

International Environmental
Law Research Centre

SITE INSPECTION REPORT

BAUXITE MINING IN KALAHANDI AND RAYAGADA DISTRICTS (ORISSA MINING CORPORATION)

Usha Ramanathan

2010

*This paper can be downloaded in PDF format from IELRC's website at
<http://www.ielrc.org/content/w1003.pdf>*

Usha Ramanathan
Law Researcher

AB 5 Purana Quila Road
New Delhi 110 001

To
The Addl. Director General of Forests (FC),
Ministry of Environment & Forests,
Paryavaran Bhawan,
CGO Complex, Lodhi Road,
NEW DELHI-110 003

February 26, 2010

Ref: Site Inspection Report for diversion of 660.749 ha of forest land for mining of Bauxite ore in Lanjigarh Bauxite Reserve in favour of Orissa Mining Corporation in Kalahandi and Rayagada districts in Orissa for approval under Forest (Conservation) Act, 1980

Ref: Ministry's letter No.8-23/2005-FC, Dated 1st January, 2010

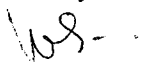
Dear Sir

I am forwarding a copy of the report of the team of three members consisting of Dr Vinod Rishi, Former Additional Director General (WL), WII, Dehradun, Shri J.K. Tewari, CCF (Central), ERO, MoEF, Bhubaneswar and myself on advice from Mr J.K.Tewari given to me over the telephone last evening (25 February, 2010). The report is in three parts, with annexures, focussing on different aspects of the study, and contributed by each of the three members.

I am also sending with the report Mr J.K.Tewari's Forwarding Letter, which was sent to me by e.mail. A signed copy will reach your offices in the ensuing days.

Warm regards

Sincerely



(Usha Ramanathan)

2
9.3.10

GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT & FORESTS
EASTERN REGIONAL OFFICE
A/3, CHANDRASEKHARPUR, BHUBANESWAR - 751 023
TEL. : (Off.) 2301213, 2302432, 2302443, 2302452, 2302453
FAX : 0674-2302432. GRAM : PARYAVARAN, BHUBANESWAR
Email : mef@ori.nic.in

भारत सरकार
पर्यावरण एवं वन मंत्रालय,
पूर्वी क्षेत्रीय कार्यालय
ए/3, चन्द्रशेखरपुर, भुवनेश्वर - 751 023
तार - पर्यावरण, भुवनेश्वर

No. 5-ORA011/2005-BHU

25th February, 2010

SPEED POST

To

The Addl. Director General of Forests (FC),
Ministry of Environment & Forests,
Paryavaran Bhawan,
CGO Complex, Lodhi Road,
NEW DELHI-110 003.

Ref: Site Inspection Report for diversion of 660.749 ha of forest land for mining of Bauxite ore in Lanjigarh Bauxite Reserve in favour of Orissa Mining Corporation in Kalahandi and Rayagada districts in Orissa for approval under Forest (Conservation) Act, 1980.

Ref: Ministry's letter No.8-23/2005-FC, Dated 1st January, 2010.

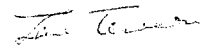
Sir,

In view of the allegation regarding violation of Forest (Conservation) Act, 1980 and to address concerns regarding tribal rights and Wildlife, a three members committee was constituted consisting of Dr. Usha Ramanathan from Centre for Study of Developing Society, Dr Vinod Rishi, Former Additional Director General (WL), WIL, Dehradun and Shri J.K. Tewari, CCF (Central), ERO, MoEF, Bhubaneswar. The committee has prepared the report which is in three parts as below:

<u>Name of the Member</u>		<u>Issues dealt</u>
1. Dr. Usha Ramanathan	-	Tribal Rights Issues
2. Dr. Vinod Rishi	-	Wildlife Conservation Issues
3. Shri J.K. Tewari	-	Violation of F(C) Act.

The report is submitted herewith for consideration and appropriate decision.

Yours faithfully,



(J.K. TEWARI)

CHIEF CONSERVATOR OF FORESTS (CENTRAL)

Encl: As above

SITE INSPECTION REPORT CONCERNING VIOLATION FOR DIVERSION OF 660.749 HA OF FOREST LAND IN KALAHANDI (SOUTH) FOREST DIVISION AND RAYAGADA FOREST DIVISION IN FAVOUR OF THE ORISSA MINING CORPORATION LTD (OMC) FOR MINING OF BAUXITE IN LANJIGARH BAUXITE MINES.

This part of the report covers issues other than those concerning wildlife and forest violations. It includes observations made during site visits between 27th January and 1st February 2010, which was the second phase of the visits.

The Dongria Kond

The site visit included a meeting with a gathering of men and women at a point near Ejirupa village. They were members of the Dongria Kond tribal communities who had reached there from a number of villages including Palveli, Gortha, Pakeri, Sargipayo, Dhongamati, Dengoni, Tahali, Kambesi (a village on the Rayagada side of the mountain) and Lakhpadar. Many of these are Dongria Kond villages. After hearing the views, anxieties and anger of the Dongria Konds gathered there, we walked to Lakhpadar village, stopping along the way at Paalberi village and Tadipula village.

The Dongria Konds are a primitive tribal group (PTG). At an estimated number of 7952 in the 2001 census – 3458 males and 4529 females -- they are an endangered tribe. Their lives are intimately connected with the mountains, forest and forest produce. They live by gathering roots, fruits and other NTFP and practice some agriculture. A “Vaidya Sangh” based in Bubhaneshwar identified 112 medicinal plants in Niyamagiri, valuable in the treatment of cancer, diabetes, leprosy, malaria, paralysis, hypertension among others. Cerebral malaria is endemic in this area, and it is widely acknowledged that the medicine administered by the Dongria Konds which they extract from the plants on the hill is more effective and reliable.

The Forest Rights Act (FRA) in the Dongria Kond area

The FRA is still in the process of being understood by forest dwellers, as also by the administration, in the areas that we investigated. The FRA expects that recognition and settlement of rights will precede any involuntary change in the conditions of the tribals and forest dwellers. A recent case in the Andhra Pradesh High Court demonstrates the lapses that may occur during the implementation of the FRA, especially in relation to community and traditional rights. **(Annexure)**

The FRA and the Rules recognise PTG as a people requiring particular protection. This is in keeping with the Constitution which recognises the right of protection and preservation of the way of life of Scheduled Tribes in a Fifth Schedule area. In Lakhpadar, we were informed that the Dongria Kond Development Agency (DKDA) has taken forms in connection with the FRA in October 2009, but the tribals were unaware of what that implied. They have not heard from the DKDA since, and are unclear what the settlement of rights would do for them.

The process of determination and settlement of individual, community and traditional rights has not been completed yet.

During the site visit, it was evident that the Dongria Kond have only a sketchy notion of the rights to which they may lay claim under the FRA. In none of the villages that we visited was there understanding about how to delineate, and claim, community and traditional rights. However, the Dongria Konds evinced a strong sense of habitat, and of the mountain which is their abode, the source of their sustenance and their sacred space. The top of the mountain belongs to Niyamaraja, which is where they congregate to worship – thirteen times each twelve months, they said.

