



BRIEFING

VEDANTA'S PERSPECTIVE UNCOVERED

Policies cannot mask
practices in Orissa

Abbreviations

EIA	Environmental Impact Assessment
ERM	Environmental Resource Management India
FPIC	Free, Prior and Informed consent
FRA	Forests Rights Act, 2006
IFC	International Finance Corporation
ILO	International Labour Organisation
MoEF	Ministry of Environment and Forests
NEAA	National Environmental Appellate Authority
NHRC	National Human Rights Commission
PESA	Panchayat (Extension) to Scheduled Areas Act, 1996
OMC	Orissa Mining Corporation
OSPCB	Orissa State Pollution Control Board
SPV	Special Purpose Vehicle
ToR	Terms of Reference

Vedanta's Perspective Uncovered:
policies cannot mask practices in Orissa

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Communities protesting at Lanjigarh against inadequate compensation, along with Vedanta officials and police, July 2012
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We've gone to the Supreme Court against plans for the Niyamgiri mine, but the central reserve police force is after us, threatening us not to oppose the mine; we wonder if it is an extended arm of the company (Vedanta).

Lado Sikaka, Dongria Kondh leader, Lakpaddar

We were forced to sell our fertile farmlands for Vedanta's refinery which later reduced our neighbourhood to a wasteland... Yes, in return, the company got us technically trained but also made us beg for jobs which never came. When we protested we had to face false charges and rot in jail for months.

A resident of Kenduguda village near Lanjigarh

Executive summary

Vedanta Resources plc is a UK-registered mining company that has come under growing national and international scrutiny owing to allegations of human rights abuses associated with its activities, especially in India where most of its operations are based.¹ India's regulatory bodies have intervened in many cases where the operations of the company's subsidiaries are not in compliance with India's laws. Communities affected by the company's operations have protested and taken action to defend their rights. Vedanta then failed to persuade the authorities to grant clearance to set up a bauxite mine in the Niyamgiri Hills in Orissa and to expand its nearby alumina refinery in Lanjigarh.

The company, under pressure from its bank lenders and investors, has responded by developing a human rights and sustainability policy framework during 2011 and 2012 which it claims are aligned to international standards and best practices. This framework reflects the recommendations of a UK-based consultancy, URS Scott Wilson, which had identified systemic failings in Vedanta's stewardship of social and environmental issues with regard to oversight, policy, benchmarking, monitoring, disclosure and auditing. URS Scott Wilson has published periodic reviews of Vedanta's progress in implementing these recommendations, which indicate that the company is on the right track. The main focus of these reviews has been the Lanjigarh alumina refinery in Orissa state.

On 22 August 2012, Vedanta published a report on its website, *The Lanjigarh Development Story: Vedanta's Perspective*, in which it defends its approach, promotes its new sustainability framework and rebuts findings, by Amnesty International in reports published in 2010 and 2011, of human rights abuses and failures to conduct proper impact assessments. Vedanta acknowledges in its report that "Amnesty's questioning of our human rights and environmental performance challenged us to critically evaluate policies and practices that require improvement".² Vedanta further accepts that "the [Lanjigarh refinery] project should be developed and taken forward in a manner that respects the human rights of all concerned."³

In this briefing, Amnesty International repudiates Vedanta's attempts to exonerate itself, and renews its recommendations to address the persistent human rights concerns associated with the company's operations in Orissa. The briefing draws on evidence received from communities affected by those operations and on the findings of non-compliance by India's regulatory authorities and other official bodies. Most of this evidence relates to the period 2010-2012.

Amnesty International draws attention to Vedanta's continuing failure to recognise the rights of Indigenous peoples and the principle of free, prior and informed consent (FPIC). Far from abiding by international standards relating to rights of Indigenous peoples, Vedanta attempts to redefine them to serve the company's interests. Not only has the company continued to ignore the views of the Dongria Kondh – the main tribal group living in Orissa's Niyamgiri hills – but it has wrongfully assumed that it knows better than the Dongria Kondh what is in their best interests.

The claim made in *Vedanta's Perspective* that the company has consulted the local communities is not supported by the evidence gathered by Amnesty International over the past four years, including testimonies from the Dongria Kondh and a review of the minutes of official meetings. Nor are these claims supported by the findings of two official expert panels appointed by the Ministry of Environment and Forests (MoEF) in 2010.

1 Throughout this briefing, 'Vedanta' is used to refer to the corporate group, including the entities operating in Orissa, India, under the effective management control of Vedanta Resources Plc

2 Vedanta Resource plc, *The Lanjigarh Development Story: Vedanta's perspective*, August 2012, p11

3 *Ibid*, p52

Vedanta's assertion that its processes, planning and consultation are in line with India's national laws, is inconsistent with testimonies from communities affected by the Lanjigarh refinery, relating to the impact of pollution on their health and water sources, the acquisition of farmlands without proper compensation, and the loss of livelihood due to pollution and reduced access to common land. These concerns are all the subject of a current investigation by India's National Human Rights Commission (NHRC).

Amnesty International's four field visits to the area surrounding the Lanjigarh refinery from 2010-2012 have uncovered information demonstrating Vedanta's failure to adequately address risks posed by the refinery's red mud ponds, and a failure to disclose relevant information on the impact of actual pollution. This is compounded by the company's failure to take appropriate remedial action.

In a context where there are far-reaching allegations of human rights abuses linked to Vedanta's operations, Amnesty International is particularly dismayed to have uncovered evidence of dissent suppressed by the police and paramilitary forces. Some of those opposed to the company's activities have been the subject of fabricated charges, which has the effect of intimidating them and others from exercising their right to protest peacefully and freely express their views. There is sufficient evidence, uncovered during an ongoing inquiry by India's National Human Rights Commission, that the police in both the framing of false charges and the suppression of dissent have acted to promote the interests of the company. The NHRC inquiry states that on a number of occasions the police booked the project-affected villagers in false or exaggerated cases, apparently at the behest of the company.⁴ Additionally, there have been at least two instances where representatives of international media and human rights organisations were harassed by the Kalahandi district police and told not to travel to Lanjigarh and the Niyamgiri Hills.

The credibility of Vedanta's claims to be conforming to human rights standards is undermined by the company's involvement in attempts by the police to silence its critics on the ground, and to deter some journalists and researchers from investigating allegations that its operations are having adverse impact on local communities. This, coupled with the company's repeated failure to disclose information, necessary for a more comprehensive assessment of the human rights impact of its proposed mine and refinery expansion, calls into question Vedanta's stated commitment to address the human rights concerns that Amnesty International and others have raised.

While Vedanta has adopted, since September 2011, a human rights policy and a new sustainability framework, the real test of any progress made must consider whether these policy changes have had any positive human rights impact on the ground. This briefing highlights the big gap remaining between Vedanta's stated policy framework and its practices in Orissa.

4 See Letter from NHRC Eastern Region's Special Rapporteur to NHRC, 10 August 2010, 12 (xii)

1 Introduction

Vedanta Resources Plc, a UK-registered company, owns and controls subsidiaries in India and elsewhere which are engaged in mining and refining operations, including in Orissa, Chhattisgarh, Tamil Nadu and Goa. These operations have, over a period of years, come under the spotlight for their human rights and environmental impact. The company has faced particularly strong local protests from communities and civil society organisations in Orissa. It has also been subject to national and international scrutiny in the wake of abuses associated with its activities in Orissa.

Criticism has been leveled at the company from many sources, including investors, bank lenders, non-governmental organizations, the UK and Norwegian governments, as well as regulatory bodies in India. Amnesty International has documented human rights concerns relating to Vedanta Aluminium's alumina refinery at a 720 hectare site in Lanjigarh in Orissa (which has an annual capacity to produce one million tones of alumina powder), as well as plans to expand this refinery operation six-fold by acquiring a further 888 hectares of land. Amnesty International has also documented serious human rights problems with proposals for open-cast mining of bauxite on a 660 hectare site in the Niyamgiri Hills, close to the Lanjigarh refinery, requiring diversion of 660 hectares of protected forests located in the traditional lands and habitats of the 8,500 Dongria Kondh, a protected Adivasi (Indigenous) community.⁵ It has been proposed that these mining operations be carried out by the state-owned Orissa Mining Corporation (OMC) and Vedanta's subsidiary Sterlite India. In addition, Amnesty International has undertaken an analysis of the companies' environmental impact assessments (EIAs) for these projects, which expose serious shortcomings.⁶

In response to the criticisms leveled against its operations in Orissa and elsewhere, Vedanta has taken a number of measures. It has appointed a Chief Sustainability Officer, commissioned reviews of aspects of its operations, established a new sustainability framework, altered its governance structures, and developed an explicit human rights commitment as part of its Code of Business Conduct.⁷ Vedanta has sought to engage with its critics, including Amnesty International.

In response to concerns expressed about the impact of Vedanta's operations, its bank lenders in September 2010 commissioned Scott-Wilson Ltd (now URS Scott Wilson) as an independent environment and social consultant with terms of reference to review Vedanta's commitment to sustainable development and assess the social and environmental issues, particularly relating to the refinery and its expansion plans. The lenders required Vedanta to report, every six months, on the progress of implementation of these recommendations until the Scott Wilson review determined that this was materially complete and all issues highlighted by it were substantially mitigated. The review's latest findings, published in March 2012, include a series of recommendations.⁸

While these developments over a relatively short period of time would appear to signal a change in direction, some investors remain guarded as to their significance. This Amnesty International

5 Amnesty International, *Don't Mine us out of Existence: Bauxite Mine and Refinery Devastate Lives in India*, February 2010, AI Index: ASA 20/001/2010; <http://www.amnesty.org/en/library/info/ASA20/001/2010/en>

6 Amnesty International, *Generalisations, omissions, assumptions: The failings of Vedanta's Environmental Impact Assessments for its bauxite mine and alumina refinery in India's state of Orissa*, July 2011. AI Index: ASA 20/036/2011; <http://www.amnesty.org/en/library/info/ASA20/036/2011> The above two reports document existing human rights abuses associated with the Lanjigarh refinery and demonstrate that corporate plans to expand the alumina refinery six-fold and to mine bauxite in the Niyamgiri hills are likely to have adverse impacts on local communities. For a summary of findings and recommendations of the two reports, see Appendices 1 and 2 to this briefing

7 EIRIS, *Two years on: Review of progress by Vedanta Resources on EIRIS' ESG recommendations*, July 2012, p2

8 Scott Wilson, *Vedanta Resources plc and Lanjigarh Alumina Refinery: Review of Progress on Recommendations*; 12 March 2012, <http://csr.vedantaresources.com/scottwilson.html>; see especially Section 5 on the Lanjigarh refinery. The review's conclusions and recommendations are discussed below

briefing questions the efficacy and value of the changes made by Vedanta and the extent to which they have resulted in meaningful change in terms of the human rights issues that originally surfaced. Amnesty International is concerned that Vedanta has invested more effort and resources in defending its reputation and neutralising criticism than in addressing the serious human rights impact of its operations on the ground.

