinery were not shared with the affected communities. 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. Regulatory clearance for the refinery expansion is pending with the MoEF.

STATES' OBLIGATIONS TO PROTECT HUMAN RIGHTS

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 International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and International Convention on the Elimination of all forms of Racial Discrimination as well as standards enunciated in the UN Declaration on the Rights of Indigenous Peoples, 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.

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. 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.

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.

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.

RECOMMENDATIONS

Amnesty International is calling on the Governments of India and Orissa to:

- ensure that there is no expansion of the refinery and mining does not go ahead until existing problems are resolved;
- ensure that Vedanta Aluminium undertakes a comprehensive clean-up of the pollution it has already caused and any person whose human rights have been violated has access to justice and to an effective remedy and reparations;
- set up a process to seek the free, prior and informed consent of the Dongria Kondh for the proposed mining project;
- to carry out a full social, environmental and human rights impact assessment of the proposal for expansion of the alumina refinery and bauxite mining project, in adequate consultation with the affected communities;
- 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;

Amnesty International is also calling on Vedanta Resources and its subsidiaries:

- to suspend plans for mining and expansion of the aluminium refinery until the existing human rights issues are properly addressed;
- ensure the Dongria Kondh’s free and informed consent is obtained prior to any continuation of the proposed mining project and respect their decision if they do not provide it;
- urgently and fully address the existing negative environmental, health, social and human rights impacts of the Lanjigarh refinery in genuine and open consultation with the affected communities and the relevant state authorities in Orissa;

Amnesty International has also called on investors in Vedanta to use their influence with the company to ensure the recommendations above are implemented. The organization has also urged the government of the United Kingdom (UK), where Vedanta is headquartered, to take action to ensure that the operations of UK-based companies are respectful of human rights.