Until these, and allied rights are recognised, recorded and settled under the FRA, it would be unconstitutional, and in breach of the FRA, to disturb their habitat.

Specifically, it would be necessary to attend to Section 3 which recognises the right over habitat and habitation of PTGs:

Section 3(1)(e): “[r]ights including community tenures, habitat and habitation for PTGs and pre-agricultural communities.”

Section 3(1)(i): “[r]ight to protect, regenerate or conserve or manage any community forest resource that they have been traditionally protecting and conserving for sustainable use.”

Section 3(1)(k): “[r]ight of access to biodiversity, and community right to intellectual property related to biodiversity and cultural diversity.”

Section 5 of the FRA, *inter alia*, empowers the holders of any forest right ...

“(c) to ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage.”

Before any decision is taken to disturb the habitat of the Dongria Kond, that they are a PTG and endangered must also be taken into account.

‘Displacement’ of Dongria Konds

The company and the Orissa Mining Corporation (OMC) informed us that there would be no displacement involved in the mining project since no one lives on that stretch of the mountains.

This statement rests on the definition of 'displaced families' and 'families affected but not displaced'.

Para 1.2 of the Rehabilitation and Resettlement Policy for the Displaced and other Project Affected Families for Establishment of Alumina Refinery by M/s Sterilite Industries (India) Ltd. near Lanjigarh, Kalahandi, Orissa that pertains to the VAL, provides the definition that has been used to identify displaced family in relation to the Alumina Project:

"1.2 A family/person shall be termed as 'displaced' and hence eligible for rehabilitation benefits if such family/persons has been a permanent resident of Orissa and ordinarily residing in the project area for at least 3 (three) years prior to the date of publication of the notification u/s 4(1) of Land Acquisition Act 1894 and

- (a) on account of acquisition of his/her homestead land is displaced from such area or
- (b) he/she is a homesteadless or landless family/persons who has been/is required to be displaced.

Note: (i) The 'project area' means the land which is acquired for establishment of industrial projects.

(ii) The persons/family who does not ordinarily reside in the homestead land acquired for this project cannot be termed 'displaced'.

Para 12: Definition of other project affected persons/families (PAPs): A person/family will be termed as 'project affected person/family' if his/her land (not homestead land) is acquired for establishment of the industrial project. These persons are therefore affected by the establishment of the project by way of acquisition of their private land but are not required to be displaced as their homestead land is not acquired.

It is by extending this definition to the mining project area that it is claimed that there are no displaced or project affected persons or families.

Dongria Konds however perceive it differently. There are no villages in the mining area, they said. But there are over 200 villages on the sides of the mountain. They will all get affected by the road, the vehicles, the mining and the drying up of the streams. Mining will bring many people into our area who know nothing about us or how we live. The wildlife is already affected by the activity, and the roads. Our lives are closely linked to the wildlife here, and as that disappears, our lives will get destroyed. Our medicinal plants and fruits and roots will get affected by all the comings and goings on the mountains and the conveyor belt that will pass through our territory. The 'dongar' where we worship our Niyamaraja will be dug up and blasted.

These are aspects that are integral to the lives of the Dongria Konds, and do not appear to have been considered while deciding to open up the mountain top for mining. While some of their concerns may be met by the assessment made by expert bodies such as the CMPDI which has made a projection of the effect of mining on water, there are no studies and no assessments about the other threats that they see themselves as facing. *This acquires importance in the context that disruption of the habitat and the way of life of this PTG cannot be remediated nor compensated, and may lead to the destruction of the Dongria Kond as a PTG. This is too serious a consequence to ignore.*

There is unrest palpable among the Dongria Konds. Uncertainty and anger, that the entry of the company could mean an end to their lives as they know it, and so to their very survival, was in evidence. These concerns need to be addressed.

The team is concerned that no experts have been brought in to assess the implications of the project for the Dongria Konds.

The team's observations during the visit are that--

- they have not been consulted about the project, because they have not been counted among the project affected
- their 'poverty' is relative, and their subsistence in their natural state is not threatened by the kind of poverty that we saw in the plains
- they want development, especially schools but from the government which, they say, has shown no interest in them till now, and, now, only to have them make way for the company.
- *the Dongria Konds are not ready for an ecological shift.*

The absence of SIIL

During our visit to Lanjigarh and the site, the team met, and held discussions with, officials of VAL. Two power point presentations, about the aluminium refinery project and the proposed mining project, were made by the Chief Operations Officer of VAL and his associates. We were not informed of the presence in our midst of any representative of SIIL, nor were we met by anyone who was introduced as an official of SIIL at any time during the visit.

This acquires significance in the context of the Supreme Court order dated 23/11/2007 in the matter of *TN Godhavarman Tirumulkpad*. The court quoted an extract from an economic daily which, *inter alia*, read: “‘Vedanta Resources is accused of having caused environmental damage and contributed to human and labour rights violations’, the ethics council said.” “We do not wish to express any opinion on the correctness of the said Report”, the Supreme Court said. “However, we cannot take the risk of handing over an important asset into the hands of the company unless we are satisfied about its credibility.”

Setting out a series of facts and circumstances in relation to M/s VAL, the Court concluded:

“ keeping in mind the totality of the above factors, we are not inclined to clear the project.”

“Liberty is, however, given to M/s SIIL to move this court if they agree to comply with the following modalities as suggested by this Court. *It is made clear that such an application will not be entertained if made by M/s VAL or by Vedanta Resources.*”

The modalities included the setting up of a SPV for Scheduled Area Development of Lanjigarh Project.

The order of the Supreme Court dated 8/8/2008 by which the forest diversion proposal for diversion of 660.749 h.a. was granted was “in matter of M/s Sterilite Industries (India) Ltd.”

Against this backdrop, that Dr. Mukesh Kumar, Chief Operations Officer, Vedanta Alumina Ltd. (VAL), was our interface with the company interested in the mining lease could acquire significance. The powerpoint presentations on 22/1/2010, 28/1/2010 and 31/1/2010 on the aluminium refinery and on mining plans was presented at the Vedanta Guest House by Vedanta personnel. It may bear emphasis that no official of SIIL was introduced in the proceedings, nor do we have reason to believe that any was present.

In the “Minutes of Meeting of First Board Meeting of LPAD Foundation held at the office of Revenue Divisional Commissioner Office, Brahmapur, Orissa at 12 noon on 14 October 2009,” Dr. Mukesh Kumar is represented as a core functionary.

These circumstances suggest that there is a violation of the Supreme Court's orders.

Given the seriousness with which the Supreme Court considered the disinvestment by, and observations of, the Norwegian Fund, the FAC may have their attention directed to a recent decision taken by the Church of England to dispose of its investment in Vedanta

Resources on grounds that “we are not satisfied that Vedanta has shown, or is likely in future to show, the level of respect for human rights of local communities that we expect” and that maintaining investments in Vedanta “would be inconsistent with the Church investing bodies’ joint ethical investment policy” as its reasons. Martin Currie Investments sold their GBP 2.3 million stake last year. BP’s pension fund reduced its holding in Vedanta citing “concerns about the way the company operates.” In October 2009, UK government ruled that Vedanta “did not respect the rights of the Dongria Kond.” On 19th February, 2010, it has been reported that United Kingdom-based Joseph Rowntree Charitable Trust was selling a £2.2 million stake (along with other investors who follow its ethical policy) in Vedanta. “We have heard first-hand about Vedanta’s environmental and human rights abuses in Orissa and believe that Vedanta is pushing industrialisation to the detriment of the lives and lands of the local people. This behaviour may be legal, but is morally indefensible,” Susan Seymour, chair of the investment committee at the Joseph Rowntree Charitable Trust is reported as having said.