The most far-reaching defence of Vedanta's operations is contained in its report *The Lanjigarh development story: Vedanta's perspective* (hereafter referred to as *Vedanta's Perspective*). This is an attempt, according to the company, to set the record straight by providing "a clear context and holistic contextual perspective to our stakeholders on the Lanjigarh refinery operations, including human rights aspects, environmental and safety management practices, community interventions and stakeholder engagement." Vedanta claims that "it gives a detailed response, point by point, to all the issues raised by Amnesty" and "presents a comprehensive view on these matters with new data that has not been in public domain until now."⁹

Amnesty International believes that the question of whether Vedanta is making progress in addressing human rights issues requires assessment of any human rights progress on the ground in Orissa – this would be the most meaningful indicator. Amnesty International has continued to monitor the situation on the ground and finds that – in terms of the human rights impact – very little has changed. Amnesty International's findings are supported by those of official panels which have ruled that Vedanta's operations are not fully compliant with India's regulatory frameworks.¹⁰

This briefing provides a summary of Amnesty International's ongoing concerns as well as a summary of the findings of official inquiries which have not been given due attention in *Vedanta's Perspective*, and which paint a quite different picture of the realities for affected communities in Orissa. Recommendations are also provided.

⁹ Vedanta Resource plc, *The Lanjigarh Development Story: Vedanta's perspective*, August 2012, p4

¹⁰ See section 3

2 Vedanta's human rights policy

In September 2011, Vedanta announced a human rights policy¹¹ wherein it committed to, *inter alia*:

- “respect and preserve the culture and heritage of the local communities including socially vulnerable groups which are impacted by our operations and work towards developing a constructive relationship with such groups and local communities, seeking broad based support for our operations.
- respect the social, economic, cultural and human rights of communities and will regularly communicate social performance in an accurate, transparent and timely manner.
- work with government agencies to develop a common understanding and agreement to protect human rights in the event of any unforeseen situations. We will ensure the protection of our people, equipment and assets.”

While such policy statements on human rights are generally welcome, they must be supported by systems and procedures that will prevent human rights abuses from occurring as a consequence of corporate operations.

1 They must be based on an adequate understanding of what is required to respect international human rights standards

A company that does not understand the international human rights framework and what it means in the context of its operations is unlikely to be able to assess its human rights impact properly and to take proactive measures to avoid causing or contributing to human rights abuses.

2 They should address the need to remediate existing abuses

A key test of a company's commitment to human rights is its willingness to acknowledge and remediate existing abuses that are caused by its operations or business interests. A company that fails to do this is unlikely to learn from its mistakes and to develop the corporate culture conducive to respecting human rights.

3 They should not be traded off against other policies

Companies frequently underplay the need to respect human rights, citing policies that are designed to benefit individuals and communities affected by their operations. Any philanthropic projects and corporate social responsibility initiatives aimed at mitigating the adverse consequences of a company's operations, are no substitute for respecting human rights.

4 There should be proper accountability for their implementation

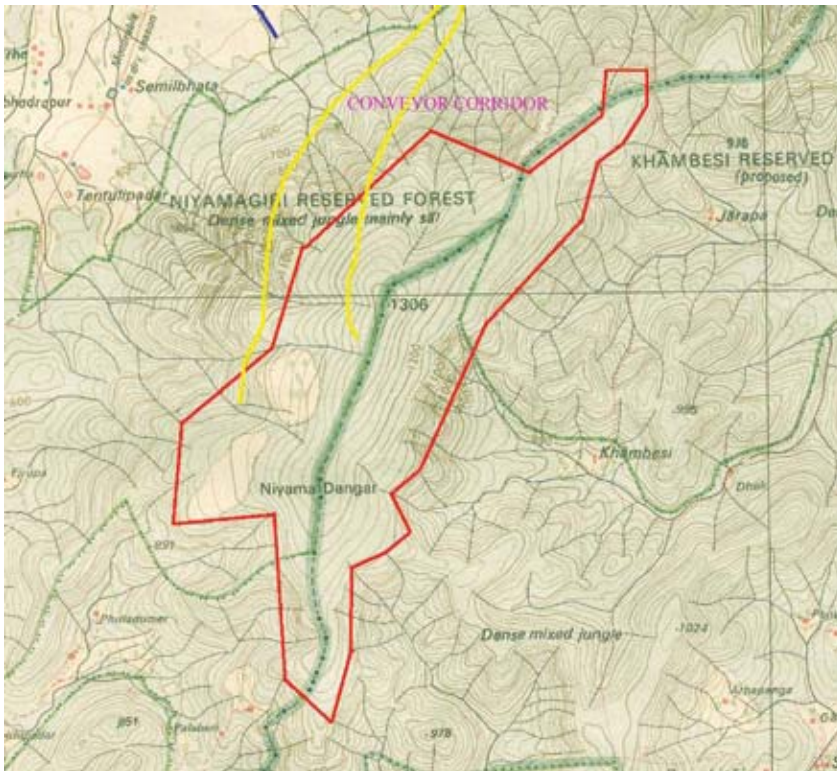
A human rights policy framework needs to include mechanisms for tracking performance, monitoring and reporting human rights impacts and holding managers and employees accountable for implementation. It needs to be integrated into performance targets so that it has traction across a company's business units.

These criteria reflect the work of the former United Nations (UN) Special Representative of the Secretary-General on Business and Human Rights, Professor John Ruggie, which culminated in the UN Framework on Business and Human Rights and Guiding Principles adopted by the UN Human Rights Council.¹² This briefing questions whether Vedanta's policy framework meets such criteria.

The UN Framework on Business and Human Rights and the associated Guiding Principles define

11 Web page accessed 23 Aug 2012: <http://www.vedantaresources.com/sustainability/files/oj6.pdf>

12 Ruggie, J, 21 March 2011, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/1731



The mining site at Niyamgiri Hills © Toposheets of Survey of India, Government of India, Mining site map drawn by Survival International based on EIAs commissioned by Stelite India / Orissa Mining Corporation and the Mining Plan submitted by the Orissa Mining Corporation, November 2004, and approved by the Indian Bureau of Mines, 18 November 2004

so that their development is in a manner and timeframe that respects their unique culture as well as being commensurate with their material and other needs.”¹⁵ These statements by the company are highly problematic: they are an attempt to redefine the essence of international standards relating to Indigenous peoples to suit the company’s interests; they do not reflect the views of the Dongria Kondh themselves; and they suggest a paternalistic approach to the community where the company holds that it knows better than the Dongria Kondh what is in the Dongria Kondh’s best interests.

2.2 Violations of international and Indian law

The claim made in *Vedanta’s Perspective* that the company has consulted the local communities¹⁶ is not supported by the evidence gathered by Amnesty International over the past four years, including testimonies from the Dongria Kondh, review of the minutes of official meetings, the minutes of the 2003 public consultations held as per India’s environmental legislation, and the findings of the two official expert panels appointed by the Ministry of Environment and Forests (MoEF) in 2010.¹⁷

The right of individuals to be consulted about projects that may impact them is reinforced by a number of international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination and ILO Convention 107 on Indigenous and Tribal Populations – all of which India is a party to.¹⁸

15 Vedanta Resources, *The Lanjigarh development story: Vedanta’s perspective*, August 2012, p26

16 *Ibid*, p28-30

17 See Usha Ramanathan, *Site Evaluation Report for diversion of 660.749 hectares 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*, 26 February 2010; *Report of the Four-member Committee for investigation into the proposal submitted by the Orissa mining Company for bauxite mining in Niyamgiri*, 16 August 2010

18 Since PESA was enacted in 1996, the authorities have repeatedly overruled dissenting decisions of the village councils and gone ahead with land acquisition for mining projects. For details, see Amnesty International, *Don’t mine us out of Existence: Bauxite Mine and Refinery Devastate Lives in India*, 9 February 2010, p28; <http://www.amnesty.org/en/library/info/ASA20/001/2010/en>

The Dongria Kondh community have the right to a co-ordinated, comprehensive and simultaneous plan of action (Articles 2 and 27 of the ILO Convention 107) to address the negative impacts of the mine, and the protection of their interests through consultation and collaboration. Their right to participation in decision-making on projects affecting their community and traditional lands (Articles 5 and 12), and their right to health (Article 25) have been violated by the authorities in Orissa state and nationally. *Vedanta's Perspective* fails to necessarily engage with these issues.

Vedanta's Perspective claims that the company's "processes, planning and consultation have been in line with all Indian national laws."¹⁹ It also claims to present a "comprehensive view... with new data that has not been in public domain until now."²⁰ However, it fails to consider India's Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), under which prior consultation with the elected village council bodies of the Dongria Kondh community is mandatory before any plans for development are implemented.²¹ *Vedanta's Perspective* also fails to take into account the more recent Forest Rights Act, 2006 (FRA), under which the claims of Dongria Kondh and other marginalised communities over their traditional forest lands and habitats in the Niyamgiri hills need to be recognised and settled in the form of grant of community titles to lands they use.²²

Vedanta's operations have resulted in breaches of these laws. The Dongria Kondh have contended, in their testimonies to Amnesty International, that the public consultations held on the plains during 2002-2003, excluded them. Also, the claims of Dongria Kondh and other marginalised communities over their traditional forest lands and habitats in Niyamgiri have yet to be officially recognised and community titles granted. The fact that the authorities in Orissa have not adequately enforced these laws does not absolve Vedanta and its subsidiaries from the responsibility of ensuring human rights due diligence, which according to the UN Guiding Principles encompasses the steps the company in question must take to identify, prevent and address the adverse human rights impacts of its operations.

19 Vedanta Resources, *The Lanjigarh development story: Vedanta's perspective*, August 2012, p11

20 *Ibid*, p4

21 For details on the PESA act, see Amnesty International, *Don't mine us out of Existence*, 9 February 2010, p7, 27 and 35; <http://www.amnesty.org/en/library/info/ASA20/001/2010/en>

Consultations under PESA have their limitations: this law does not specify the kind of information that should be provided to these elected bodies on the proposed projects nor does it have adequate provisions to ensure that consultation undertaken with the local communities is 'genuine'. In addition, the legislation does not specify what should happen in cases where the village councils or local communities reject a particular project proposal

22 See Letter from the Minister of Tribal Affairs No. MTA/VIP/18/44/2012 to State Chief Ministers on the need for implementation of the FRA, 24 May 2012

3 Vedanta's compliance failings

India's environmental and forestry laws make it mandatory for companies to obtain prior clearances for new industrial projects involving major changes in land use patterns. The MoEF evaluates applications from the companies before granting any clearances. The Forest Conservation Act, 1980, regulates forest clearances, while the 1986 Environment (Protection) Act governs environmental clearances. These laws require companies to prepare EIA reports.²³

Under India's environmental laws, state-level pollution control authorities are required to set up public consultations with the local communities likely to be affected by projects that will affect the environment. The authorities, after giving due notice, hold public hearings at a location close to the proposed project site and seek written responses from other concerned persons having a "plausible stake" in the project's environmental aspect. These public hearings are the only official opportunity for affected communities to obtain information about the project's likely impact and potential risks and to make their views known. Prior to these public hearings local communities should have access to the comprehensive EIA report and its executive summary in English and relevant local languages. However, the laws do not require the MoEF or the state pollution control authorities to carry out any prior evaluation of the EIAs to assess their accuracy or comprehensiveness.

