

**REPORT OF THE FOUR MEMBER COMMITTEE FOR
INVESTIGATION INTO THE PROPOSAL SUBMITTED
BY THE ORISSA MINING COMPANY FOR BAUXITE
MINING IN NIYAMGIRI**

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EXECUTIVE SUMMARY

The proposed mining lease (PML) area, which lies on the upper reaches of the Niyamgiri hills, is surrounded by dense forests and is the habitat for diverse species of plant and animal life.

The PML site is largely grassland surrounded by sal forests. This type of grassy meadow eco-system is usually found on lateritic zones on upper reaches at about 700 metres and above. The fact that this ecosystem is mostly prevalent in areas inhabited by the Dongaria Kondh suggests that, besides natural geological and climatic factors, it has also been modified by human actions such as burning for grasses and collection of Minor Forest Produce (MFP) practiced over a long period by the hill tribes. Fires are an annual feature leading to patches of grassy blanks. This retrogression, combined with grazing, adds to the area of the naturally occurring meadows.

Some 20 species of orchids are found in and around the PML. The members of the Dongaria Kondh tribe use these plants as medicines to treat different ailments like scorpion and snake bites, stomach disorders, arthritis, tuberculosis, paralysis, cholera, acidity, eczema, tumours, menstrual disorders, wounds and sores, diarrhoea, dysentery, bone fractures, rheumatism, asthma, malaria, etc.

The Niyamgiri massif is important for its rich biodiversity. In addition, it also plays the critical role of linking forests of Kandhamal district to forests of Rayagada, Kalahandi and Koraput districts. These forests also join the Karlapat wildlife sanctuary in the north-west and Kotagarh wildlife sanctuary in the north-east. They thus have high functional importance in creating an uninterrupted forest tract which is part of a continuous long corridor extending outside the protected area. Such corridors are particularly important for the conservation of wildlife species like elephant and tiger found in this region. The wild life productivity of this habitat is particularly high because it provides the valuable 'edge effect' to wild animals with open grasslands as feeding space and the neighbouring trees for shelter and escape.

The forested slopes of the Niyamgiri hills and the many streams that flow through them provide the means of living for Dongaria Kondh and Kutia Kondh tribes. These are Scheduled Tribes, with the Schedule V of the Indian Constitution which enjoins the government to respect and uphold the land rights of Scheduled Tribes applying to the entire Niyamgiri hills region. These tribes are also notified by the government as 'Primitive Tribal Groups' and eligible for special protection. While the Dongaria Kondh live in the upper reaches of the Niyamgiri hills, the Kutia Kondh inhabit the foothills. The Dongaria Kondh derive their name from *dongar* or hill. The Niyamgiri hills are the sole habitat of this group whose distinctive identity is evident in their unique language, agro-forestry expertise, social structure, and religious practices. At least 1453 Dongaria Kondh (20 per cent of the total population of the community numbering 7952 as of the 2001 census) live in villages in and around the Forest Blocks of the proposed mining lease area.

The two communities regard the Niyamgiri hills as sacred and believe that their survival is dependent on the integrity of its ecosystem. The PML site is amongst the highest points in the hills and it is considered especially important as a sacred site. All the Dongaria and Kutia Kondh villagers that the Committee conversed with emphasized the connection between their culture and the forests of the Niyamgiri

hills. The proposed mining lease (PML) area is used by both Dongaria and Kutia Kondh and is part of their Community Reserved Forests as well as their habitat, since they depend on it for their livelihoods as well as socio-cultural practices. Their reverence for the hills is rooted in their strong dependence on the natural resources that the mountains provide. Their customary practices in the area include agriculture, grazing and the collection of minor forest produce. The age-old access of Kutia and Dongaria Kondh to the PML area and the surrounding forests has been recognised in several forest settlement reports and Working Plans, and was also confirmed by the forest staff to the Committee members during their field visit.