It appears, from correspondence that was made available to us, that the district administration, too, has not paid heed to the Supreme Court’s orders. A letter/fax. no. 658/Res dated 16/11/2009, from the “Collector Kalahandi-cum-Director, LPADF, Lanjigarh” to the “Director, National Rural Health Mission, Orissa, Bhubaneswar”, read:

LANJIGARH PROJECT AREA DEVELOPMENT FOUNDATION,
LANJIGARH

No. 658/Res

Dated the 16th November, 2008

This is in continuation of my letter No. 657/Res dated 15.11.2009 about the Lanjigarh Area Hospital. As mentioned, there is local opposition to the proposal of handing over the Lanjigarh Area Hospital to M/s Vedanta Alumina Ltd., Lanjigarh and withdrawing the Government staff. However, it is imperative for

the welfare of the people of that area that the Hospital should be provided adequate infrastructure and personnel. The Lanjigarh Project Area Development Foundation (LPADF), a Special Purpose Vehicle formed by the order of Hon'ble Supreme Court has already allotted Rs. 3.00 Crore for the Hospital. M/S VAL has already identified an NGO for day-to-day running of the Hospital. At this juncture handing over the Hospital to M/S VAL may not be desirable in view of the public sentiments.

I had a discussion with Dr. Mukesh Kumar, Chief Operating Officer of M/S VAL in the matter. He suggested that instead of the present Bilateral Agreement between M/S VAL and the CDMO, Kalahandi about the Hospital, a Tripartite Agreement be signed among M/S VAL, LPADF and the CDMO, Kalahandi. The Hospital may be handed over to the LPADF for infrastructure development and M/S VAL would provide personnel for day-to-day running of the Hospital. The Agreement may also provide for further contribution from M/S VAL towards infrastructure or from LPADF for day-to-day running. The Collector, Kalahandi in his capacity as the Director of the LPADF may take over the Hospital and start the development works.

The FAC may need to consider the consequences of this continuance of VAL in the mining project and in the SPV created pursuant to the Supreme Court's order *which expressly excluded Vedanta Resources and VAL, while permitting SILL to be a party to the project and to the SPV.*

Impact of VAL in the area

The impact that VAL has had on the population in the vicinity of their plant and on the surrounding area was considered during the team's visit. This acquired relevance for a variety of reasons:

- the work on the conveyor belt and on the road linked to the mining area with the premises of the VAL.
- the acquisition included land required for the VAL project and for the Mines Access Road, as is clear from a “Memorandum of Settlement between the M/S VAL and the villagers of Rengopalli ...” [see **Annexure**]
- although SIIL was directed by the Supreme Court to be the contracting and performing party, it is VAL and its officers who are the functionaries on site, including in relation to the SPV that has been set up by order of the Supreme Court.
- the capacity to anticipate, and pre-empt, problems that the people living in the vicinity may face could be assessed.
- VAL’s proposal to expand its plant capacity six-fold will have a direct impact on the mining activity, and its fall-out, if any.

The team visited two villages which are situated close to the plant and which have approached the SHRC complaining of increased morbidity and mortality, loss of cattle, irritation in the eyes and noise population.

Rengopalli village is situated close to the Red Mud Pond. At the early stages of the alumina refinery project, VAL sought to have the land in the village acquired to build its Red Mud Pond, boundary wall for its alumina refinery and to construct the Mines Access Road. This village is mainly populated by the Kutia adivasis. During our visit, they told us that 13 people had died of TB in the preceding two years. 200-250 cattle and goats had perished. They complained that the dust from the factory and the toxicity in the air near the Red Mud Pond was causing them inconvenience, ill health and irritation in the eyes. When the Collector, Kalahandi, visited the village on the direction of the SHRC, he too reported that the red mud pond was indeed causing irritation in the eyes. [Annexure of SHRC proceedings]

The villages of Rengopalli had been unwilling to be displaced when land was being acquired for VAL. Their agricultural land had been acquired for the project, while they had stayed on in their homesteads. They had used the compensation amount to buy land at Muniguda: a distance from their homestead that prevents them from undertaking cultivation, so they have given it for share cropping. The expansion of the Red Mud Pond is taking away the road that the children use to reach their school, and that was also causing them concern.

Despite the villagers having written to the SHRC, and the Collector being brought into the matter, it is striking that *there is no mechanism that has been set in place to monitor the morbidity and mortality of the persons living in the vicinity of the pond and the factory. There has been no effort to stem the immiseration that is visible in these villages.*

The condition of the villagers in Bandhaguda village, which borders the plant, is not very different. We were told that they too had resisted acquisition and eviction, had lost their agricultural land to acquisition, and were now on homesteads with no means of making a living.

In both villages, the inability to find employment, and the effects of the pollution, is driving them to demand that they now be displaced and rehabilitated. The demand flows out of an expectation that they too may get rehabilitation sites and structures and a job for one member of their families. 120 families have been treated as 'displaced' by the project so far, and they have been housed in the rehabilitation colony, and 68 have been given employment; that is the cause for the optimism. It was clear that this choice – of being displaced – was born out of hopelessness. The people of these two villages complained that the company was now refusing to acquire the land and treat them as displaced people.

It is these two villages that have taken their case to the SHRC; but there are other villages where the fall-out of the setting up of the plant is being experienced. In Chatrapur village, again situated along the boundary of the plant, 40 families belonging to the Scheduled

Castes and Scheduled Tribes complained of dust pollution. A railway siding being constructed to carry coal to the plant was resulting in their land getting waterlogged, and they complained that it was they who had to bear the consequences. They too demanded to be displaced, and rehabilitated, with jobs in the company.

In Basantgun village, along the plant's perimeter, they complained that they had to suffer the pollution, but they were not getting the jobs.

Kotdwar is a village with a Scheduled Caste population. They are project affected in that their land has gone to the company. This cluster of 20 houses is up against the boundary wall of the factory and resembles an industrial slum. They said they had an agreement with the Collector that they would get jobs for the land they had to give up; but nothing has happened. They fear that the water is contaminated in their hand pumps. They complained of goats and cattle dying after eating the grass in the area, but the administration was telling them that the animals must have died of old age.

They showed us an "Identity Card" that had been issued to them by VAL and the Collector. It had a column indicating the "[n]ame of the member of the family nominated for employment/training/self-employment" and carried a note "[t]his card is issued as per the provision of the approved Resettlement and Rehabilitation Policy of the Government of Orissa for the establishment of Alumina Refinery Project at Lanjigarh and the contents are subject to change whenever necessary." On the strength of this joint assurance from the company and the Collector, they were expecting to be employed by the company.