Vedanta's Perspective claims that the company's operations are compliant with India's national laws including environmental legislation, but several official inquiries during 2010-2012 belie such claims:

3.1 Inquiries into compliance relating to mine plans

The claim in *Vedanta's Perspective* that the company had consulted the local communities on all its plans is not supported by the evidence:

- In August 2010, the MoEF decisively acted on the findings of two official expert panels it had appointed and rejected the mandatory forest clearance for the mine plans. The panels, consistent with Amnesty International's own findings in February 2010, had documented the Orissa authorities' and the companies' breaches of Indian law. The panels also pointed out the failure of the state authorities to register the Dongria Kondh community's claims to forest lands in the Niyamgiri hills, under the Forest Rights Act (FRA), which had come into effect in January 2008.²⁴
- In September 2010, India's National Environmental Appellate Authority (NEAA) completed hearings on four petitions filed in May 2009 challenging the April 2009 environmental clearance for the mining project. Of the four petitions before the NEAA, two had been filed by 22 Dongria Kondh community leaders and a Majhi Kondh community leader who said they had no prior knowledge of two mandatory public hearings held in 2003 on the EIA on the proposed mine; they were neither adequately informed nor consulted about the mine plan details.

23 In India and elsewhere, companies routinely commission consultants to prepare EIAs. EIAs usually contain technical data about the project's environmental impact, but there is limited reference in most EIAs to a project's likely impact on the communities, their livelihoods, their access to water and food. See Amnesty International, *Don't mine us out of Existence: Bauxite Mine and Refinery Devastate Lives in India*, 9 February 2010, p25; <http://www.amnesty.org/en/library/info/ASA20/001/2010/en>

24 MoEF, Government of India, *Decision on grant of forest clearance in Kalahandi and Rayagada districts in Orissa for the proposal submitted by the Orissa Mining Corporation for bauxite mining in Lanjigarh bauxite mines*, 24 August 2010. See also Amnesty International, *India: Rejection of Vedanta mine, a landmark victory for Indigenous rights*, 24 August 2010; <http://moef.nic.in/downloads/public-information/Vedanta-24082010.pdf>

- In its order on 15 September 2010 on all the above four petitions, the NEAA pointed out that, of the two EIAs undertaken for the mine plans, one was commissioned by Vedanta in 2002 and the other by the OMC in 2005. The NEAA held that the second EIA produced in 2005, on the basis of which the mine plans received environmental clearance, was never in the domain for “people to express their views/concerns during the two public hearings held in Rayagada and Kalahandi [districts] during 2003.”²⁵ It also stated that “a perusal of [the 2005] rapid EIA reveals that it lacks analysis in respect of human miseries which the project is likely to inflict. However, except for some minor variations, there is a marked similarity in the two reports and whether the [2002] report could have provided some basis to the MoEF to incorporate additional safeguards or mitigative measures can best be assessed by the MoEF itself through its expert arm viz. the Expert Appraisal Committee.” Following these conclusions, the NEAA suspended the MoEF’s April 2009 environmental clearance for the mine plans and asked the MoEF to revisit the issue.
- In March-April 2011, the MoEF’s expert committee for the environmental appraisal of mining plans, which accordingly re-examined the issue, felt that the absence of the 2005 EIA report from the public domain had no tangible effect on the outcome of the decision on granting environmental clearance. This was because the Wildlife Institute of India, Dehra Dun and the Central Mine Planning & Design Institute, Ranchi, had prepared additional reports with a view to augment the environmental management plan. The committee also felt that the formation of a Special Purpose Vehicle (SPV) for the benefit of the Adivasi community would serve as an “antidote to human miseries.” The committee concluded that the two EIAs for the mine plans met the necessary requirements and that the mine plans had in place an effective environmental management plan.²⁶ The MoEF, however, later distanced itself from these conclusions,²⁷ stating that granting environmental clearance for the mine plans did not arise in this case because it depended on securing the mandatory forest clearance – which had already been rejected on the basis of breaches of Indian law and the failure on the part of the state authorities to register the Dongria Kondh community’s claims to forest lands in the Niyamgiri hills under the FRA, effective from January 2008.
- In April 2011, the OMC filed a petition in the Supreme Court challenging the MoEF’s refusal to grant forest clearance for the project.²⁸ In November 2011, 11 of the 23 above-mentioned Adivasi leaders also filed a petition asking the Supreme Court to hear their arguments against the mine plans.²⁹ The Supreme Court is yet to commence a hearing on this.

In the absence of proper consultation, there is no basis for Vedanta’s repeated portrayal of the Dongria Kondh as a beneficiary of the Lanjigarh refinery project and its expansion plans.³⁰ The Dongria Kondh are in a better position than Vedanta to determine what is in their interest.

3.2 Inquiries into compliance failings relating to the refinery and its expansion

Vedanta’s current plans for the refinery’s expansion envisage construction of additional refining facilities for up to five million tonnes of bauxite per year, including new waste systems and township housing. This reportedly requires the acquisition of an additional 888 hectares around the existing refinery (a reduction from the 1,340 hectares mentioned in its 2008 expansion plans). However, the MoEF has yet to determine whether or not to grant the mandatory environmental clearance needed for an expansion of the refinery.

25 NEAA Order on Appeals 18-21/2009, 15 September 2010

26 *Summary record of the 13th meeting of the Expert Appraisal Committee for Environmental Appraisal of Mining Projects constituted under EIA notification 2006*, MoEF, Government of India, 23-25 March 2011

27 MoEF, Government of India, F. No. J-11015/221/2005-IA-II(M), 11 July 2011

28 Writ petition (Civil) 180/2011, OMC vs. MoEF, 1 April 2011

29 Impleadment petition in Writ petition (Civil) 180/2011, OMC vs. MoEF, 1 November 2011

30 Vedanta Resources, *The Lanjigarh development story: Vedanta’s perspective*, August 2012, p5, 8, 11, 23, 25, 28, 30, 35, 36, 38, 40, 52 and 53

Claims made in *Vedanta's Perspective* that the company's "processes, planning and consultation have been in line with all Indian national laws"³¹ and that it presents a "comprehensive view... with new data that has not been in public domain until now"³² are further undermined by the following indications of compliance failings relating to the refinery operations and its proposed expansion:

- In 2010 the Eastern Region Special Rapporteur of India's National Human Rights Commission (NHRC) commenced an investigation into complaints from affected communities about:
 - the impact of pollution associated with the operation of the Lanjigarh refinery on the health and on local water sources
 - the acquisition of farmlands for the refinery without proper compensation for those whose farmlands were acquired
 - loss of livelihoods due, amongst other things, to reduced access to common land and pollution of water sources
 - instances of Vedanta's unauthorised encroachment on to private farmland.
 - Police conduct, including bringing spurious charges against individuals who protested against the situation in Lanjigarh.³³
- By August 2010 Vedanta had completed more than half the expansion work without having first obtained necessary environmental clearance from the MoEF. In October 2010,³⁴ the MoEF suspended the 2008 terms of reference (ToR) for the refinery's expansion and annulled the April 2009 public hearing held by Orissa State Pollution Control Board (OSPCB) at Lanjigarh.³⁵ The MoEF wanted the status quo to be maintained on the issue of refinery expansion.³⁶ In January 2011, the MoEF wrote to its Bhubaneswar regional office urging it to resolve Vedanta's long-standing denial of community access to 26 hectares of village forest land within the refinery area.³⁷
- Since October 2010, Vedanta has made at least four unsuccessful bids to secure clearance for expanding its refinery in Lanjigarh and, in doing so, attempted to avoid a new public hearing that would involve consultation with affected communities.
 - Vedanta appealed to the MoEF for grant of environmental clearance for the refinery expansion project, by citing an MoEF office memorandum dated 16 November 2011 about the granting of environmental clearance to companies which had already commenced work on their projects. However, the MoEF rejected Vedanta's bid and asked the company to file a new proposal which should include holding new public hearings.
 - Vedanta challenged the MoEF decision in the Orissa High Court, but the court, in January 2011, dismissed the petition, stating that the MoEF was justified in suspending its March 2008 ToR for the refinery's expansion and annulling the April 2009 public hearing held at Lanjigarh.³⁸

31 *Ibid*, p11

32 *Ibid*, p4

33 See letters from NHRC Eastern Region's Special Rapporteur to NHRC, 6 March 2010, 10 August 2010, 17 January 2011 and 14 May 2011

34 MoEF, Government of India, F. No. J-11011/1103/2007-IA-II(I), 20 October 2010. <http://moef.nic.in/downloads/public-information/letter-vedanta-sec5.pdf>; See Amnesty International, India government's decision to reject Vedanta refinery expansion welcomed, 22 October 2010; <http://www.amnesty.org/en/news-and-updates/indian-governments-decision-reject-vedanta-refinery-expansion-welcomed-2010-10-22>

35 At this public hearing, of which Amnesty International obtained video footage, the local communities had sought information on the negative impact of the existing refinery, but the OSPCB staff present did not answer their questions and decided in favour of the expansion. See Amnesty International, *Don't Mine us out of Existence: Bauxite Mine and Refinery Devastate Lives in India*, February 2010, AI Index: ASA 20/001/2010, p72; <http://www.amnesty.org/en/library/info/ASA20/001/2010/en>

36 MoEF, Government of India, F. No. J-11011/81/2003-IA-II(I), 20 October 2010. <http://moef.nic.in/downloads/public-information/Vedanta-direction-sec5.pdf>

37 MoEF, Government of India, Letter No. 5-ORC003/2004-BHU, 24 January 2011

38 Orissa High Court order on Writ Petition (Civil) 19605/2010, 19 July 2011; http://moef.nic.in/downloads/rules-and-regulations/HC_vedanta.pdf; also see Amnesty International, *Orissa high court rejects Vedanta refinery expansion*, 19 July 2011. AI Index: PRE01/352/2011