The PML is locally known as Aonlabhata for the large number of Amla (*Emblica officinalis*) trees to be found on its edges, the fruit of which is harvested for medicinal use and for sale. The PML and the neighbouring forests are also known to be the source of many other forest products including edible mushrooms and honey, items that are important sources of nutrition in the Kondh diet as well as marketable commodities that fetch them a good income.

The tiny community of the Dongaria Kondh, who live in the upland areas of the Niyamgiri hills, depend on the hills intensely. Their distinctive cultural identity is intrinsically linked to the Niyamgiri hills and they have crafted a diverse and intricate agro-forestry system that uses mountain slopes and streams to great advantage. Dongaria Kondh cultivate patches of land cleared from the forest that are rotated to maintain soil fertility. Since their population is very small, they regard land as plentiful and leave most of it forested. They are renowned for their skill in horticulture. The fruit that they grow on forest plots fetches them a handsome income throughout the year. In addition, they collect a variety of forest produce and also rear chicken, pigs, goats and buffaloes.

Ecological Costs of Mining

Mining operations of the intensity proposed in this project spread over more than 7 square km would severely disturb this important wildlife habitat. The entire Niyamgiri hills will suffer major ecological damage if mining is allowed in the PML area.

Several perennial springs flow from below the top plateau, which is a part of the proposed mining lease site. It appears likely that the PML could be one of the main sources of Vamsadhara river which would make mining on this plateau a hydrological disaster.

- As many as 1,21,337 trees will have to be cut in case the mining lease is granted. Of these trees approximately 40 per cent would be in the mining lease area while the remaining 60 per cent would have to be removed to construct the access road and other mine related planned activities.
- Given that more than 1.21 lakh trees have to be felled; and since the number of shrubs and large herbs in a rich tropical forest are at least thrice the number of trees, it can be reasonably concluded that more than 3.63 lakh shrubs and ground level flora would also be cleared under the project.
- The PML (and the Niyamgiri Hills habitat) is highly productive in terms of wildlife since it provides the valuable 'edge effect' to wild animals, with open grasslands as feeding space and neighbouring trees for shelter and escape.
- The grasses are breeding and fawning ground for Four-Horned Antelope (*Tetracerus quadricornis*), Barking Deer (*Muntiacus muntjac*), as well as Spotted

Deer (*Axis axis*). A rare lizard, Golden Gecko (*Callodactylodes aureus*), is found on the proposed lease area.

- The value of Niyamgiri hill forests as an important elephant habitat is well recognized; therefore this habitat has been included within the South Orissa Elephant Reserve. Mining on the scale proposed in this habitat would severely disturb elephant habitats, and threaten the important task of elephant conservation in south Orissa. That mining causes severe disturbance to elephant habitats has already been demonstrated in Keonjhar district.

Human Costs of Mining

The PML area falls under four different administrative categories of forests. Though there are no villages inside the PML area itself, there are four villages inside the boundaries of the four forest blocks, as per the topo sheet, and 12 villages inside these four blocks as per government notification. In addition, there are 27 villages adjoining to the four Forest Blocks as per the topo sheet.

Mining, if permitted, will directly affect a substantial section (almost 20 per cent of their entire population in this world!) of the Dongaria Kondh community. An impact on such a significant fraction of the population of the community will have repercussions on the community's very survival, the overall viability of this group and its biological and social reproduction.

All the 104 Dongaria Kondh villages are linked by marriage, since the member of a clan must seek a spouse from another clan. The circulation of women and bride-price between villages is essential for maintaining the social and economic integrity of the community. The mining operations will also have significant adverse impact on the livelihoods of these communities for three reasons.

- The mining operations will destroy significant tracts of forest lands. Since the Dongaria and Kutia Kondh are heavily dependent on forest produce for their livelihood, this forest cover loss will cause a significant decline in their economic well-being.
- Their cultivation lands lie in close proximity to the PML area. Mining-related activities such as tree-felling, blasting, the removal of soil, road building, and the movement of heavy machinery will deny them access to their lands that they have used for generations.
- These activities will also adversely affect the surrounding slopes and streams that are crucial for their agriculture.

