

AMNESTY INTERNATIONAL

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India: Open Letter to authorities to withdraw the clearance granted to Vedanta-Orissa Mining Corporation for bauxite mining project which could threaten Dongria Khond indigenous communities at Niyamgiri

To

Chairperson
National Environmental Appellate Authority
J. L. Nehru Stadium, Gate No. 31,
Lodi Road, New Delhi 110003, India

Dear Sir/Madam,

On 28 April 2009, the Ministry of Environment and Forests of the Government of India granted an environmental clearance for the Government of Orissa's Mining Corporation Limited to establish the Lanjigarh bauxite mining project in the Niyamgiri hills.¹ The opencast mine will be operated by Vedanta Aluminium Limited, as per a joint venture agreement between this company and the Orissa Mining Corporation Limited.

Amnesty International requests the National Environmental Appellate Authority to withdraw the clearance until all necessary measures are taken by the Government to ensure that the mining project will not negatively impact the human rights of the *Dongria Kondhs*, an endangered indigenous community, and other communities who may be affected by the mining operations atop Niyamgiri hills. This has to include, at a minimum,

- a genuine consultation with the *Dongria Kondhs* as well as other communities who are dependent on the Niyamgiri hills as a source of water and for their livelihoods;
and
- an independent human rights and environmental impact assessment of the mining plan, potential risks and impacts.

As you are aware, the Niyamgiri hills are sacred to the *Dongria Kondh adivasi* community of about 8000 people who live on and at the base of the Niyamgiri hills and were described as 'endangered' by India's Supreme Court-appointed Central Empowered Committee (CEC).² The *Dongria Kondh* self-identify as an indigenous

¹ Ministry of Environment and Forests, *Letter No.J-11015/221/2005-IA.II(M)*, 28 April 2009.

² *CEC report to Supreme Court in IA No. 1324*, 21 September 2005, para xix and *CEC Supplementary Report to Supreme Court in IA No. 1324*, 22 February 2007, para 7 (The CEC is an authority set up under the Environment Protection Act, 1986 and has the mandate of monitoring and ensuring compliance with the orders of India's Supreme Court).

people. *Dongria Kondh* community members interviewed by Amnesty International in March 2009³ described the Niyamgiri hills as central to their collective identity, religious beliefs, traditional way of life and culture. They also explained that Niyamgiri hills were essential for their survival as a distinct people and for their economic and physical survival. The *Dongria Kondh* practice shifting cultivation on the Niyamgiri hill slopes, collect forest produce and carry out hunting in the area for their food and livelihoods. They also rely on the Niyamgiri hills as a source of water, wood, and traditional plants which they use as medicine. Amnesty International is concerned that there has been no attempt to ensure that the proposed bauxite mine does not threaten the *Dongria Kondh's* ability to continue to engage in these traditional practices that are central to their way of life and culture.

Consistent with international law, prior to any approval being granted for the proposed mine, the free prior and informed consent of *Dongria Kondh* communities should have been sought. The Government of Orissa should have ensured that *Dongria Kondh* communities were given full information that was accessible, transparent and objective so that *Dongria Kondh* communities were able to assess the potential impacts of the proposal on their way of life. They should have been allowed sufficient time to be able to freely make informed decisions about their views of the proposed mine, and to actively engage in decision making with the relevant authorities about the proposal. In contrast, the *Dongria Kondh* communities have not been given any information about the potential impacts of the proposed mine, or been consulted to determine their views about the proposal. None of the *Dongria Kondh* communities living on or near the Niyamgiri hills were given notice of the public hearings which were held in February and March 2003, nor were attempts made in any other way to ensure their participation in these hearings, which were held at a considerable distance from where they live.⁴ The public hearings were also completely inadequate as information was not provided to the communities on the potential risks and negative impacts of mining.

Although an Environmental Impact Assessment was commissioned by Vedanta's predecessor company, Sterlite Industries, in 2002, such an assessment is rarely sufficient to ensure that the potential human rights impacts of an operation are assessed and that plans are developed to mitigate such impacts. In this case, the assessment commissioned by Sterlite Industries lists the number of villages and their demographic data an area within ten km radius of the refinery and mine sites but neither mentions the *Dongria Khond* and other communities by name nor discusses how close some of the communities live in close proximity to the mining site.⁵ It does not study the ways in which the communities currently utilise water, wood and other natural resources in the hills or effectively analyse how these could be impacted by the mining project in the long run. On the other hand, it states that education,

³ Amnesty International undertook a mission to Lanjigarh and to the Niyamgiri Hills in March 2009 and met with local communities, including the *Dongria Kondh* communities, government officials and VAL representatives.

⁴ Amnesty International found from these communities that none of them had been made aware of the public hearings held at Lanjigarh and Muniguda in the plains on 7 February and 17 March 2003; These communities said they were not aware of the Orissa State Pollution Control Board (OSPCB) advertising them in English and Oriya newspapers, based at Orissa's capital Bhubaneswar, 630 km from the villages, on 8 January and 17 February 2003 and that no attempts were made to reach them in their own oral language or in a manner accessible to them.

⁵ Tata AIG Risk Management Services, *Rapid EIA report for Lanjigarh bauxite mining project*, August 2002, Section 2.7-1.

employment, community services, transportation and economy of the local population would be positively impacted during the mine preparation and the operational phases. Despite numerous protests and complaints from the *Dongria Kondh* and other communities, no attempt has been made by the government to set up a consultation process with the communities nor has an independent impact assessment been undertaken.

