

# AMNESTY INTERNATIONAL

## Public statement

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### **India: Seek free, prior, informed consent of Dongria Kondh on the Niyamgiri bauxite mine project**

Authorities in India need to establish a process to seek the free, prior, informed consent (FPIC) of Dongria Kondh *adivasi* (indigenous) communities on the proposed bauxite mine project in Niyamgiri, Orissa, and respect their decision, Amnesty International said today, on the occasion of the United Nations' International Day of the World's Indigenous Peoples.

Several *adivasi* communities in mineral-rich states including Orissa, Chhattisgarh, Jharkhand, Bihar, Andhra Pradesh and West Bengal have been protesting over the potential negative impacts of mining projects on their traditional forest lands and habitats on which they have been completely dependent for centuries. The Indian authorities have often failed to consult the communities to seek their consent or provide them with prior information on the projects. These protests are occurring even as India is considering new legislation aimed at expanding its mining sector.<sup>1</sup>

One such example is struggle of the Dongria Kondh *adivasis* in the Niyamgiri Hills to resist the bauxite mine project on their sacred sites proposed to be executed by Orissa Mining Corporation and Sterlite Industries India, a subsidiary of the UK-based Vedanta Resources.

Amnesty International has documented the human rights abuses faced by Dongria Kondh and other communities in Niyamgiri.<sup>2</sup> The Dongria Kondh are concerned that the proposed mine project on their traditional lands and habitats will result in violations of their rights as indigenous community to water, food, health, work and other rights to protection of their culture and identity. The only occasion for any consultation by the authorities was a public hearing held seven years ago when the project's environmental impact assessment report was made public, but the Dongria Kondh were never directly informed about the hearing.

Dongria Kondh communities have also informed Amnesty International that the authorities repeatedly overlooked protection measures listed in India's Constitution to

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<sup>1</sup> Mines Ministry prepares a fresh draft of new mining bill for Group of Ministers, Business Standard, 3 August 2010. <http://www.business-standard.com/india/news/mines-min-preparesfresh-draftnew-mining-bill-for-gom/103764/on>

<sup>2</sup> For details, see Amnesty International, *Don't Mine us out of Existence: Bauxite Mine and Refinery Devastate Lives in India*, AI Index: ASA 20/001/2010, February 2010, Chapters 1 and 3.

avoid social injustice and exploitation of *adivasi* communities<sup>3</sup> and recent legislations requiring prior consultation with elected village-level councils<sup>4</sup> and guaranteeing registration and recognition of their communities' interests in common forest resources.<sup>5</sup>

In addition, international law to which India is a party – the International Labour Organization's Indigenous and Tribal Populations Convention No. 107 and the UN Declaration on the Rights of Indigenous Peoples, 2007- requires authorities to recognize indigenous communities' rights over their traditional lands<sup>6</sup> and obtain their consent before any attempt to remove them from their traditional lands.<sup>7</sup> International law also recognizes the special spiritual relationship that indigenous peoples have with their traditional lands, and particularly their sacred sites. For indigenous peoples, "relations to the land are not merely a matter of possession and production but a material and spiritual element..."<sup>8</sup>

Amnesty International urges the Indian authorities to establish a process to seek the free, prior, and informed consent (FPIC) of the Dongria Kondh before proceeding with the proposed mine project in Niyamgiri. This must include:

- providing the Dongria Kondh with accessible and adequate information about the project;
- undertaking, in genuine and open consultation with the Dongria Kondh, a comprehensive human rights and environmental impact assessment of the project and providing appropriate procedural safeguards to ensure their participation in the assessment process and that their knowledge and perspectives of the Hills are given due weight and respect and
- respect the decision of the Dongria Kondh if they do not provide consent to the project.

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<sup>3</sup> Article 244 and the Fifth Schedule of the Constitution grant 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.

<sup>4</sup> The Panchayats (Extension to Scheduled Areas) Act, 1996.

<sup>5</sup> Scheduled Tribes and Other Traditional Forest-Dwellers (Recognition of Forest Rights) Act, 2006. A four-member expert panel appointed by India's Ministry of Environment and Forests which is examining the local authorities' decision to reject the Dongria Kondh's claims over common resources in Niyamgiri as per this legislation is expected to submit its report by 20 August.

<sup>6</sup> This requirement to demarcate indigenous peoples' traditional lands is set out in the ILO Convention No. 107, ratified by India on 29 September 1958. See Article 11 of Convention No. 107 which provides 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. India has not signed the more recent ILO Convention No.169.

<sup>7</sup> See Article 12 of Convention No. 107. See also, Article 13(2) of the Convention No. 107 requires that third parties not be permitted to exploit Indigenous and Tribal Populations' lack of knowledge of the law to secure title to their lands. Also, if these communities are displaced in the process, replacement lands "of quality at least equal to that of the lands previously occupied by them" and compensation "for any resulting loss" are necessary.

<sup>8</sup> See, I/A HR Court, *Awes Tingni Mayagna (Sumo) Indigenous Community v. Nicaragua*, Series C (No. 79) (2001).