If the economic and social life of one-fifth of Dongaria Kondh population is directly affected by the mining, it will threaten the survival of the entire community - mining would destroy their economic, social and cultural life.

Enforcement of the Forest Rights Act

The entire PML area falls in the category of Community Forest Resource (CFR) as defined in section 2(a) of the Forest Rights Act (FRA) for the tribals living in the villages inside or surrounding the four forest blocks, the list of which is given in section 2.B.i. In addition to these villages, there are several villages within one to five km aerial distance from the proposed mining lease (PML) area. The entire PML area (including the area of all the four forest blocks) is clearly the habitat of the two Primitive Tribal Groups and their villages, as defined in section 2(h) of the FR Act.

These villages have been vested with recognizable community and habitat rights by GoI under section 4(1) of the FRA, and the procedure laid down in section 6 of the FRA must be followed by the district authorities. These rights should have been formalized by now, as the Act came into being more than two years ago on the 1 January, 2008. As holders of these rights, the entire Dongaria Kondh community and Kutia Kondh living close to the four forest blocks are empowered under section 5(c) of the Act to ensure that their habitat is preserved from any form of destructive practices that affects their cultural and ecological heritage. The state government cannot take any action that appropriates a part of their habitat without following the due process of law.

- As per the Preamble of the FR Act, forest dwellers are ‘integral to the very survival and sustainability of the forest ecosystem’. Therefore, in law, forests now include forest dwellers and are not limited to trees and wildlife. Since the MoEF is charged with the responsibility of implementing the Forest Conservation Act, it has to ensure that both forests and forest dwellers are protected.
- As far as forest rights are concerned, the Forest Rights Act, is a special law and therefore the authorities specified under it override those recognized by the Forest Conservation Act, a more general law. Section 5(c) has authorized the Gram Sabhas to ensure that their habitat is preserved from any form of destructive practices affecting their cultural and natural heritage. MoEF, as the authority under the Forest Conservation Act, cannot override the statutory authority under the Forest Rights Act, viz. the Gram Sabhas. MoEF would in fact be guilty of violating the FR Act, if it ignores the wishes of the Gram Sabhas.
- The FR Act does not provide for modification of rights for any purpose other than conservation of critical wildlife habitats. The Section 5 of the Act vests the Gram Sabhas and the forest dwellers with statutory rights to their habitats, where they have the authority to conserve, protect and manage forests, biodiversity, wildlife, water catchment areas and their cultural and natural heritage. The rights conferred under the Forest Rights Act automatically imply that free, prior and informed consent of forest dwellers such as the Dongaria and Kutia Kondh is a prerequisite for the diversion/destruction of the forest that they inhabit. The consent of these communities is required before any damage or destruction of their habitat and community forests is authorized. This is independent of the fact whether the Gram Sabhas submit their claims for the PML area or not.
- Appropriation of land over which tribal and other inhabitants of these habitats have well-recognized ownership and access rights, without due process of law and without consulting the villagers themselves, would not only violate the Forest Conservation Act, but would also forcefully evict forest-dwelling Scheduled Castes and Tribes from their lands and prevent them from exercising their rights under FRA over their habitats.
- According to section 4(5) of FRA, there can be no removal or eviction of people from forest land unless the tribal rights under FRA have been recognized and the verification procedure is complete. In order to ensure the compliance of this section, MOEF, vide its circular F.No. 11-9/1998-FC (pt) dated 3 August, 2009, asked the state government to submit a number of certificates to GoI, before its proposal for diversion under the Forest (Conservation) Act, 1980 can be considered. **These certificates included letters from each of the concerned Gram Sabhas**, indicating that all formalities/processes under the FRA have been

carried out, and **that they have given their consent to the proposed diversion. The District Collectors did not attach any of these letters from the Gram Sabhas in their certificates given in March 2010.**