- Vedanta sought a review of this decision but, in July 2011, the Orissa High Court dismissed its appeal.³⁹ The company subsequently submitted a new application for environmental clearance for expansion of the refinery. In response the MoEF, in August 2011, detailed 70 conditions that Vedanta would have to fulfil before any clearance could be granted. These conditions stipulated that Vedanta commission a new EIA and subject itself to a new public hearing to enable consultation of affected communities.⁴⁰
 - In March 2012, Vedanta wrote to the OSPCB to seek a waiver of the public hearing, stating that the OSPCB had already issued its consent for the project on 16 February 2010, that there was no change in the project site or capacity, and that holding a new public hearing would not serve any purpose except giving an opportunity to those opposed to the refinery expansion,⁴¹ but this too was turned down.
- On 15-17 March 2012, the Orissa authorities held village council meetings on the issue of acquiring lands at Rengopalli, Kothadwar and Bandhaguda villages, which are in close proximity to the refinery and have borne the brunt of its pollution impact. Amnesty International obtained video footage of the meetings at Rengopalli in which the Orissa authorities, along with Vedanta officials, offered to grant inhabitants of the three villages their longstanding demand for rehabilitation and resettlement,⁴² in exchange for agreeing to let their entire villages be acquired for the refinery's expansion. This would be in addition to the cash compensation they would receive towards the sale of lands. However, at the Rengopalli meeting, neither the Orissa authorities nor the company made any offer to independently evaluate the impact of existing pollution on the communities and remedy the situation or arrive at reparations.
 - On 1 April 2012, the Orissa authorities announced⁴³ that they would hold a public hearing on 2 May 2012 at Rengopalli village on the refinery's expansion plans, but the MoEF, on 17 April, deferred the public hearing until the authorities fully resolve the longstanding issue of Vedanta denying the local communities access to 26 hectares of village forest land within the refinery area.⁴⁴
 - On 3 May 2012, the Orissa government's forestry department inspected the plant area, concluded that Vedanta had failed to protect 0.047 hectares of village forest land and filed a case against Vedanta Aluminium's President, Dr Mukesh Kumar, under Sections 81 and 83 of the Orissa Forest Act.⁴⁵ This case is pending before the Bhawanipatna sub-divisional judicial magistrate.

39 Orissa High Court rejects Vedanta's review petition, *Business Standard*, 20 January 2012, <http://www.business-standard.com/india/news/hc-rejects-vals-review-petition/462328/>; also see Amnesty International, *India urged to clean-up Vedanta refinery after plant expansion rejected*, 20 January 2012, AI Index: PRE01/029/2012; <http://www.amnesty.org/en/for-media/press-releases/india-urged-clean-vedanta-refinery-after-plant-expansion-rejected-2012-01-2>

40 Minutes of the 27th Meeting of the Expert Appraisal Committee (Industry-1), MoEF, Government of India, 26-27 August 2011

41 Vedanta Aluminium Seeks Waiver of Public Hearing, *Economic Times*, 2 March 2012, <http://epaper.timesofindia.com/Default/Scripting/ArticleWin.asp?From=Archive&Source=Page&Skin=ETNEW&BaseHref=ETD/2012/03/02&PageLabel=19&EntityId=Ar01903&ViewMode=HTML>

42 See *Proceedings of the Fifth Rehabilitation and Peripheral Area Development Committee (RPDAC) meeting on Vedanta Alumina Ltd. held on 15 July 2011 in the conference hall of the Collectorate, Kalahandi, at Bhawanipatna under the chairmanship of RDC (SD) Berhampur*, Section 2 which approves the displacement of the three villages as per Orissa's rehabilitation and settlement policy. Apart from the three villages, several others in proximity to Vedanta's refinery have been demanding rehabilitation and resettlement ever since Vedanta's refinery commenced operations in 2007. The NHRC Eastern Region's Special Rapporteur has recommended that the project-affected people of Bandaguda, Kothadwar, Rengopalli, Kenduguda, Sindhbaheli and other such villages/hamlets located close to the refinery should be given the option to shift to other areas with assistance from the state government or Vedanta Aluminium in the scale admissible to displaced families. Most of them have lost the bulk of their agricultural land and have not been provided with any alternative source of livelihood. See Letter from NHRC Eastern Region's Special Rapporteur to the NHRC, 10 August 2010, Recommendation (vi)

43 OSPCB, No. 6114 IND-II-PH-589, 31 March 2012; appeared in Oriya and English newspapers on 1 April 2012

44 MoEF, Government of India, F. No. J-11011/406/2011-IA-II(I), 17 April 2012; http://moef.nic.in/downloads/public-information/vedanta_allumina.pdf

45 Forest Department, Government of Orissa, Kalahandi district, South Division Officer Report No. 23/2012-13, 3 May 2012

4 Mine plans and continuing failures

The following information was gathered during Amnesty International visits to the Niyamgiri Hills during 13-16 December 2010, 1-4 March 2011, 21-22 August 2011 and 7-8 April 2012. The information demonstrates the failure of the Orissa authorities and the companies concerned (OMC and Vedanta) to disclose critical information on the potential negative impact of the new mine plans on the Dongria Kondh communities and to commence a genuine process of consultation with these communities.

Amnesty International visited more than 20 villages in the Niyamgiri hills including Phuldumer, Palaberi, Lakpaddar and Kunnakadu which are in close proximity to the proposed mine site⁴⁶ and held focus group meetings in 10 of the villages.⁴⁷ An overwhelming majority of the residents, many of whom have been involved in the protests against the mine plans for the last nine years, said they continue to consider the hills sacred, and are dependent on them for their economic, physical and cultural survival. They continue to rotate cultivation on the hill slopes, and hunt and collect forest produce in the area for their food and livelihoods. They also continue to rely on the Niyamgiri hills for their water, wood and medicinal plants.

4.1 Processes to inform and consult

The Dongria Kondh leaders in these villages told Amnesty International that neither the Orissa government nor the companies concerned had made any significant attempt to establish any mechanism for providing them with information about the mining plans, let alone seek their consent. Amnesty International's investigations, which included assessing documentary evidence of consultation, corroborates the testimony of the village leaders.⁴⁸

4.2 New impact assessments as per international standards

The Dongria Kondh leaders stated their concerns about the impact of the mine plans on their local water sources, their usage of water, wood and other natural resources in the hills, their traditional livelihoods and their very survival as a community, as well as other related concerns such as the impact of the influx of outsiders, machinery, transportation and other arrangements which will accompany the mining. The EIAs undertaken for the mine in 2002 either do not address these issues or do so only in a very limited manner. The EIAs undertaken for the mine in 2002 and 2005 do not give any consideration to human rights issues or potential adverse impact, despite the fact that the proposed mine will affect Indigenous peoples.

Assessment of human rights impact is increasingly seen as vital for businesses, particularly in sectors with operations that are highly physically invasive, such as extractive industries. According to the UN Special Representative of the Secretary-General on Business and Human Rights: “[w]hile these assessments can be linked with other processes like risk assessments or environmental and social impact assessments, they should include explicit references to internationally recognised human rights. Based on the information uncovered, companies should refine their plans to address and

46 Other villages visited included Ada Panga, Tahali, Salapale, Golgola, Kalenipata, Kunucheli, Smanda, Sutanguni, Sangipahu, Gunjapaju, Suruhipai. Gailanga, Dholi, Serigipai, Jharapa, Arhaanga, Salpajhola, Gundwavu, Denguni and Gorta

47 Lakpaddar, Ada Panga, Tahali, Salapale, Golgola, Kalenipata, Kunucheli, Gundwavu, Monda, Sutanguni and Sangipahu

48 Amnesty International, *Don't Mine us out of Existence: Bauxite Mine and Refinery Devastate Lives in India*, February 2010, AI Index: ASA 20/001/2010, p27-33; <http://www.amnesty.org/en/library/info/ASA20/001/2010/en>

avoid potential negative human rights impacts on an ongoing basis.”⁴⁹

Vedanta's Perspective continues to argue that the environmental assessments, commissioned by it in 2002 and 2005, are adequate in this respect. Expert analysis of the EIAs, published by Amnesty International in 2011, found that the EIAs could not be considered adequate in relation to assessment of human rights impacts, contained significant weaknesses in the assessment of environmental and social impacts, and breached India's regulations.⁵⁰

4.3 The Dongria Kondh claims under the Forest Rights Act 2006

Residents from the villages of Lakpaddar, Jharapa, Patangapadar, Dangamati, Khambesi and Bandali, in Rayagada District, told Amnesty International that, immediately after the FRA came into effect in 2008, they learnt that they could make community claims for the forest lands which they have been directly using. In August-September 2009, they began filing claims to forest lands,⁵¹ including those in close proximity to the forest land sought for the mining project, but found that the local authorities would not register their claims. The Dongria Kondh community's claims to these lands were first legitimised in 2010 only after the two MoEF-appointed official panels visited the Niyamgiri hills and met with them, before concluding that the local authorities had not recognised the Dongria Kondh's claims under the FRA and recommending that the MoEF reject forest clearance for the mine.

While the Orissa government has now recognised the claims of individual residents and communities to forest lands around the area proposed to be diverted for bauxite mining in Kalahandi district, it does not appear to have recognised the claims of communities, such as the residents of Lakpaddar, to the forest lands in Rayagada district which are also for mining.⁵² Also, the local authorities' procedures for reviewing for recognising these claims remains unclear, leading to delays in the recognition of such claims to forest lands. Amnesty International is concerned about these delays and the implications for communities facing diversion of their land for mining purposes.

4.4 Processes for information and consultation on development plans

The Dongria Kondh leaders also informed Amnesty International that they learnt from news reports in mid-2010 that a “new development plan” for them was to be put forward by OMC-Vedanta (meaning the Lanjigarh Project Development Area Foundation's⁵³ plans for their development of the Dongria Kondh villages).⁵⁴ Community members, as well as their leaders, stated that neither the

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

50 Amnesty International, *Generalisations, omissions, assumptions: The failings of Vedanta's Environmental Impact Assessments for its bauxite mine and alumina refinery in India's state of Orissa*, July 2011. AI Index: ASA 20/036/2011; <http://www.amnesty.org/en/library/info/ASA20/036/2011>

51 Amnesty International has copies of the community claims filed by the villages in September 2009

52 The Orissa government, in December 2010, informed the MoEF that the local authorities had recommended, in November 2009, recognition of 2,375 individual claims from Adivasi families and 37 community claims from Adivasi communities who live around the 353 hectares of reserve forest area in Kalahandi district meant to be diverted for the mine. As of August 2010, these claims were taken up for re-evaluation by the local authorities. With regard to claims from villagers in the Rayagada district who live around the remaining 307 hectares of protected reserve forest intended to be diverted for the mine, the authorities had received a large number of individual claims but no community claims. See Letter from Special Secretary to Orissa Government, Scheduled Castes and Scheduled Tribes Development Department, to Director, Ministry of Tribal Affairs, Government of India, 13 December 2010

53 This foundation, known as LPDAF, was set up in 2009 as an SPV, in keeping with the Supreme Court's 8 August 2008 order, with the objective of undertaking development work in the region. As per the order, Vedanta's subsidiary Sterlite India will have 49 per cent stake in this foundation, the Orissa government 26 per cent and the OMC the remaining 25 per cent. The bauxite mining project should contribute to this foundation an initial amount of Indian rupees (INR) 120 million (US\$ 2.18 million) from April 2007 and five per cent of its annual profit before tax and interest or INR 100 million (US\$ 1.81 million), whichever is higher, every year. This is meant to be used for the sustainable development of local communities. The mining project should also contribute INR 550 million (US\$ 10 million) towards the net present value of the protected forests and INR 505 million (US\$ 9.18 million) towards a wildlife management plan

54 The LPDAF's First Board of Directors' meeting was held on 14 October 2009. In late 2011, the LPDAF set in motion some plans for the development of some villages in the Lanjigarh area, commissioning a socio-economic baseline study and development needs assessment. See The Human Development, *Socio-economic survey and Need assessment for Lanjigarh panchayat*, Dharamgarh, 2011, Annexure XIII to the EIA submitted on refinery expansion plans in February 2012



Dongria Kondh women with Amnesty International material © AI

Orissa government nor the companies concerned made any attempt to provide information to them on the details of these plans, let alone consult them or seek their consent. A number of communities living at the top of the Niyamgiri hills informed Amnesty International that most plans continued to be decided not in consultation with or with the consent of the Dongria Kondh communities. They also stated that they continued to have no representation in meetings of elected village council bodies, which the authorities were required to consult with under the terms of the PESA. Also, these meetings were generally on the plains and not in the hills where Dongria Kondh mainly reside.