The company told us that there are an estimated 1822 PAFs, in three phases. 110 had applied for training and had been sent to be trained. There are contractors to whom many of the tasks had been outsourced, and, according to the company, the PAFs were unwilling to work with the contractors and were insisting that they be absorbed by the company, which was impractical.

The villagers are facing the effects of loss of land, proximity to pollutants, and an inability to access jobs (despite what they understood was a promise that a job would be provided to the designated person) has left these villagers in a state of unrest and immiseration..

Especially given that the logic of industrialising the region was based on improving the conditions of the people; that land loss linked with unemployment is a prescription for immiseration; that these are villages peopled by Scheduled Castes and Scheduled Tribes and that it is in a Fifth Schedule area; the poverty, joblessness and pollution and its effects cannot be treated lightly.

No mechanism has been set in place to monitor matters of

- health
- employment
- immiseration
- collateral effects of the developments in and around the plant, including matters such as water logging, the loss of an easementary way (to the school from Rengopalli) and connected matters.

Forest Rights Act (FRA)

The settlement of rights under the FRA is incomplete even beyond the Dongria Kond villages. There was a lack of awareness especially about community rights, including rights to grazing land, land for *haat* and for places of worship. In Panimunda village on the Rayagada side of the mountain, for instance, where we met members of the Kondo Tribe and others belonging to a Scheduled Caste (Dumbo caste), they said they had applied for '*dangar*' land, but did not otherwise understand the notion of community land as it is set out in the law.

A number of those we met complained that they had taken their families to file their claims under the FRA, but they had been turned away because they had not appended a

photograph of the rights seekers. We were given an extract from the register containing the Minutes of Sub-Divisional Committee, Kalahandi, of proceedings dated 6/6/2009 of the SDLC concerning implementation of the FRA which explains why this happened. The Minutes sets out the information to be gathered about the applicant:

“1. Each call record produced by FRCs must have joint enquiry report signed by the representative of Forest, Revenue and SSD Department.

2. *Joint photograph of couple.*

3. Voter ID Cards of head of family/applicant.

4. Original sketch map of the land occupied alongwith _____ (illegible).”

The Minutes record that cases “are pending due to want of joint photographs of the couple which will be collected very shortly.” This additional requirement is not found in the Rules, and has acted as a barrier to applying under the FRA. It is not usual for families to be travelling to the plains, and there are no facilities for photographs to be taken in the villages. The administration has not made any arrangements for taking the photographs, and has left the onus on the tribal villagers. This is one instance of what is slowing down the process of recognition and settlement of rights.

The Minutes also reflect the lack of attention to community rights.

These are serious imperfections in the FRA process. A review of the implementation of the FRA is clearly needed. This is a Fifth Schedule area, dominated by tribal communities and by members of Scheduled Castes. The FRA was enacted to recognise and settle individual, community and traditional rights of tribals and other forest dwellers. *Before any further change to the status of this population is proceeded with, the FRA must be implemented, in letter and spirit, if injustice to these communities is to be averted.*

Curbs on questioning the project and its effects

Displacement, loss of livelihood, pollution, non-payment of compensation for land and objections to the project and its effects are some of the causes for discontent and protest. The reaction to the protest has been in the form of

- an agreement which abjures the villagers from opposing the activities of the company
- arrest and detention by the police and being let off on bail with an undertaking taken from the villagers saying: "I will not protest again."

The "Memorandum of Settlement between M/S Vedanta Alumina Ltd, Lanjigarh and the Villagers of Rengopalli, Lanjigarh Block of District Kalahandi, Orissa this 28th day of June 2006" is an instance of the curbs that are being introduced by "agreement." [see Annexure].

"The residents of Village Rengopalli had raised certain issues pertaining to their land acquisition and compensation and development of their village. Vedanta wants to build its Red Mud Pond and boundary wall for its Alumina refinery and also to construct the Mines Access Road which will pass through the village of Rengopalli. The villagers of Rengopalli were not accepting the land payment and opposing the construction of the red mud pond and Mines Access Road."

By settlement, therefore, it was recorded that

"1. The people of Rengopalli will unconditionally accept the land payment and will not directly or indirectly oppose the construction of Red Mud Pond boundary wall and the access road and whole heartedly cooperate, participate in construction in a peaceful manner.

They will continue to cooperate the company in all their future activities for construction and operations of Vedanta's Alumina refinery. They will not raise any future issues, which will materially affect the construction and operation of Alumina refinery. *Any*

demands raised by Rengopalli villagers shall be only routed through the village co-ordinator to be nominated by Vedanta and they will not resort to any pressure techniques/strikes/stoppage of work/threatening etc.”

[For complete document, see **Annexure**]

In return, VAL agreed, *inter alia*, to “provide appropriate training facilities to the eligible PAPs to acquire skills and provide employment as per provision of Resettlement and Rehabilitation policy of Government of Orissa approved for Lanjigarh Project.”

The villagers of Rengopalli conveyed to us that it was this promise of jobs for which they had been waiting. Twenty-five youth had taken training, but had not been employed. Their understanding was that the twenty-five should have been employed by the company, and they did not see how to get the company to honour the agreement.

The ‘settlement’ is steeply slanted in favour of the company and has the express purpose of stifling protest and the expression of discontent. Since then, as has been observed earlier in this report, the villagers of Rengopalli have approached the SHRC in connection with matters concerning health, pollution and the access road to the school.

These villages are populated by adivasis and Scheduled Tribes. Rengopalli’s habitants belong to the Kutia Kond adivasi tribe. Their agricultural land has been acquired for the refinery, and the homestead remains with them. That too is in jeopardy when the Red Mud Pond is expanded.

This Memorandum of Settlement is contrary to public policy as per section 23 of the Contract Act. Expressions of dissent and difference are forms of democratic expression, and these cannot be curtailed by agreement. This has been explained by the Madras High Court in Dow Chemical International v. Nithyanandam, International Campaign for Justice in Bhopal, Bhopal Group for Information and Action, Bhopal Gas Peedit Mahila Stationery Karamchari Sangh, Bhopal Gas Peedit Mahila Purush Sangharsh Morcha,

Greenpeace International and one other, O.A.395-397 of 2009 in Civil Suit No. 356 of 2009, order dated July 9, 2009 in the Madras High Court.

These are important cautions while dealing with the rights of adivasis and Scheduled Caste populations who are facing disruption of their lives and livelihood. Democratic, and constitutional, means have to be deployed in taking a project forward. This is why the involvement of the *gram sabhas*, holding public hearings, and practising the requirements of Free Prior Informed Consent has become central to project functioning, especially in adivasi areas. The imposition of these conditions violate the fundamental rights of the villagers of Rengopalli to express themselves and to demand their rights.

The team was met by villagers at Kadampura Chowk, and villagers from Bandhguda, Kotdwar and Dhadel who have been detained, charge-sheeted and are currently facing trial following protests against the company, while they were demanding rehabilitation, employment and expressing other similar concerns. These issues of land, livelihood, and immiseration is being converted into issues of law and order. While one aspect of these protests are in the realm of law and order, the treatment of these protests as offences in criminal law distorts the situation on the ground.