- The Chief Secretary, Orissa in a general direction dated 24 October, 2009, to all District Collectors, had instructed that proposals for **diversion of forest land should be put before the Gram Sabhas**, and their consent or rejection should be attached. This directive was also ignored by the district **administration of Rayagada and Kalahandi: the letters from the Gram Sabhas were not attached with the certificates given by the Collectors.**
- The district authorities have failed to provide maps and electoral rolls to the Gram Sabhas as provided in rule 6(b) of the FR Rules. Hence they have violated these FR Rules. In addition, they have also failed to act under rule 12(3) of FR Rules. This rule mandates that if a forest area is used by more than one Gram Sabha, the Forest Rights Committees of the respective Gram Sabhas shall meet jointly to consider the nature of enjoyment of such claims, and submit the findings to the respective Gram Sabhas in writing. As the PML habitat may be common to a large number of villages or an entire tribal group, it was incumbent upon the district administration to call a meeting of multiple concerned villages. In fact, by failing to record the community and habitat rights of the Kondh, these officers are guilty of violating the law. They should not forget that they could be punished under section 7 of the FR Act for contravening the provisions of the Act and the Rules. However, we are not recommending their prosecution, but we will suggest that they be sent for a specially designed training programme on 'Forest Rights Act and Tribal Development'.
- From the meeting with the senior officers and the Chief Secretary, it was apparent that the district administration has been reluctant to act fairly and firmly under section 6 of the Act to formalize the rights of Kondh over the PML area, as the state government has already decided to transfer the said land for mining. Hence, it was not keen to recognize community and habitat rights of the Primitive Tribal Groups over the PML area. This is in spite of the undisputed fact that, as dictated by the FR Act, government authorities have no discretionary rights to ignore these rights. Not only is the transfer of community resources for mining without seeking their informed consent unfair, it is also illegal after the enactment of the FR Act. The administration has also failed to consult the PTGs and other forest dwellers about the impact of mining on their lives after the passing of FR Act. Their consent for diversion of land has not been taken.
- **Claims from Gram Sabhas for the PML area** - Despite the reluctance of the district administration and state government, several Gram Sabhas have already passed resolutions claiming community and habitat rights over the PML area under various sub sections of section 3, such as (1)(b), (c) and (e), and forwarded the same to the SDLC, as provided in section 6(1) of FRA. For instance, the resolution of the Gram Sabha of village Kendubardi demanding rights over Aonlabhata (one of the local name for the PML area) has been received in the SDLC in Aug 2009. Similarly, the Palli Sabha resolution dated 8 January, 2010, from village Phuldumer, which was visited by the chairperson, states, 'We use Aonlabhata (Badabhata) the area of Niyamgiri which is the proposed mining lease area of Vedanta'. Rather than process such applications as under law, the district authorities chose to give a false certificate in March 2010 (annexure 1) that

there have been no claims from the Gram Sabhas for the area covered under mining lease.

- After the visit of the committee members to village Khambesi, their Palli Sabha too passed a resolution on 30 July, 2010, stating, 'It was unanimously decided that as the proposed area is the primary source of our life and livelihood as well as the basis of our culture, the mining would be protested. Through this Gram Sabha resolution this message would be conveyed to the committee constituted by the Ministry of Environment and Forest, Government of India, not to allow the VEDANTA company for the extraction of bauxite from the Niyamagiri reserve forest, Proposed Khambesi reserve forest, proposed Nimagiri reserve forest and other adjacent forest areas'.
- There is yet another formality to be completed by Orissa government. Since in district Rayagada the formalities of section 6 onwards under the Orissa Forest Act in respect of Khambesi and Nimagiri PRF have not been completed, it is clear that the condition (xvii) imposed by GoI in its order dated 11 December, 2008, has not been fulfilled.
- From the evidence collected by the Committee, we conclude that the Orissa government is not likely to implement the FR Act in a fair and impartial manner as far as the PML area is concerned. It has gone to the extent of forwarding false certificates and may do so again in future. The MoEF is advised not to believe the Orissa government's contentions without independent verification. GoI should therefore engage a credible professional authority to assist people in filing their claims under the community clause for the PML area with the state administration. Even if the applications for habitat and community rights are filed, there is the danger that these can be arbitrarily rejected. Hence the authority established by GoI must follow these applications through each stage, and inform MoEF immediately of violations of the Act and its Rules. Similarly any certificate given by the district and state authorities regarding the consent of Gram Sabhas to diversion of forest area for mining must be subject to independent scrutiny by this authority. Based on these objective reports, the GoI has to draw its conclusions about the intent and actions of the state administration and act appropriately.
- It is established beyond any doubt that the area proposed for mining lease (PML) and the surrounding thick forests are the cultural, religious and economic habitat of the Dongaria Kondh. Section 4 of the FRA recognizes these rights, and these facts are undisputed. The Government of Orissa and the district committees have to complete the procedure as given in section 6 of the Act, and formalize the rights of the indigenous communities and correct its administrative records. The rejection of the claims of the Primitive Tribal Groups on any grounds whatsoever is illegal on the part of district or sub-divisional committees. If such action is taken against the PTG by the Orissa Government, GoI has to conclude that provisions of FR Act have not been followed by the state government. Based on this, it must withdraw the stage one clearance given under FCA for the said area.