4.5 Misusing the concept of sustainable development to ignore human rights abuses

Vedanta portrays the Dongria Kondh as a community characterised by poverty and lack of sustainable livelihoods. In *Vedanta's Perspective*, the company quotes, from Amnesty International's 2010 report, a member of the Dongria Kondh community saying that they want the authorities to provide them with schools and medical facilities. However, Vedanta makes no mention of the Dongria Kondh demand that they do not want the top of the Niyamgiri hills excavated.⁵⁵ Vedanta's public materials have repeatedly reflected a view that, in order to gain access to education, health care and other services that are important to the realisation of their economic and social rights, the Dongria Kondh should be willing to accept mining operations.

In human rights terms the Dongria Kondh are being asked to accept violations of their rights as Indigenous peoples in order to access their rights to education and health. This view represents a serious misunderstanding of international human rights law and standards. Human rights are indivisible and should not be traded against each other. Nor can a company uphold the corporate responsibility to respect human rights by such an approach. Plans to “develop” communities that are drawn up without their involvement or consent should not be used to justify significant changes to their traditional way of life, as this constitutes a fundamental abuse of human rights.

The approach taken by Vedanta and the Orissa authorities appears to highlight only the potential benefits associated with the mine plans in terms of corporate-sponsored development activities, while ignoring the mine plans' potential negative impacts on the affected communities. Although corporate initiatives such as assisting with local medical care can be beneficial, they do not give licence to continue with other practices that cause harm to human health and well-being.

55 Amnesty International, *Don't Mine us out of Existence: Bauxite Mine and Refinery Devastate Lives in India*, February 2010, AI Index: ASA 20/001/2010, p24-25. <http://www.amnesty.org/en/library/info/ASA20/001/2010/en>

5 Police and paramilitary suppression of dissent

5.1 Arbitrary detention of Adivasi activists and intimidation of human rights defenders

On 9 August 2010, two months after an MoEF panel visited Niyamgiri, the Orissa police arbitrarily detained two Dongria Kondh leaders – Lado Sikaka who was among those who had challenged the April 2009 environmental clearance for the mine plans and Sana Sikaka. They were released two days later after Amnesty International’s intervention.⁵⁶ In February 2012, Amnesty International received reports of intimidation of the Dongria Kondh leaders by India’s central reserve police force (CRPF) personnel ahead of a religious festival. On that occasion the Dongria Kondh leaders alleged that the CRPF had warned them not to oppose the Niyamgiri mine plans.⁵⁷

Additionally, there have been at least two instances where representatives of international media and human rights organisations were intimidated and harassed by the Kalahandi district police and told not to travel to Lanjigarh and the Niyamgiri hills.

On 6 April 2012, when Amnesty International researcher Ramesh Gopalakrishnan was travelling to villages near the refinery to gather information from the affected communities, he was approached by two police officials at Lanjigarh, wanting to know the names of the villages that he had visited. The police officials said they had received calls from the “company’s intelligence” stating that “persons belonging to foreign organisations are trying to spread false propaganda against the plans for the mine and refinery’s expansion”. During the encounter, the police officials received telephone calls which they said were from the Kalahandi district superintendent of police, Sudha Singh, and the “company’s intelligence”. The police cautioned Amnesty International against visiting the Niyamgiri hills and meeting the Dongria Kondh community. The police asserted that the hills were



Dongria Kondh protestors at a campaign meeting at Jagannathpur on 9 April 2012 ©AI

⁵⁶ Amnesty International, *India must investigate abduction of indigenous activists*, 11 August 2011, <http://www.amnesty.org/en/news-and-updates/india-must-investigate-abduction-anti-vedanta-activists-2010-08-11>

⁵⁷ Amnesty International communication with Dongria Kondhs in Lakpaddar village, Niyamgiri hills, 24 February 2012; see also Survival International, *Clampdown on sacred ritual as Vedanta mine appeal approaches*, 24 February 2012; <http://www.survivalinternational.org/news/8125>

being frequented by Maoists who had, in March 2012, abducted two Italian tourists and held them hostage for about a month before releasing them in exchange for the release, from prison, of their jailed colleagues. The police said the Orissa authorities had issued orders banning “outsiders” from visiting the hills. The company has denied that it prompted any police action in relation to Amnesty International’s visit.

On 28 June 2012, Sandra Petersmann, the Delhi-based India correspondent for the German Public Radio network, ARD, visited Bhawanipatna in Kalahandi district, where she was then barred by the police from going on to visit Lanjigarh and four surrounding areas in the Niyamgiri hills. The police cited the Maoist call for a protest week from 26 June to 2 July 2012 as the reason for restricting her travel.

Such incidents point to an attempt by Orissa police and the CRPF to inhibit human rights and media organisations from reporting on the suppression of peaceful protests by the Dongria Kondh community, whose leaders have mounted a legal challenge against the Niyamgiri mine plans. It would appear that the Maoist presence in the region might be being used as a pretext.

5.2 Fabricating charges against protesting villagers in Lanjigarh

The NHRC Eastern Region Special Rapporteur has recorded that the Lanjigarh police, acting on various complaints from Vedanta’s employees and contractors during 2005-2010, had filed more than 65 cases against members of local communities and named at least 250 persons as accused in these cases.⁵⁸

In his first phase of investigation which concluded in August 2010, the NHRC Eastern Region Special Rapporteur stated that “contrary to the claims made in proceedings of the Gram Sabhas [elected bodies of village councils] that everyone present in the meeting loudly supported the project, the fact is that right from the beginning, the project-affected people have been protesting against the acquisition of their land without adequate compensation and provision of alternate means of livelihood. The company has chosen to suppress dissent through inducement and coercion, often with the full support of the local police. Protestors have been booked in false cases including dacoities [banditry]. The police have forced them to sign agreements with the company, undertaking to vacate their land and houses at the company’s terms, under duress.”⁵⁹ He went on to add that “local police have been extra zealous in promoting the interests of the company. On a number of occasions they have booked the project-affected villagers in false or exaggerated cases, apparently at the behest of the company.”⁶⁰

The Special Rapporteur has conducted investigations into two petitions alleging that the Lanjigarh police, acting on complaints from Vedanta Aluminium employees during 2008-2010, had framed false charges against protestors belonging to local communities at Kenduguda and Chhattarpur and sent them to prison. He concluded that the police cases were “without foundation”.

58 Annexure to Letter from NHRC Eastern Region’s Special Rapporteur to NHRC, 10 August 2010. Amnesty International has documented one of these cases dating back to March 2006 when local police, during a protest by Bandhaguda residents against the acquisition of their common village lands for Vedanta’s refinery, arrested 32 residents including a 16-year-old boy on charges of having trespassed into the refinery premises and assaulted its employees. Of those arrested, 31 young men were released on bail after spending three days in prison at Bhawanipatna. However, upon their release, police officers in plainclothes forcibly took them on a week-long pilgrimage to the famous pilgrim town of Puri, stating that their prison term had “polluted” the Adivasis. Upon their return to Bandaguda, they found that the refinery had annexed the land over which they had been protesting, including burial grounds, located on public land and a new boundary wall had been erected. The villagers told Amnesty International that they saw it as a clear instance when the police colluded with Vedanta and its contractors to remove them in order to extend the refinery’s boundary wall, which was promptly denied by the police. See Amnesty International, *Don’t Mine us out of Existence: Bauxite Mine and Refinery Devastate Lives in India*, 9 February 2010, AI Index: ASA 20/001/2010, p40; <http://www.amnesty.org/en/library/info/ASA20/001/2010/en>; The NHRC Eastern Region Special Rapporteur recommended that the Orissa government hold an inquiry into the circumstances in which Vedanta officers were permitted to visit the Bhawanipatna prison for the purpose of “striking an agreement with the project-affected people in custody there, for their alleged complicity and the role played by the jail superintendent in obtaining their signatures on the agreement papers.” See Letter from NHRC Eastern Region’s Special Rapporteur to NHRC, 10 August 2010, Recommendation (v)

59 See Letter from NHRC Eastern Region’s Special Rapporteur to NHRC, 10 August 2010, 12 (viii)

60 *Ibid*, 12 (xii)

In the first petition filed, eight men of Kenduguda village⁶¹ (Jayasingh Nag, Narayan Nag, Baladev Nag, Karuna Nag, Niranjana Nag, Sudarsan Nag, Debendra Nag and Banamali Majhi) alleged that they had been targeted for demanding employment in the refinery as per promises given by Vedanta and the Orissa authorities when farmlands belonging to their families had been acquired. They alleged that the Lanjigarh police, acting on complaints from two Vedanta Aluminium employees (Bharat Bhushan and Pravin Narain Das) in February 2008, had framed several charges against them including unlawful assembly, rioting and stealing a gold chain from one of the employees. Three youths (Jayasingh Nag, Narayan Nag and Baladev Nag) who were arrested in the case spent 15 months in prison. The five others who surrendered to the police successfully moved the Orissa high court to be released on bail. On 16 May 2009, the Additional Sessions Judge at Bhawanipatna acquitted the eight men of all the charges against them after the two complainant-witnesses turned hostile during the trial proceedings.⁶²

Investigations by the Special Rapporteur revealed that Vedanta had sponsored five of the eight youths for technical training, but only two of them (Sudarsan Nag and Debendra Nag) were given employment with the contractors. The services of the latter were terminated after four months. The Special Rapporteur concluded that both cases against them “appear to have been fabricated”.⁶³

Subsequently, the NHRC held the charges against the eight persons to be false. It asked the Orissa police to prosecute the two Vedanta Aluminium employees under Section 3 (viii) of the Prevention of Atrocities against the Scheduled Castes and Scheduled Tribes Act, 1989 (instituting false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Tribe) and Section 3 (ix) of the same act (giving any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Tribe).⁶⁴ On 11 May 2012, the Orissa police sought more time to respond to this directive.⁶⁵

In the second petition,⁶⁶ Satyabadi Naik, a Bhawanipatna-based journalist alleged that the Lanjigarh police, acting on a complaint in February 2010 from Furnace Fabrica, one of Vedanta’s contractors, had framed several charges against five women (Kamala Bibhar, Jayanti Bibhar, Nila Nayak, Purnima Bibhar and Tulsi Bibhar) including that they had committed dacoity (banditry) and stolen material meant for the Vedanta refinery including fabricated steel plates and structures, anchors, angles and channels weighing 65 tonnes. The five women employed as contract workers in Furnace Fabrica, were arrested on 24 February 2010 and detained in Bhawanipatna prison together with the two infant children of Purnima Bibhar and Tulsi Bibhar the next day. They spent the next 26 days in prison until they were released on bail. The trial in the case has not been concluded.