This “burden of criminality”, a lawyer told us, disables the tribals and Scheduled Castes of the area from pursuing their rights. This, he said, itself constitutes a violation of the fundamental rights of the adivasis and Scheduled Castes in this Fifth Schedule area. In many instances, protestors were booked on false cases to silence them, we were told.¹ *These are serious allegations, and must be probed to ensure that the power of the law is not abused.*

Public Hearing

¹ This is also reflected in the statement of Kumuti Majhi of Sudhibali village at the Public Hearing for expansion of the Alumina Plant held on 25/4/2009: “He stated that he gave everything to the VAL but still they are neglected. Whenever they raise the objection they are booked on false cases.”

There has been no public hearing in relation to the mining project after 2003. In 2003, it was held at the PWD Inspection Bungalow, Muniguda, Rayagada District on 17/3/2003, and at the Office of the Special Officer, Kutia Kandha Development Agency, Lanjigarh, Kalahandi District on 7/2/2003. These were hearings in relation to the “proposed alumina refinery captive power plant *and bauxite mine.*”

The public hearing held on 25/4/2009 in relation to the “expansion of Alumina Refinery Capacity from 1.0 MTPA to 6.0 MTPA at Lanjigarh in the district of Kalahandi” has been recorded, and it is annexed to this Report. [Annexure] Twenty seven (27) persons spoke at the public hearing. Each of them spoke about the dust pollution, the non-provision of employment, non-performance of the promises made by VAL when they took their land for the refinery, the diseases that pollution brought with it. Except one speaker who is recorded as only having spoken to welcome the project, the twenty six (26) others were agitated by what they saw as having transpired since their lands were acquired and the refinery set up. The conclusion, highlighted in the report of the proceedings, however, reads:

“The overall opinion of the public about the project was favourable, provided the proponent takes care of their issues.”

It was represented to us that this conclusion could not flow from the anger and disillusion that was witnessed at the meeting, and reflected in the words of those who spoke at the public hearing. A CD of the public hearing testifies to the mood of the speakers having been predominantly defiant.

There was anxiety expressed that, were a public hearing to be held on the mining project, the conclusion may likewise be shown as positive even if the sentiments expressed were to the contrary. It was suggested that, before the FAC relies on the conclusion proffered about a public hearing, it view the proceedings on camera and the views of the people, and itself assess whether the conclusion follows from the proceedings.

Government agencies as beneficiaries

It was pointed out to us that there are instances where a government department has received material assistance from VAL, and that this could detract from the neutrality of the government department. As an instance, it was pointed out that two rooms had been added to the BDO's office in Viswanathpur, and furnished, by VAL as a resting place for the Collector when he travels on duty.

This is a disturbing state of affairs and needs to be checked if the neutrality of the state is to be maintained.

Diversion of 660.749 ha of forest land for mining of Bauxite ore in Lanjigarh Bauxite Reserve in favour of Orissa Mining Corporation in Kalahandi and Rayagade districts in Orissa.

A SITE-INSPECTION REPORT ON THE ISSUES CONCERNING WILDLIFE CONSERVATION

This note relates to observations made with respect to the issues relating to Wildlife Conservation during a site visit to the mining site at Lanjigarh Bauxite Mining lease area, which was carried out in pursuance of the Order issued by the Government of India, Ministry of Environment & Forests vide their F. No. 8-23/2005-FC of 01st January, 2010. The visit to the site was made between 21 January 2010 and 24 January 2010.

BACKGROUND:

The **Hon'ble Supreme Court's Orders** dated 23.11.2007 w.r.t. I.A. NO. 1324 & 1474 IN WRIT PETITION (CIVIL) NO. 202 OF 1995 and dated 8.8.2008 w.r.t. I.A. NO.2134 OF 2007 IN WRIT PETITION (CIVIL) NO. 202 OF 1995 on **grant of clearance for diversion of 660.749 ha of forest land** to undertake bauxite mining on the Niyamgiri Hills in Lanjigarh had allowed MoEF to grant approval in accordance with law.

During the processing of the proposal at different levels of the Ministry of Environment & Forests for the diversion of the above mentioned land a number of issues concerning environment, forest cover, ecology of the area, tribes and people and wildlife in the proposed mining area had been scrutinized. The issues concerning wildlife conservation revolved mainly around the following points:

1. The significance of the area from the point of view of wildlife conservation point, given that it did not form a part of any National Park, Wildlife Sanctuary or a Biosphere Reserve;
2. Threats posed by mining activity to the habitat and the populations of endangered species including, among others, the elephant, sambhar, spotted deer, leopard, sloth bear, barking deer etc., found in the area;
3. Threats posed to the stability of the natural ecosystem in the ecologically sensitive area.

Admissions and denials, as well as approaches for mitigation of the problems that could arise for the conservation of wildlife in the area had been considered by various competent authorities and legal angles examined before the signal to go-ahead with the diversion of 660.749 ha of a compact

site over land constituted as forest in the districts of Kalahandi and Raygade was allowed to be given.

Certain conditions had been imposed to ensure that the impact on wildlife, in addition to other issues relating to Environment and Forest Conservation and people inhabiting the region was reduced to bare minimum. The main approach was to bring a meeting point between Conservation and Development. For the implementation of the action points various documents, including the following, were approved:

1. A Wildlife Management Scheme modified under the guidance of the Wildlife Institute of India, was approved by the PCCF(WL) & CWLW, Orissa for implementation at a cost of Rs 50.53 crore, and the funds were placed in position for this purpose by the applicants for diversion of forest land for mining of bauxite ore. Prescribed Wildlife Management Scheme is expected to take care of the issues relating to the conservation and management of wild life populations in the project impact area.
2. Treatments have been prescribed in a Conservation Plan prepared for the interspersed forest area sandwiched between mining units on the mining lease area.
3. A Conservation cum Development Plan (2007-12) has reportedly been prepared by SC&ST Development Department, Govt of Orissa.
4. Indian Bureau of Mines approved the modified Mining Plan for lease area of 721.323 ha on 16.01.2009.
5. As per CMPDI, The proposed mining activity will have no impact on the aquifer in the plain area.
6. WII has confirmed that Dongria Kondhs do not inhabit the proposed mining site. Development of people within a 50 km radius of the Project is planned with support from the Project.
7. Dongria Kondhs consider the hill at Hundijali as a sacred place, the seat of Niyam Raja, 8-10 km away. Cultural rites are not being impacted by mining Project since the mining site is not in their way.

Environmental Clearance was granted by MoEF on 28 April 2009: MoEF No J-11015/221/2005 - IA.II(M),

Stage I clearance from Forest Conservation angle was granted vide MoEF's No 8-23/2005-FC dated 11 December 2008.

Compliance of the action points under the set of conditions stipulated under the grant of in-principle approval of the government was reported by the State Government of Orissa.

The site inspection, therefore, focused on the current status of issues relating to wildlife conservation at the mining lease site and the ecosystem in which it lies. The site inspection took place on 22 & 23 January 2010. The approach and the observations made are given below:

APPROACH:

a. Interaction with people: While traveling by road in the districts of Rayagade and Bhavanipatna (Kalahandi) on way to Lanjigarh on 22 January 2010 random unscheduled halts were made for direct interaction with people to understand their views about the mining project at Niyamgiri hill. Care was taken to closely explore the views held by people who identified themselves as adivasis and were living in their traditional tribal way in small hamlets along the road passing through the forest.