In sum, the MOEF cannot grant clearance for diversion of forest land for non-forest purposes except if:

1. The process of recognition of rights under the Forest Rights Act is complete and satisfactory;
2. The consent of the concerned community has been granted; and

3. Both points have been certified by the Gram Sabha of the area concerned (which must be that of the hamlet, since this is a Scheduled Area).

All of these conditions, not any one, must be satisfied. This is irrespective of the fact whether people have filed claims or not. In short, the circular of 3 August, 2009, by the Ministry of Environment and Forests, which lays down these conditions has articulated the correct legal position. The Ministry should enforce its circular with all the authority at its command. There are already a large number of Palli Sabha resolutions from Kalahandi and Rayagada districts, where people have applied for forest rights on the same area that is proposed to be given on lease for mining. Some Palli Sabhas have explicitly opposed the diversion of their forests for mining. The Sarpanch of Parsali (district Rayagada) gave such an application personally to the Chairperson which was handed over to the Collector on the 9th July. Therefore there is incontrovertible evidence that the three conditions listed above are not satisfied, and therefore the application of Orissa government for diversion of forest land should be rejected.

If mining is permitted on this site it will not only be illegal but it will also:

- Destroy one of the most sacred sites of the Kondh Primitive Tribal Groups
- Destroy more than seven square kilometers of sacred, undisturbed forest land on top of the mountain that has been protected by the Dongaria Kondh for centuries as sacred to Niyam Raja and as essential to preserving the region's fertility.
- Endanger the self-sufficient forest-based livelihoods of these Primitive Tribal Groups
- Seriously harm the livelihood of hundreds of Dalit families who indirectly depend upon these lands through their economic relationship with these Primitive Tribe Groups,
- Build roads through the Dongaria Kondh's territories, making the area easily accessible to poachers of wildlife and timber smugglers threatening the rich biodiversity of the hills

Violation of Forest Conservation Act

- The company is in illegal occupation of 26.123 ha of village forest lands enclosed within the factory premises. The claim by the company that they have only followed the state government orders and enclosed the forest lands within their factory premises to protect these lands and that they provide access to the tribal and other villagers to their village forest lands is completely false. **This is an act of total contempt for the law on the part of the company and an appalling degree of collusion on the part of the concerned officials.**
- For the construction of a road running parallel to the conveyor corridor, the company has illegally occupied plot number 157(P) measuring 1.0 acre and plot number 133 measuring 0.11 acres of village forest lands. This act is also similar to the above although the land involved is much smaller in extent.

Violation of the Environment Protection Act (EPA)

- The company M/s Vedanta Alumina Limited has already proceeded with construction activity for its enormous expansion project that would increase its

capacity six fold from 1 Mtpa to 6 Mtpa without obtaining environmental clearance as per provisions of EIA Notification, 2006 under the EPA. This amounts to a serious violation of the provisions of the Environment (Protection) Act. This expansion, its extensive scale and advanced nature, is in complete violation of the EPA and is an expression of the contempt with which this company treats the laws of the land.