The NHRC’s Eastern Region Special Rapporteur has concluded that the charges against the five women “are palpably false” and recommended reinstatement in their jobs and award of interim relief to them.⁶⁷ Subsequently, the NHRC stated that there was some reason to believe that an attempt had been made by the police to falsely implicate these five women and asked the Orissa police to identify the officials responsible and initiate appropriate action against them.⁶⁸ On 11 May 2012, the Orissa police sought more time to respond to this directive.⁶⁹

61 NHRC petition No. 600/18/6/2010

62 Judgment of the Additional Sessions Judge, Fast Track Court, Bhawanipatna, Kalahandi District, in Case No. 117/90 of 2008

63 See Letter from NHRC Eastern Region’s Special Rapporteur to NHRC, 18 August 2010, 10.3.B; Letter from NHRC Eastern Region’s Special Rapporteur to NHRC, DS/Special Rapporteur/ NHRC 06/11, 17 January 2011 and NHRC Camp sitting at Bhubaneswar, 18-19 January 2001; Case 600/18/200

64 NHRC proceedings on complaint 600/18/6/2010, 13 April 2012

65 NHRC proceedings on complaint 600/18/6/2010, 21 May 2012

66 NHRC petition No. 601/18/6/2010

67 See Letter from NHRC Eastern Region’s Special Rapporteur to NHRC, 18 August 2010, 10.3.A; Letter from NHRC Eastern Region’s Special Rapporteur to NHRC, DS/Special Rapporteur/ NHRC 06/11, 17 January 2011 and NHRC Camp sitting at Bhubaneswar, 18-19 January 2001; Case 601/18/200

68 NHRC proceedings on complaint 601/18/6/2010, 13 April 2012

69 NHRC proceedings on complaint 601/18/6/2010, 21 May 2012

A third petition, under investigation by the NHRC, relates to the arrest of 47 villagers of Rengopalli on 21 January 2012.⁷⁰ For six months, the villagers had been peacefully protesting against the Orissa government's July 2011 decision to take over, without their consent, 0.86 hectares of what they claimed to be their common land and hand it over to Vedanta for the completion of the construction of the Lanjigarh refinery's west red mud pond.⁷¹ The authorities had cited safety in matters relating to the red mud pond as the reason for the takeover of the land. The land appropriated from the villagers included an access road from their village to the main road. On 21 June 2012, when Vedanta officials, armed with a court order to secure the land with police assistance, tried to ring-fence the area, the police arrested the villagers after stones were allegedly pelted at them. Following their arrest, the 47 villagers were charged with 10 offences, including attempted murder of police officers, rioting with deadly weapons, causing hurt by endangering life or personal safety of others, resorting to obscene acts and songs and criminal intimidation.⁷² Amnesty International is concerned that the police may have fabricated the above-mentioned five charges to pressure the villagers into giving up their protests against the takeover of land by the company.⁷³ The villagers spent 45 days in Bhawanipatna prison before being released on bail.

70 NHRC petition Nos. 295/18/6/2012 filed by Radhakant Tripathy and 338/18/6/2012 filed by Hema Dei

71 Revenue and Disaster Management Department, Government of Orissa, Letter No. (KLD) 1/2011/29214 to Kalahandi district collector, 8 July 2011

72 Lanjigarh police station First Information Report on case C.T. 46/12, 24 January 2012. For Vedanta's version, see *Facts on construction of red mud pond at Vedanta Alumina refinery, Lanjigarh, Odisha*, http://www.vedantaaluminium.com/pdf/FACTS%20ON%20CONSTRUCTION%20OF%20RED%20MUD%20POND%20AT%20VAL_LANJIGARH.pdf; The Scott-Wilson Review is aware of this case. See Scott Wilson, *Vedanta Resources plc and Lanjigarh Alumina Refinery: Review of Progress on Recommendations*, 12 March 2012, Section 5.2 Recommendation 4.5.8 Grievance Mechanism, <http://csr.vedantaresources.com/scottwilson.html>

73 See Amnesty International, *India: Drop false charges against those protesting against Vedanta's land acquisition in Orissa and release them*, AI index: ASA 20/004/2012, 25 January 2012; <http://www.amnesty.org/en/library/info/ASA20/004/2012/en>

6 Refinery, its expansion plans and continuing failures

The following information gathered during Amnesty International's visits, during 10-12 December 2010, 27-28 February 2011, 19-20 August 2011 and 5-6 April 2012, to Lanjigarh and the surrounding villages of Rengopalli, Bandhaguda, Kothadwar, Kappaguda, Chhattarpur, Kenduguda, Harekrishnapur, Sindbaheli, Basantpada and Jagannathpur, points to the failure on the part of the Orissa authorities and Vedanta to:

- address risks posed by the refinery's red mud pond facilities.
- disclose information on the impact of pollution and offer redress for this.
- redress the loss of livelihoods of those who sold their lands for the refinery.
- disclose, to the local communities, information on the potential negative impact of the refinery's expansion plans.
- commence a genuine process of consultation with them.

6.1 Risks posed by the red mud pond

Local communities and Amnesty International have raised concerns over the risk posed by the refinery's 28 hectare west red mud pond. The red mud pond holds a mix of highly toxic alkaline chemicals and heavy metals including radioactive elements that are waste materials from the alumina refining process. Amnesty International has previously reported on breaches of the red mud pond. This pond is full and its dyke walls were recently raised by three metres. A new 60 hectare east red mud pond has been functioning since December 2011. The ponds are situated only a kilometer away from streams that feed into the Vamsadhara river, on which downstream communities are dependent for drinking water, personal use and for their livestock.⁷⁴

In April-May 2011, the local communities twice reported "leaks" or overflows from the east red mud pond.⁷⁵ Vedanta immediately denied the reports. The OSPCB, after two inspections,⁷⁶ did the same, but noted that during the second incident, alkaline water from the central collection pit next to the red mud pond overflowed from the pit and passed into a nearby water pond. The MoEF also denied the reported leaks.⁷⁷

The communities also informed Amnesty International that Vedanta has not conducted mock drills to test how it would deal with a possible breach of the red mud pond or other such emergencies. The need for such mock drills had been pointed out in a performance review of the Lanjigarh refinery, undertaken by Environmental Resource Management India (ERM India) in October 2011.⁷⁸

74 Amnesty International, *Don't Mine us out of Existence: Bauxite Mine and Refinery Devastate Lives in India*, 9 February 2010, AI Index: ASA 20/001/2010, p46; <http://www.amnesty.org/en/library/info/ASA20/001/2010/en>

75 Amnesty International, Open letter: Serious risks to the health and safety of local communities in Orissa, 14 April 2011, <http://www.amnesty.org/en/library/info/ASA20/016/2011/en>

76 OSPCB, *Report on Visit to Alumina Refinery of Vedanta Aluminium Ltd., Lanjigarh, Orissa, on 25 April 2011*; OSPCB, *Inspection Report*, 17-18 May 2011

77 MoEF, Reports on the leakage from the red mud pond of alumina refinery at Lanjigarh in District Kalahandi in Orissa of M/s Vedanta Aluminium Limited, 3 June 2011. For questions raised by Amnesty International, see Amnesty International, *India: Open letter to the Ministry of Environment and Forests*, 24 June 2011; <http://www.amnesty.org/en/library/info/ASA20/032/2011/en>; In late 2011, Vedanta presented, to the OSPCB, an inspection report on the red mud ponds from a scientist at the Indian Institute of Science, Bangalore, certifying that the dyke wall of the east red mud pond was sufficiently strong, that the west red mud pond "looks very good without seepage or any slips" and that it was stable and fit for use. See Prof. T. G. Sitharam, Site visit report for the red mud pond – west cell, n.d

78 ERM India, *Independent Environmental & Social Performance Review, 1 MPTA Aluminium Refinery, Lanjigarh, Orissa*, February 2012, sections 1.9, 4.1 and 4.5



East red mud pond at Lanjigarh, 2011 ©AI

6.2 Information on the impact of pollution and appropriate remedial action

The local communities of Bandhaguda, Rengopalli, Chhattarpur and Lanjigarh have been complaining about the pollution and contamination of their water sources, which contradicts Vedanta's claim to be running a "zero discharge refinery." These communities have also been demanding information and remedial action. Residents of these villages informed Amnesty International that they no longer felt it was safe to use river water for personal use including drinking, bathing and for washing clothes and livestock. They highlighted that, despite their concerns for safety, they are often forced to rely on using the river water because of lack of alternatives.

Following reports by OSPCB during 2008-2010, Vedanta took some measures, as required by the OSPCB and the Orissa Human Rights Commission, to halt the wastewater discharges from the refinery into the nearby fields which could contaminate the Vamsadhara river. However, the communities are still concerned over the possible contamination of river water by such occasional discharges, especially during the monsoon.

Noise and dust pollution arising from the refinery operations continue to affect the health of nearby villagers. This is despite Vedanta's use of dust mitigation technology to meet requisite ambient air quality standards. The level of dust generated by the constant movement of trucks laden with bauxite and alumina powder has fallen to some extent after the introduction of the dedicated railway corridor for the movement of bauxite. The number of trucks, which arrive at the site each day and throughout the night, has come down from 200 to an estimated 100, on the days when the railway corridor is being used.

In February 2010, the NHRC Eastern Region's Special Rapporteur commenced an investigation into complaints of pollution and its impact on the health of the affected communities in Bandhaguda, Rengopalli and Lanjigarh and the surrounding villages. In August 2010, after finding instances of air and water pollution, as well as some evidence that respiratory conditions, conjunctivitis, and skin disorders are on the rise, he recommended that the Orissa authorities establish an expert committee to systematically monitor and evaluate the impact of pollution on the health of the local communities.⁷⁹ He also recommended permanent relocation of these and other villages which are in close proximity to the refinery and have borne the brunt of its pollution.⁸⁰ No such committee has so far been established.