Other persons with whom interaction took place included Hon'ble Member of Parliament from Kalahandi, District Collector of Kalahandi, Forest Officers, Officials of Orissa Mining Corporation and M/S Vedanta Alumina Ltd., and the members of the public and tribal youth we came across accidentally near Niyamgiri ridge.

b. Independent Technical Surveys:

For an overall perspective of the structure of the forest ecosystem in the rugged hilly topography a one hour (approx) aerial survey by helicopter was carried out over the lease area, covering proposed mining units, adjacent forest and hill ranges and semi-rural habitation areas.

For quick analysis of the natural condition of the area before mining starts an Ecosystem approach was employed for interpreting the ecological indicators in the field. The ecological indicators in the landscape were sought and examined to the extent it was possible during the site inspection.

For examining immediate status of issues regarding wildlife conservation in the diversion area for mining work visit was made on-foot and by road, wherever road existed,

OBSERVATIONS MADE DURING SITE INSPECTION:

Observations and interpretations of evidences noticed are given below:

A. Violation of the provisions of law under Wildlife Protection Act, 1972.

- i. No evidence of hunting or damage to wildlife habitat by the staff or officials of the OMC or the Vedanta Alumina Ltd., at the mining lease site came to our notice.
- ii. There was no evidence of damage to the wildlife habitat by felling of trees at the mining site on the dates of inspection.
- iii. At the fringes of forest outside the lease area and near the human habitations at the base of the hill below the mining lease area some people, apparently local inhabitants, were seen carrying posts and branches of trees felled by them - they carried axes with them. The wildlife habitat around the mining units within the lease area did not appear to be disturbed.
- iv. There was no evidence of any mining of ore in the lease area.

Observation: Site inspection did not reveal any violation of laws relating to wildlife conservation by the OMC or VAL in the lease area.

Special Note: The threat to wildlife in the forests around Lanjigarh from activities considered illegal under the provisions of Wildlife Protection Act, 1972 is real. Increase in local demand for cheaper, unregulated fuelwood and structural timber by new settlers not directly employed by the upcoming industrial complex is the main cause of increase in threat to wildlife and wildlife habitat in and around Lanjigarh. The advancing settlement of people in Lanjigarh, upcoming consumer goods markets, and concentration of people not indigenous to the area needs to be controlled by the concerned authorities in the State Government.

b. Loss of wild life habitat affecting their population structure

During the site inspection evidences of the presence of spotted deer and hare, and digging for roots by porcupines and human beings were noticed in the area. Evidences of the presence of other larger animals were not observable on the hard barren blanks in the lease area. Evidences of presence of elephants, tiger, leopard, or other larger animals did not come to our notice, mainly because the barren rock does not easily lend to registering tracks and foot-prints of such animals.

However, their presence in the forest around the lease area cannot be ruled out. Enquiry from a local tribal pointed to the presence of an animal that he described to be large with stripes. Confirmation of its true identity was not possible as the hyena and tiger, animals coming close to his description, carry stripes on their bodies.

Local enquiry for availability of water in pools or drains within the lease area on the hill top drew a blank. Water was reported to be available in lower elevations and hills outside the lease area.

The wildlife habitat had stunted tree growth at mining site, indicating thin layer of soil; but the growth of the same species of trees growing on the slopes of the hill below the lease area was better and denser, indicating richer habitat for wildlife species that prefer woodlands. Spotted deer are animals of forest edge, while hare prefer open ground.

The interspersed of the blank areas with small stretches of forest on the plateau-like hill top, and the growth of dense stands of tall trees on the hill slopes is an ecologically qualifying feature of the area. The wildlife of the area is governed by the distribution of the resources offered by this ecosystem.

Observations:

Mining activity had not started in the lease area and it is premature to comment upon the impact on wildlife habitat and population structure in the lease area.

In the 660.749 ha of lease land, 270.489 ha forest growth is interspersed with 390.26 ha mining blocks. The mining units are in four clusters of

mining sites. Over the mining lease area 20 ha will be mined at any particular time in order to reduce the intensity of shock impact of this activity and distribute it over space and time for the duration of the mining project. As per the estimated volume of denudation caused by felling of trees in the area, if 50,000 trees are to be cut and 16,00,000 to be planted in different area, away from the site of mining. Further, it is informed that 3,55,300 m³ top soil and 2,000,000 m³ waste from mining will be temporarily dumped in predetermined places and liquidated in 5 years. Thereafter there will be no more dumping.

The effect of removal of trees and top-soil on the continuity of the wildlife habitat at the site is bound to be irretrievable, and cannot be treated as nominal. Dumping of overburden, even if it is for 5 years, is again a source of permanent impact on wildlife habitat.

Mining is an activity that directly and openly impacts the basic element of an ecosystem: the foundation of the trophic structure of the ecological web of life on which wildlife survives. Therefore, it is to be expected that mining will have its impact on the natural ecosystem of the area where it is being undertaken.

Special Note:

In a fringe of grass surrounding one of the mining ore unit, a mat of grass seeds 12-inch x 9-inch (approx.) was seen laid out by ants on a small flat surface of bare rock, presumably for drying out in the sun. In another spot, a blue wasp was seen dragging away a paralyzed golden spider after it had immobilized it by its sting. It is also stated that golden lizard is found in the area, but it could not be observed from direct sighting or other signs and evidences. The observation made at the site indicates that similar other patches around the lease area also provide micro-habitat for biodiversity of a nature that is characteristic of the Niyamgiri hill ecosystem.

The uniqueness of the micro-habitats can be prevented from permanent loss if no further grant of lease in such areas is allowed. The gene-pool of local species of wild grasses and other plants, small insects, arthropods and other life-forms that colonize barren spaces will be of immense value for reclamation of mined surface only if they are not decimated through award of permission to mine ore in the rest of the Niyamgiri ecosystem. Otherwise, the loss of wildlife habitat of special nature, as found in the area, and the population structure of the foundation of the ecosystem's equilibrium is bound to be disturbed beyond the elastic limits of recovery of the environmental quality. Examples of NALCO and other mining sites do not suffice because there is no comparison made between the status of biodiversity in the area before and after the mining was taken up and what is its present status; nor such a comparison is applicable to different situations so as to safely predict the likely impact of large scale mining in a natural ecosystem.

c. South Orissa Elephant Reserve - a linking corridor for elephants in Orissa

OBSERVATIONS:

Evidences of the presence or movement of elephants in the mining site were not noticed during the site inspection on 22.01.2010. During our interactions with local people en-route Lanjigarh from Rayagade enquiries about the presence or movement of wild elephants in the region indicated that the elephants did occasionally visit their crops from the forests in the region. But the level of man-elephant conflict in the area was not as severe as is seen in the Jharkhand, south-Bengal and Chhattisgarh inter-State elephant range.