Violation of conditions of Clearance under EPA granted to Refinery

- The refinery was accorded clearance under the EPA on the condition that no forest land would be used for the establishment of the refinery. But now it is clearly established that the company has occupied 26.123 ha of village forest lands within the refinery boundary with the active collusion of concerned officials. Hence, the environmental clearance given to the company for setting up the refinery is legally invalid and has to be set aside.

Very limited relevance to the expanded Refinery:

- The mining activities in the PML site will have limited relevance to the refinery now under its six fold expansion as the 72 million ton ore deposit here would last only about four years for the increased needs of the expanded refinery. In balance against this are the severe adverse consequences on the primitive tribal people, environment, forests and wildlife that inhabit these forests.

Non-implementation of the Panchayats (Extension to the Scheduled Areas) Act (PESA)

The concerned area is a schedule V area where PESA is applicable. Thus, in addition to the implementation of FRA, the state government also has to ensure the compliance of the following provisions of PESA:

Section 4(i): The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects.

section 4(d) : every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;

section 4(m) (iii), according to which Gram Sabha has the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.

Recommendations

- On the basis of oral and documentary evidence collected by the Committee it is established beyond dispute that Dongaria and Kutia Kondh have had traditional, customary, and often formalized access to the PML area as well as to the surrounding thick forests on the slope to collect various types of forest produce. These rights would be extinguished if the area is transferred for mining.
- The Ministry of Environment and Forests cannot grant clearance for use of forest land for non-forest purposes because the legal conditions for this clearance as laid down by its circular of 3 August, 2009, have not yet been met. These include the following: *the process of recognition of rights under the Forest Rights Act has not been completed; the consent of the concerned community has neither been sought nor obtained; and the Gram Sabhas of the area concerned (hamlets in a*

Scheduled Area) have not certified on both these points as required.

- Mining will severely degrade the Niyamgiri hills ecosystem which is a rich wildlife habitat and an important and recognized elephant corridor, endanger the Dongaria Kondh's self-sufficient forest-based livelihoods, and lead to the extinction of their culture over a period of time.
- More than 7 square kilometres of the sacred undisturbed forest land on top of the mountain that has been protected for ages by the Dongaria Kondh as sacred to their deity, Niyam Raja, and essential for the region's fertility, will be stripped off its vegetation, soil and rendered into a vast barren exposed land.
- Mining will build roads through the Dongaria's territories, opening the area to outsiders, a trend that is already threatening the rich biodiversity of the hills.
- The mining at the proposed mining lease site will provide only 3Mtpa of ore out of the total annual requirement of 18 Mtpa of the Refinery after its ongoing expansion from the existing capacity of 1 Mtpa to 6 Mtpa (for which they have already nearly completed the work even before getting permission). The proposed mining site thus has low relevance to the future of the Refinery and is not critical at all for its functioning as is being claimed by the Company and the state officials.
- The Vedanta Company has consistently violated the FCA, FRA, EPA and the Orrisa Forest Act in active collusion with the state officials. Perhaps the most blatant example of it is their act of illegally enclosing and occupying atleast 26.123 ha of Village Forest Lands within its refinery depriving tribal, dalits and other rural poor of their rights.

In view of the above this Committee is of the firm view that allowing mining in the proposed mining lease area by depriving two Primitive Tribal Groups of their rights over the proposed mining site in order to benefit a private company would shake the faith of tribal people in the laws of the land which may have serious consequences for the security and well being of the entire country.

INTRODUCTION

In 2003, Vedanta Resources signed a Memorandum of Understanding with the State Government of Orissa for construction of a refinery for aluminium production, a power plant and related mining development at Lanjigarh in Kalahandi district. M/s Sterlite Industries (India) Limited (SIIL), fully owned and controlled by Vedanta Resources, proposed to set up a refinery with a capacity of 1.0 million tonnes per annum (tpa) for processing aluminium for export. It also proposed to extract bauxite from the area adjoining the refinery, which is estimated to have approximately 73 million tonnes of mineable ore.