Amnesty International is aware that after a mandate from the Supreme Court of India, a Special Purpose Vehicle (SPV) of the Vedanta and Orissa Mining Corporation has developed proposals for the development of the area and for conservation and development of the *Dongria Kondh* and other *adivasi* communities, but found that no details of the proposals have been disclosed to these communities nor their consultations sought.⁶

The Government of India is under an obligation under international human rights to ensure genuine consultation with *Dongria Kondh* communities. It must also ensure that members of the community are fully and accurately informed of the nature and consequences of the mining proposal and provided with an effective opportunity to participate individually or as collectives. It is also obligated to ensure that decisions are taken on the development and use of the traditional lands of *Dongria Kondh* communities without their free, prior, informed consent.⁷

Dongria Khond communities, living in the vicinity of the proposed site for bauxite mining, have significant concerns over the potential effects of blasting, noise, dust, arrangements for transport of people and the mined bauxite. *Dongria Kondh* and other communities living on Niyamgiri also highlighted to Amnesty International their complete dependency on the streams which originate from the top of the Niyamgiri hill top for drinking water, personal use and agriculture. They expressed their concerns about the potential impact of the mining on these water bodies and on their ability to continue to live, work and survive in the areas that *Dongria Khond communities* have traditionally inhabited and other communities have also lived in for hundreds of years.

The CEC's fact-finding report acknowledges that the protected Niyamgiri hills constitute the "origin of Vamsdhara river and other rivulets" and there is likelihood of "adverse effect of mining on bio-diversity and availability of water for the local people."⁸ Environmental activists have pointed out 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 the bauxite and have warned of eventual destruction of the groundwater recharging process if mining is allowed. However, an interim expert report commissioned by the Orissa Mining Corporation has concluded that "the proposed mining activity (at a much

⁶ These proposals include undertaking a Scheduled Area Development of Lanjigarh Project' using five per cent of annual profit tax from the mining project or INR 100 million, whichever is higher, as per the above Supreme Court ruling, formation of a company called Lanjigarh Scheduled Area Development Foundation and a comprehensive conservation cum development plant for the *Dongria Kondhs* for the period 2007-2012.

⁷ Schedules V and VI of India's Constitution seek to protect the lands and habitats of some of *adivasi* communities. The 72nd and 73rd amendments to India's Constitution and the Panchayat (Extension to Scheduled Areas) Act, 1996, seek to vest powers of consultation with the local bodies of *adivasis* and other already marginalized communities on issues relating to local development planning.

⁸ CEC report to India's Supreme Court in IA No. 1324, 21 September 2005, para 30 (xiii).

higher level) would have a negligible impact on the lower aquifer system.”⁹ Considering the seriousness of the potential impact of mining on water bodies and the concerns expressed by the communities, there is a necessity for a deeper study and a more transparent system of consultations with the communities on this issue.

Amnesty International is concerned about the potential impact of the mining on the human rights of *Dongria Kondh* and other communities. In particular, there are serious threats posed by the proposed mine to their human rights to water, food, health and sustainable livelihoods. Given the seriousness of these potential impacts, the Government of India is obligated under international human rights law to undertake a comprehensive, independent and holistic human rights and environmental impact assessment of the risks identified by the CEC. The Government must also ensure that the project does not result in a violation of human rights, including through a failure on the part of the Indian authorities to take all necessary measures to safeguard persons within their jurisdiction from infringements of human rights by third parties.

The Government is also obligated to ensure the participation of people in decision-making processes that may affect the exercise of their rights. *Dongria Kondh* and other communities living on the hills but also others who may be impacted must therefore be provided with full, accessible and adequate information about the mining project and its risks. They should be fully engaged in decision-making through fair and free processes, and should be given the opportunity to develop with the relevant authorities mitigation measures to ensure that risks and potential impacts are as far as possible avoided. It is also essential that measures are put in place at the earliest opportunity to ensure that if any human rights abuses do occur, *Dongria Kondh* and other communities are able to defend their rights and access effective remedies, as well as ensure that perpetrators of violations are held accountable.

Amnesty International urges the National Environmental Appellate Authority

- To withdraw the environmental clearance for opening a mine on Niyamgiri hills until all necessary measures are taken by the government to ensure that the mining project will not negatively impact the human rights of *Dongria Kondh* and other communities who may be affected by the mining operations;
- Undertake an independent and impartial human rights and environmental impact assessment of the bauxite mining proposal on the local communities including the attendant risks, which *Dongria Kondh* and other communities have an opportunity to participate in, and to make the findings public;
- Ensure that these findings are disseminated to the communities in an accessible manner, especially to those who are not formally literate, to provide them with information towards a genuine process of consultation;
- Set up a genuine process of consultation with *Dongria Kondh* and other communities who may be affected by the proposed mining project and provide them with full, accessible and adequate information about the mining project and its risks;
- Ensures these communities are fully engaged in decision making through fair and free processes that provide them the opportunity to develop mitigation

⁹ Central Mine Planning and & Design Institute, Ranchi, *Interim Report on Hydro-geological Investigations on Lanjigarh Bauxite Mines*, August 2006, para 13.

measures to ensure that risks and potential impacts are as far as possible avoided
and

- Ensure that decisions are taken on the development and use of the traditional lands of *Dongria Kondh* communities with their free, prior, informed consent.

Thank you for your consideration for the above recommendations, and we look forward to your response at the earliest.

Sincerely,
Madhu Malhotra
Deputy Program Director
Asia-Pacific Program

Copies to:

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