Special Note:

Mining area constitutes 0.05% of 7713 sq km of proposed South Orissa Elephant Reserve to be constituted for 179 elephants. The herd structure of the population of 179 elephants, their movement patterns and the range over which they move were not available. Niyamgiri, Patragurha, Raulaghimiri, Nachinigura, Hatisal, Karanja and Jalakrirha RFs; Khambesi, Nimagiri, Batarilima, Kudlima, Dahikhal, Sarambi, and Chatikuna and the Protected Forest of Jungle Block reportedly form the Buffer Zone of the elephant habitat.

The forest areas where elephants were reported to move were the two arms of the nebula-like linkages connecting the central hill formation near Niyamgiri and the forest areas stretching toward Karlapat, Kalahandi and Bissamcuttack. These can be seen on the the Google Earth scan for the area bounded within the Longitudes of 83° 11' E and 83° 40' E and Latitudes 19° 21' N and 19° 50' N, which shows a nebula shaped mountainous geological formation in the central section of the landscape. On a Survey of India map Sheet No 65 M (Scale 1:250,000) this formation is shown to range west of the road passing through Bissamcuttack-Tikaraparha-Sibapadar-Ambadala etc. Lanjigarh, the site of Alumina Refinery of M/S Vedanta Aluminium Ltd, nestles in the northern cusp of this formation. On a 1:50,000 scale, the Survey of India sheet No 65M/6 shows the administrative and topographic details and different kinds of land-use to which the area is subjected. The forest area of 660.749 ha in which mining for Bauxite ore is proposed is located in the higher reaches of the hill stretched in east-west direction just south of Lanjigarh village. Google Earth scan is a satellite depiction of the land, its topography, forest cover and land-use pattern by human population as a composite unit.

The satellite imagery indicates the presence of tenuous forested links that connect the Niyamgiri forest with other larger patches of forest in the east, west, south and north. These links are ecological wildlife corridors that allow the movement of wild animals between different sections of their habitat for ensuring that strong genetic enrichment for biodiversity is maintained in the area.

Bauxite ore is reportedly present over an extensive stretch of the hill formation. There is a good scope for mining for bauxite in areas beyond the 660.749 ha lease currently under consideration. The impact of mining at Lanjigarh Bauxite Reserve on wildlife corridors, and elephant range may not be serious if it is confined to the present lease area and more areas are not opened up for bauxite mining till the present lease area is reclaimed fully.

d. Possible impact on environment and overall ecology of Niyamgiri hills

The entire landscape is structured into three easily recognizable ecological land profile categories:

Category I: The natural forest ecosystem in which there are no permanent human settlements or habitations.

It is self-sustaining ecological entity. The level of human disturbance in this area is bare minimum.

Category II: The retrograde, secondary forest ecosystem in which primitive agricultural practices, like shifting cultivation, are practiced. Some of the natural self-sustaining processes are compromised by human intervention to the extent that monocultures are introduced for a short duration in a multi-tiered vegetative cover profile, and the land is later allowed to revert back to the natural ecosystem. The productivity of the land is reduced but not lost completely.

It represents partially subsidized natural ecosystem that has been reduced from its natural status of climax forest to secondary forest ecosystem because of human activities.

Category III: The subsidized semi-rural/ semi-urban human-dominated landscape in which human populations exploit forest based inputs for meeting their needs for fuel, food, and introduce extraneous influences into the natural ecosystem with non-indigenous resources such as seeds, chemicals, fertilizers, etc., imported to the site to aid their survival. Growth and harvesting of monoculture of non-indigenous species of plants, permanent settlements, low dependence level on natural resources, low contribution to conservation of nature and wild natural resources are the main indicators of this category of ecological units in this area. The human habitation proceeds towards urban economy and not towards ecosystem based economy.

It has ecologically the lowest compatibility with natural forest ecosystem.

OBSERVATIONS

Category I: The ridges and slopes of the hills are mostly covered with dense forest and belong to Category I mentioned above. Bauxite ore is exposed to the surface where level natural blanks show up in the forest cover in the upper reaches of the hills. The blanks are bordered with stunted growth of trees, indicating a thin layer of soil. The 660.749 ha of land falls in this Category.

The surface of the mining units was found to be mostly blank, without tree cover, and with thinly scattered clumps of grass cover and *phoenix* palm. No perennial source of water was noticed at or near the sites for mining. The evidence of collection of rain water in small pools at some spots was noticed. The site for inspection was approached by a very rough boulder-strewn steep track which rose from the base of the hill to the top of the hill.

The mining lease area on the Niyamgiri plateau is currently without any significant ecological damage, but it is likely to bear the impact of mining activity with the start of mining activity. Actual impact will have to be monitored over a longer period of time.

Category II These units are located at the edge of the natural forest and are outside the forest diversion area. The lower slopes of the hill exhibited the presence of such partly subsidized ecological units in patches. Both wildlife and forest dwelling human populations co-exist in a low-conflict situation in such units.

There is not well defined boundary to indicate the limits within which people resort to shifting cultivation at the edge of the forests. But on our way from Rayagade to Lanjigarh it was noticed that the easier slopes along the foot of the Niyamgiri hill were subjected to this kind of activity, converting self-sustaining natural ecosystem to partially subsidized ecosystem. The impact of the Aluminium Project in converting naturally self-sustaining ecosystem on the slopes of Niyamgiri hill into partially subsidized ecosystem was not noticeably evident. The conveyor belt is a linear intervention in this region and is not likely to cause an irreversible impact on this part of the ecosystem in the long run.

Category III: The valleys and plains at the bottom of the hilly formations are occupied by this type of land-use pattern. The Aluminium Ore Refinery has come up on land covering such an ecological unit.

Special Note:

The apprehension of Environmental degradation of the Niyamgiri hills ecosystem by land degradation, geo-hydrological drainage change, air and water quality reduction and public health hazard is not unfounded. More than mining at the site where ore is

exposed, the impact will be generated by human activities in the area which will be a fall out of the concentration of human population in and around the site of the Refinery. It may get irrecoverably aggravated if the entire hill is to be mined. In spite of the two decade experience with NALCO in Panchpatmali Bauxite Mines, where wildlife reportedly frequents the dense forests grown on the reclaimed mined-out areas, gaps will remain in the recovery and restructuring of the ecosystem. Compensatory afforestation cannot create any ecosystem that has been impacted. Afforestation activity limits itself to growing of stands of selected tree species. Afforestation can not return natural elements like waterbodies, marshes, sandbanks, grasslands, glades, rocky-outcrops, top-soil and sub-soil, ground-water regime and other ecological structures that may have existed in the area diverted. The simple reason is that we do not have the expertise to replicate even one of the many natural processes and elements in spite of our scientific and technical advancement.

RECOMMENDATIONS:

The convergence between Development and Conservation of natural resources is achievable by defining a balancing point between conservation of nature - forest and wildlife - and development. This balance point is decided by nature through its ecological limitations and not by human beings at the time of planning economic activities. If limits of ecological elasticity are not exceeded there are chances of designing Projects in which ecological recovery from the after-shocks of the Project activities can be managed. In the present case, the present level of stress in the natural ecosystem can be mitigated by following the identified action points arising out of the ecological considerations to which the proposed Project has been subject, provided the ecological limitations are not lost sight of. However, it is our impression that the ecosystem at Niyamgiri may not allow introduction of further stresses. For this reason it will be in the overall interest of development and conservation of human society, natural environment and wildlife to:

DO NOT ALLOW FURTHER DIVERSION OF FOREST LAND IN THE NIYAMGIRI ECOSYSTEM COMPLEX SPANNING THE FORMATION VISIBLE IN THE SATELLITE IMAGERY OF GOOGLE EARTH.