⁷⁹ Letter from NHRC Eastern Region's Special Rapporteur to NHRC, 10 August 2010, 10.2

⁸⁰ *Ibid*, Recommendation (viii)

6.3 The loss of livelihoods of those who sold their lands for the refinery

After the impact of pollution, the most pressing problem faced by the eight villages surrounding the refinery is the failure, after more than six years, on the part of the authorities and Vedanta, to adequately address the loss of livelihoods of those whose farmlands were compulsorily acquired in order to establish the refinery.

Investigation by the NHRC's Eastern Region Special Reporter found that the Orissa authorities acquired 568 hectares of private farmland in 24 villages for the refinery following which they paid a total compensation of INR 138 million (US\$ 2.51 million), after obtaining the amount from Vedanta.⁸¹ Data available with Vedanta revealed that 1,823 families sold their lands for the refinery; of them, 121 families were fully displaced as their homestead lands in three entire villages had been acquired.⁸² Of those who sold farmland, 257 families had sold all of their farmlands and 470 families had sold more than two-thirds of their land. Those who sold land came from already marginalised communities – many were Adivasi and Dalit communities.⁸³ Also, the compensation paid per hectare of farmland acquired worked out to less than INR 250,000 (US\$ 4,545) and in some cases less than INR 200,000 (US\$ 3,636). The compensation paid per hectare of homestead land acquired was approximately INR 800,000 (US\$ 14,545).

Investigation by the NHRC Eastern Region's Special Rapporteur found that this compensation was inadequate to the families whose farmlands were acquired for Vedanta's refinery, given the loss of livelihoods for a majority of them who had been dependent on farming and had no alternative source of livelihood.⁸⁴ Surveys of families undertaken at the time of acquisition of their lands did not adopt consistent criteria, resulting in a number of discrepancies in classification of these families and payment of adequate compensation to them.⁸⁵ Hundreds of families were made to give up their farmlands, which is a key long-term livelihood resource in an area like Lanjigarh, for cash.

As for employment in the refinery as a potential source of livelihood, it has proved a mirage for the majority of the families whose lands were compulsorily acquired for the refinery. Residents in five of the eight villages interviewed by Amnesty International said they were given assurances of employment in the refinery, by both Vedanta and the Orissa authorities at the time of acquiring their lands. However, they subsequently learned that the official rehabilitation and resettlement policies guaranteed employment only to those who lost their homestead lands; those who retained their homesteads but lost their farmland were to be offered priority in employment opportunities, but there were no guarantees, despite the loss of their main livelihood source.

Investigation by the NHRC Eastern Region's Special Reporter found that very few of the affected group of villagers were employed by Vedanta.⁸⁶ Of the 121 fully displaced families, persons from 75 families were provided with employment in the refinery.⁸⁷ Of the 1,702 other families who sold their farmlands for the refinery, persons from only 11 families were given employment in the refinery.⁸⁸

In 2006, Vedanta offered the 1,702 families, whose farmlands had been compulsorily acquired for the refinery, the option of one-time cash compensation in lieu of employment: initially, 46 families took INR 6.3 million (US\$ 126,000); later 1,372 families received compensation of INR 97.5 million (US\$ 1.97 million). One hundred and ten families preferred not to take cash compensation and sent one person each for technical training at Vedanta's expense. Of these, 87 individuals completed the training and Vedanta claimed that 11 of them were provided with employment in

81 *Ibid*, 10.A

82 *Ibid*, 10.B (xiii)

83 *Ibid*, 10.B (ix)

84 *Ibid*, 10.B (ix)

85 *Ibid*, 10.B (xii)

86 *Ibid*, 10.B (xiii)

87 *Ibid*, 10.B (xiii)

88 *Ibid*, 10.B.(xiv)

the refinery. However, it was not clear if the remaining 319 families (who did not take the initial cash offer or send people for technical training) received cash compensation. According to Vedanta officials, 220 of the families had not applied for cash compensation.⁸⁹

In contradiction to Vedanta's claims, the NHRC Eastern Region Special Rapporteur's investigation found that many people had been coerced into receiving this cash compensation, with Vedanta engaging one section of the community to persuade others to accept cash compensation and give up their demand for employment in the refinery. In August 2010, his investigation concluded that the company was "insensitive to [the] demands [of those whose lands had been compulsorily acquired] but have harassed them in various ways in collusion with the local police. The company's response to the grievances of the families has been ad hoc and arbitrary. They have chosen to stem dissent through intimidation and inducements and found a willing ally in the local police for the purpose."⁹⁰

Vedanta says in *Vedanta's Perspective* that it currently employs 550 people and its contractors employ 1,950 persons. However, it is not clear how many of those employed by its contractors are from the families whose lands were compulsorily acquired for the refinery. Many of those who sold their farmlands feel that the information given to them about their future prospects was misleading, and that they have been left in a difficult situation with no means to seek redress.

When the compensation money runs out having been spent as income, many families will be forced into a situation where they have no means of supporting themselves. For those families who sold part of their farmlands to the refinery, their remaining farmlands do not appear to produce enough, resulting in crisis. This fact has been noted by the NHRC Eastern Region's Special Rapporteur in his investigation in August 2010.⁹¹ In May 2011, he again voiced criticism that "Vedanta had not done anything tangible to mitigate the grievances of the displaced and the project-affected people. On the other hand, it has now taken the plea that since the proposals for mining bauxite in the Niyamgiri hills and the expansion of the alumina plant have been shut down by the MoEF, the company would not be able to honour all the promises it had given for the development of the area and the rehabilitation of the project-affected people. The land losers have been agitating, so far in vain, for enhancement of the compensation money, alternative livelihood support and pollution control."⁹² This problem has also been acknowledged in July 2011 by an official committee, which appears to be the sole official agency set up to resolve rehabilitation issues. However, this committee rejected the demand from the affected communities to double the cash compensation, resulting in protests.⁹³

From July to December 2011, hundreds of protestors staged six blockades in Lanjigarh, demanding employment in the refinery and additional compensation. Residents of Rengopalli and surrounding villages staged a two-month-long protest in 2011 in front of the refinery's main entrance, demanding additional payments for lands compulsorily acquired from them in 2002-2003 to establish the refinery's red mud pond. In July 2012, Orissa authorities agreed to hold talks with the protestors and Vedanta officials. The results of the talks are not known.

Vedanta has claimed that its grievance redress mechanism, set up in 2011, has been integrated with the official committee on rehabilitation and area development. Given the context of ongoing protests, it is not clear how the latest Scott-Wilson review of March 2012 could have concluded that this mechanism appeared to be "functioning well". When visiting the villages around Lanjigarh during 5-6 April 2012, Amnesty International found that the residents' awareness of the existence of this mechanism was limited to members of elected village bodies. The Scott-Wilson review admits this, but goes on to add that "generally however most people knew that they could visit the Vedanta CSR [Corporate Social Responsibility] office on Fridays to present their grievances

89 *Ibid*, 10.B.(xiv)

90 *Ibid*, 10. B (xv)

91 *Ibid*, 10 B (ix)

92 Letter from NHRC Eastern Region's Special Rapporteur to NHRC, 14 May 2011

93 Proceedings of the Fifth Rehabilitation and Peripheral Area Development Committee (RPDAC) meeting on Vedanta Alumina Ltd. held on 15 July 2011 in the conference hall of the Collectorate, Kalahandi, at Bhawanipatna under the chairmanship of RDC (SD) Berhampur

and that they would be dealt with”.⁹⁴ In reality, a CSR office would not be capable of addressing this problem, which needs to be dealt with systematically involving the Orissa authorities and the companies concerned.

6.4 Information on the potential negative impact of the refinery’s expansion

- Vedanta’s refinery expansion plans were put forward in a context where only very limited action had been taken to address the pollution associated with the existing refinery. People in the villages closest to the refinery want to be relocated and the Orissa authorities also want them relocated. However, no concrete plans are in place. The new EIA carried out for the refinery expansion states that lands for the refinery’s expansion would be appropriated from “nearby areas” and indicates that the residents of Rengopalli, Kothadwar and Bandhaguda villages are likely to be displaced to a new location, possibly to Vedanta’s rehabilitation and resettlement colony.⁹⁵ This puts the residents of these three villages in an uncertain and invidious position, not knowing where they will be resettled or whether they will receive compensation.
- A review carried out by Amnesty International found that the EIA for the refinery’s expansion, and the EIAs annexure reports, apart from disclosing the results of air and water quality monitoring over the three years, are silent about the ongoing impact of pollution on the local communities. They do not consider the findings and recommendations of the NHRC Eastern Region Special Rapporteur’s investigation; nor do they inform the villagers of Rengopalli, Kothadwar and Bandhaguda how they would be rehabilitated and resettled in their new homes.
- On the question of bauxite availability, the EIA refers to Niyamgiri as a possible source, but fails to furnish the details of litigation and the proceedings pending in the Supreme Court against the mining project.

Affected communities have the right to full and adequate disclosure of information on how any proposed expansion of the refinery will affect their human rights. This information must be provided to them in a timely and appropriate manner. Moreover, the process to identify risks to the population should be done in consultation with the communities and take their knowledge and views into account. The time given to this process should be adequate to enable an effective assessment of the potential human rights impact, and the development of plans to address any risks identified.

94 Scott Wilson, *Vedanta Resources plc and Lanjigarh Alumina Refinery: Review of Progress on Recommendations*, 12 March 2012, <http://csr.vedantaresources.com/scottwilson.html>; see Section 5.2 Recommendation 4.5.8 Grievance mechanism

95 The EIA says “the proposed rehabilitation and resettlement plan for Rengopalli, Bandhaguda and Kothadwar is attached as Annexure V”, but in Annexure V one finds no such plan; Annexure V is the July 2011 document, *Proceedings of the Fifth Rehabilitation and Peripheral Area Development Committee (RPDAC) meeting on Vedanta Alumina Ltd. held on 15 July 2011 in the conference hall of the Collectorate, Kalahandi, at Bhawanipatna under the chairmanship of RDC (SD) Berhampur*, Section 2 which approves the displacement of these three villages as per Orissa’s rehabilitation and settlement policy. See Global Experts, *Environmental Impact Assessment & Environmental Management Plan for expansion of alumina refinery plant from one mmta to six mmta of Vedanta Aluminium Limited, Lanjigarh, Kalahandi, Odisha*, March 2012, p13. Point 13 indicates that the residents of the three villages are likely to be rehabilitated and resettled in Vedanta’s rehabilitation and resettlement colony at Lanjigarh itself

7 Recommendations

Amnesty International reiterates its earlier calls that the authorities in Orissa state and nationally and the companies concerned should:

- make a public commitment not to go ahead with the plans for the mine and the refinery's expansion until all existing problems are addressed; full, impartial and adequate assessments of the human rights implications of the proposed projects are carried out; and effective plans are developed and action taken to ensure that human rights are respected and protected;
- ensure the Dongria Kondh's free, prior and informed consent is obtained for any continuation of the proposed project and respect their decision if they do not consent.