VINOD RISHI

SITE INSPECTION REPORT CONCERNING VIOLATION FOR DIVERSION OF 660.749 HA OF FOREST LAND IN KALAHANDI (SOUTH) FOREST DIVISION AND RAYAGADA FOREST DIVISION IN FAVOUR OF THE ORISSA MINING CORPORATION LTD (OMC) FOR MINING OF BAUXITE IN LANJIGARH BAUXITE MINES.

In view of the allegation regarding violation of F(C) Act, 1980 and to address concerns regarding tribal rights and Wildlife, a three members committee was constituted consisting of Dr. Usha Ramanathan, from Centre for Study of Developing Society, Dr Vinod Rishi, Former Additional Director General(WL), WII, Dehradun and Shri J.K. Tewari, CCF (Central), ERO, MoEF, Bhubaneswar. The committee visited in two phases - first visit by Dr. Vinod Rishi and myself on 22nd and 23rd January, 2010 and second visit from 27th to 30th January, 2010 by Dr Usha Ramanathan and I also joined her for the last two days. The visit was followed by interaction with the CEO, OMC on 31.01.2010.

The OMC Ltd. has applied for Bauxite mining lease of Lanjigarh Bauxite deposit over an area of 721.323 ha covering part of Niyamgiri Reserved Forest of Kalahandi District and Khambesi Proposed Reserved Forests, Niyamgiri proposed Reserve Forest and Jungle Block (Revenue forests) of Rayagada District. Government of India, Ministry of Coal and Mines have granted the lease vide their letter No. 4/81/2003-M.IV dated 13.09.2004 for a period of 30 years with a direction to State Government to ensure compliance of Acts and rules including Forest (Conservation) Act, 1980. The granted lease area of 721.323 ha included 672.018 ha of forest land and 49.305 ha of non-forest land. The proposal was for 660.749 ha leaving aside 11.269 ha for safety zone. The Government of India, Ministry of Environment and Forests, have in their letter No. 8-23/2005-FC dated 11.12.2008 also accorded the in-principle approval to this diversion proposal subject to compliance of stipulations.

The above area was inspected by me on 22.01.2010 along with Dr. Vinod Rishi and again on 29.01.2010 along with Dr. Usha Ramanathan. Senior officials of the Forest Department like Nodal Officer, local CCF and DFO also accompanied during the visit. There is one kutchia road leading from foot hill (near Ejrupa) to hilltop

approximately 3.5 km long motorable only by a four wheel drive due to poor maintenance and slope problem. The road is said to be constructed during the initial prospecting by the GSI during 1977-79 and subsequently used by the department for inspection and other activities. It was also used by the M/s Mineral Exploration Corporation Limited (MECL), a Govt. of India undertaking during 2003 for detail exploration of the deposits and subsequently by Central Mine Planning and Design Institute Limited (CMPDI) and Orissa University of Agriculture & Technology (OUAT) for conducting hydrological survey. The committee could not notice mining or any other activity which may be considered as violation of the F(C) Act, 1980. In this regard the District Collector, Kalahandi has submitted a report to the Commissioner-cum-Secretary, Department of Steel and Mines on 29.11.2009 which is enclosed as Annexure-1 and the Divisional Forest Officer, Kalahandi South Division has given another report to the PCCF, Orissa on 30.11.2009, which is enclosed as Annexure-2. According to those reports, no mining or construction activity has taken place in the proposed area of 660.749 ha for diversion for mining of bauxite ore in Lanjigarh. I agree with their reports. There is no violation of F(C) Act, 1980 with respect to 660.749 ha of forest land.

In addition to the above, I may inform that the OMC has submitted additional proposal for diversion of 33.73 ha of forest land in Niyamgiri Forest through State Government which was received in this office on 10.02.2009. The proposal was forwarded to the Ministry as it was an integral part of the mining proposal of 660.749 ha. The Ministry has given in-principle approval for the same on 15.04.2009.

The break up of the requirement of 33.73 ha of forest land is given below:-

Sl. No	Purpose	Reserve Forest land in ha	Revenue Forest land (Gramya Jungle-jogya, G.Jungle) in ha	Total forest land in ha
1.	Conveyor Corridor	7.0	0	7.0
2.	Mine access road	23.0	2.82	25.82
3.	Common Corridor with conveyor system and mine access road	0	0.91	0.91
	Grand Total	30.0	3.73	33.73

State Government has already informed in their proposal about the violation committed by the user agency that the user agency has constructed 47 numbers of Pillars (23 Nos RCC Pillar fully constructed 15 Nos RCC pillars partly constructed and 9 pillars steel made) over non-forest land coming within the conveyor corridor over 45.6 square meter of non-forest land in the project area. But the actual area calculation is not correct as the Conveyor area already erected above the ground is not calculated. The normal way of calculation is to calculate total length multiplied by the width of structure and additional area required for operation i.e. erection, irrespective of the fact that it is above ground or below the ground. Therefore the recorded area of 45.6 square meter has no meaning. The actual area of construction would be much larger. However, the conveyor belt over the village forest area is not connected. This is only a case of violation of the guidelines regarding Forest (Conservation) Act, Para 4.4 (issued by the Ministry of Environment & Forests).

Besides this the user agency has constructed an incomplete mine access road also, mainly in the non-forest area close to conveyor belt but this also passes through the village forest (Gramya Jungle Jogya) Plot No. 157(P) 1 acre in extent and Plot No. 133 having an extent of 0.11 acres. Both upstream and downstream are lands transferred to the Company by IDCO. Length of the road works through the village forest is around 50 meters out of total length of around 1 km mine access road. Nature of the work done is cutting and leveling. It is difficult to assess the oldness of the road at this stage. This is a case of violation of the F(C) Act and also of the guidelines Para 4.4 issued by the Ministry of Environment & Forests. I discussed this issue with the District Collector, Kalahandi and he informed me over phone that he is aware of the violation of the Forest (Conservation) Act but it happened before his taking charge. Map given by the Vedanta Alumina Limited showing the road by long broken lines and conveyor corridor by continuous line is enclosed as Annexure-3.

During the inspection of the diversion proposal area of 33.73 ha for Conveyor corridor and mine access road on 23.01.10, the revenue officials were not available. But, they were present during inspection on 29.01.10. Normally revenue and adjacent

forest boundaries should coincide but in the present case, there was a gap of about 75 meter of width meaning that is no man's land. This is rather surprising and should be addressed urgently by the Revenue and Forest authorities through joint survey and not leave it for encroachment by private parties.

Appropriate decision may be taken in the light of above observations.



(J.K. TEWARI)
CHIEF CONSERVATOR OF FORESTS (CENTRAL)