Amnesty International also urges the authorities in Orissa state and nationally to:

- halt the suppression of peaceful protests by the Dongria Kondh against the mine plans, drop the false charges leveled by the police against the protesting communities in Lanjigarh including those investigated by India's NHRC Eastern Region's Special Rapporteur, and investigate any allegations of collusion between Vedanta officials and the police in the framing of false charges and suppression of dissent.
- respect, protect and fulfil the Dongria Kondhs' rights to freedom of expression and peaceful assembly. The policing of protest actions should be fully consistent with human rights law and standards, including on the use of force.
- lift undue restrictions on the freedom of movement of national and international human rights and media organisations.
- order an independent audit of the existing refinery at Lanjigarh, ensure its clean up, and act on the recommendations of the NHRC Eastern Region's Special Rapporteur to address all outstanding human rights concerns including impact of pollution on the communities.
- prohibit any expansion of the Lanjigarh refinery until all human rights abuses faced by local communities are fully addressed.

Appendices

APPENDIX 1

Conclusions of Amnesty International's 2010 and 2011 reports

Amnesty International's two reports had concluded that:

- The open-cast mine plans by the state-owned Orissa Mining Corporation (OMC) and Vedanta's subsidiary Sterlite India which call for diversion of 660 hectares of protected forest land located in the traditional lands and habitats of the 8,500 strong Dongria Kondh, a protected Adivasi (Indigenous) community and a few other marginalised communities, threaten the very survival of the Dongria Kondh as a community. It is clear that the Niyamgiri Hills are of vital importance to the Dongria Kondh and essential to their survival as a distinct community and maintenance of their livelihood, culture and distinct way of life.
- Ongoing pollution associated with the Lanjigarh refinery, operated by Vedanta Aluminium, seriously undermined the human rights of local Majhi Kondh Adivasi and Dalit communities, including their right to health and a healthy environment, an adequate standard of living, water, work and food. The communities, some of whom have been protesting against this, have received little in terms of remedy.
- Environmental Impact Assessments (EIAs) commissioned by the concerned companies for the mine plans (in 2002 and 2005), the refinery (in 2002 and 2005) as well as the latter's expansion (in 2008) and the public hearings held in 2003 by the state authorities as part of the EIA processes, are flawed and fail to meet India's regulatory requirements.
- The Orissa authorities and the companies concerned misinformed the local communities about the potential risks and the impact of the refinery's operations on their lives and livelihoods, failed to disclose adequate information to the local communities, and failed to consult properly with them on these issues.
- India's official bodies failed to respect and protect these communities' human rights as required under international human rights law to which India is a state party.
- The companies involved in the two projects 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 operations.

Amnesty International pointed out that international human rights law required national authorities to take all necessary measures to safeguard communities within their jurisdiction from infringements of their human rights, including by third parties such as companies. However, failure on the part of the authorities 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 former UN Special Representative of the Secretary-General on business and human rights. It is reflected in the UN Framework and Guiding Principles on Business and Human Rights adopted by the UN Human Rights Council in June 2011.

APPENDIX 2

Recommendations from Amnesty International's reports

In its reports and subsequently, Amnesty International has reiterated its call to the authorities in Orissa state and nationally to suspend the mine plans and establish a process to seek the free, prior and informed consent (FPIC) of the Dongria Kondh community on the mine plans as per international human rights standards. This process should include:

- Providing the community with accessible and adequate information, including to those who are not formally literate, about the mining project.
- Ensuring a comprehensive human rights and environmental impact assessment of the mine plans, undertaken in genuine and open consultation with the Dongria Kondh community and other marginalised communities living in the Niyamgiri hills.
- Establishing appropriate procedural safeguards to ensure the Dongria Kondh community can participate in the assessment process and that their knowledge and perspectives are given due weight and respect. The time given to this process should be adequate to enable an effective assessment of the potential human rights impacts and to develop plans to address any risks identified.
- Ensuring the Dongria Kondh FPIC is obtained prior to any continuation of the mine plans and respect their decision if they do not provide it.
- Ensuring respect for and protection of the rights of the Dongria Kondh and other marginalised communities to freedom of expression and peaceful assembly. The policing of protest actions should be fully consistent with human rights law and standards, including in relation to the rights to freedom of expression and assembly and the use of force.

Amnesty International has also called on Vedanta and its subsidiaries to:

- Urgently and fully address the existing negative environmental, health, social and human rights impacts of the Vedanta Aluminium refinery at Lanjigarh: this should be done in genuine and open consultation with the affected communities at Lanjigarh.
- Proactively disclose to the affected communities information on the existing refinery and plans or its expansion and the mine plans; ensure that this is done in a manner that is accessible to them and cooperate fully with any state process on such disclosure.
- Make a public commitment not to expand the refinery or go ahead with the mine plans until existing problems are addressed; full, impartial and adequate assessments of the human rights implications of the proposed projects are carried out; and effective plans are developed and action taken to ensure that human rights are respected and protected.
- Ensure the Dongria Kondh's FPIC consent is obtained prior to any continuation of the proposed project and respect their decision if they do not provide it.

Amnesty International has recommended that Vedanta's lenders and investors:

- Express concern to Vedanta about the impact of its activities in Orissa on human rights and call on Vedanta to implement the recommendations above.
- Ask Vedanta to report regularly on progress by the company to address the risks and human rights concerns surrounding its operations in Orissa.
- Call for a suspension of all mine plans and plans for refinery expansion until the human rights issues are properly addressed.
- Call on Vedanta to publicly commit to ensuring that adequate human rights impact assessments are carried out for all its operations; that such impact assessments are taken fully into account in decision-making processes which respect human rights; and that the information is made accessible and available to the affected communities.

APPENDIX 3

Responses to Amnesty International's reports

Vedanta's responses

- Vedanta's immediate response to Amnesty International's 2010 report was to reject its findings outright. On 9 February 2010, the company issued a statement in Delhi, asserting that the report "directly strikes at the heart of India's economic growth and rural development" and "challenges the credibility and robustness of India's regulatory framework."⁹⁶ The company responded by saying that "the Lanjigarh [refinery] project, whose many facets had been developed by Vedanta with the highest regard for human rights, will deliver significant economic stimulus to the local community." The Niyamgiri mine plans had been cleared by India's Supreme Court order dated 8 August 2008 which, the company claimed, "balanced the development needs with the protection of the environment and ecology"⁹⁷ and "considered whether the local people were consulted and was satisfied with the evidence of the consultation process".
- Vedanta's second response came in July 2010 at a meeting in London with Amnesty International.⁹⁸ The company reiterated its position.
- The third response came in January 2012 in the form of a press statement denying the negative impact of the refinery's pollution on the local communities.⁹⁹
- The company's fourth response, *Vedanta's Perspective*, which Amnesty International received in August 2012, in the guise of providing more data on the developments in Lanjigarh and Niyamgiri, again rejects Amnesty International's above findings.¹⁰⁰

Response from India's authorities

In August 2010, India's Ministry of Environment and Forests (MoEF) decisively acted on the findings of two official expert panels appointed by it and rejected the mandatory second stage Forest Clearance for the mine plans. The panels, whose findings were consistent with Amnesty International's findings, had documented the Orissa authorities' and the companies' breaches of Indian law; the panels also pointed out the failure on the part of the state authorities to register the Dongria Kondh community's claims to forest lands in the Niyamgiri hills under the Forest Rights Act (FRA) which came into effect in January 2008.¹⁰¹ The MoEF, in October 2010, suspended the terms of reference (ToR) for the refinery's expansion issued by it in March 2008¹⁰² and cancelled the April 2009 public hearing held at Lanjigarh.¹⁰³ It wanted the status quo to be maintained on the issue of refinery expansion.¹⁰⁴

96 *Statement from Vedanta Resources on Amnesty International Report*, issued on 9 February 2010 at New Delhi; on file with Amnesty International

97 The Supreme Court's 8 August 2008 order was in response to concerns about the possible impact of the mine on protected forests, including depletion of water sources and flora and fauna

98 Vedanta Resources, Amnesty International's Report *Don't Mine us out of Existence, Concerns and Present Status*, 27 July 2010

99 Vedanta Resources, *Vedanta Aluminium refinery balances growth with sustainability*, January 2012

100 Vedanta Resources, *The Lanjigarh development story: Vedanta's perspective*, August 2012

101 MoEF, Government of India, *Decision on grant of forest clearance in Kalahandi and Rayagada districts in Orissa for the proposal submitted by the Orissa Mining Corporation for bauxite mining in Lanjigarh bauxite mines*, 24 August 2010. See also Amnesty International, *India: Rejection of Vedanta mine, a landmark victory for Indigenous rights*, 24 August 2010; <http://moef.nic.in/downloads/public-information/Vedanta-24082010.pdf>

102 MoEF, Government of India, F. No. J-11011/1103/2007-IA-II(I), 20 October 2010 <http://moef.nic.in/downloads/public-information/letter-vedanta-sec5.pdf>; See Amnesty International, *India government's decision to reject Vedanta refinery expansion welcomed*, 22 October 2010; <http://www.amnesty.org/en/news-and-updates/indian-governments-decision-reject-vedanta-refinery-expansion-welcomed-2010-10-22>

103 At this public hearing, the local communities had protested seeking more information on the negative impact of the existing refinery and its expansion, but the authorities decided in favour of the expansion

104 MoEF, Government of India, F. No. J-11011/81/2003-IA-II(I), 20 October 2010. <http://moef.nic.in/downloads/public-information/Vedanta-direction-sec5.pdf>

Response from Vedanta's investors

In September 2010, Vedanta's bank lenders commissioned Scott Wilson Ltd (now URS Scott Wilson) as an independent environment and social consultant with terms of reference to review Vedanta's commitment to sustainable development and assess the social and environmental issues, particularly relating to the refinery and its expansion plans. The lenders required Vedanta to report, every six months, on progress of implementation of these recommendations until the Scott Wilson review determined that this was materially complete and all issues highlighted by it were substantially mitigated. The review's latest findings were published in March 2012 and include a series of recommendations.¹⁰⁵



The Lanjigarh refinery, as viewed from Kenduguda village ©AI

¹⁰⁵ Scott Wilson, *Vedanta Resources plc and Lanjigarh Alumina Refinery: Review of Progress on Recommendations*, 12 March 2012, <http://csr.vedantaresources.com/scottwilson.html>; see especially Section 5 on the Lanjigarh refinery. The review's conclusions and recommendations are discussed below

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