The location of the Proposed Mine Lease (PML) site is between 19° 38" to 19° 48" North latitude and 83° 22' to 83° 25' East longitude. The mining is proposed to be undertaken on the top of the Niyamgiri hills in Kalahandi and Rayagada districts in Orissa; with the PML site between 900 to 1000 metres above mean sea level.¹ The site will be spread over an area of 7 sq. km. As per the proposal, the PML site contains 72.897 million tonnes of bauxite and 17.9 million tonnes of overburden. The open cast extraction process would involve the removal of overburden to an average depth of 2.7 metres, and mining of bauxite ore to a depth of 13.6 metres over the proposed site.

Vedanta proposes to extract 3 million tpa of bauxite from the reserves which have an projected lifespan of 23 years. The bauxite will be crushed and transported by a conveyor belt to the refinery at the foot of the hill. It is expected that the mining will lower the topographic level by some 10-15 m. To meet the power demands of the refinery project, a 75 MW captive coal-based power plant was also proposed. The Environment Impact Assessment (EIA) report for the aluminium refinery, prepared in August 2002, stated that the mining of bauxite is an integral part of the project. It also stated that the refinery should be preferably located near the bauxite mine. When justifying the choice of Lanjigarh, district Kalahandi, as the site for the refinery, the proposal cited the proximity of the bauxite reserve to Lanjigarh, as well as the fact that SIIL had a lease agreement with the Orissa Mining Corporation (OMC).

In 2004, three writ petitions were filed at the Cuttack High Court in Orissa and in the Supreme Court of India challenging the proposed mining lease on the grounds that it violated India's Constitutional provisions under Schedule V, the Supreme Court's order on the Samata case, and the country's environmental and forest conservation laws.² The Supreme Court began hearing arguments in these cases in November 2004, following which the Court's Central Empowered Committee (CEC), an

¹ Government of Orissa, Forest and Environment Department, 'Proposal for diversion of 660.749 ha of forest in Kalahandi (South) Forest Division and Rayagada Forest Division in favour of Orissa Mining Corporation Ltd (OMC) for mining of Bauxite in Lanjigarh Bauxite Mines'. No. 1 of (Cons.) 3673/F&E, Bhubaneswar, dated 12 February, 2005.

² Interim Application 1324 & 1474, Writ petition (Civil) No. 202 of 1995, with Interim Application Nos. 2081-2082 at Writ Petition (Civil) No. 549/2007.

advisory body set up to advise the Court on environmental issues, investigated aspects of the case. This investigation took place between 2005 and 2007. The Supreme Court's interim order in November 2007 stayed the mining project. However, the Court's final order in August 2008 granted clearance with certain conditions related to the sustainable development of local communities, protection of the environment and conservation of wildlife.³

Following the MoEF's decision that the refinery could be constructed while the mining component was still under review, Vedanta had proceeded to build the refinery which was completed in 2006. The Ministry had specified that the company could source bauxite from indigenous mines which had already received environmental clearance. The company commenced full refinery operations in 2007 using bauxite brought by train and truck from Korba (Chhattisgarh) and other states, including Gujarat and Tamil Nadu. In October 2007, Vedanta Alumina sought environmental clearance from the Ministry of Environment and Forests (MoEF) for a six-fold expansion of the refinery's capacity to 6 million tpa. This proposal is under consideration by the Ministry and has not been approved.

Pursuant to the orders of the Hon'ble Supreme Court of India, the MoEF, Government of India (GoI/GoI/GoI), in its order dated 11 December 2008 gave in-principle clearance to the diversion of 660.740 ha of forest land for the mining project:

After careful consideration of the proposal of the State Government of Orissa and on the basis of the recommendations of the Forest Advisory Committee, the Central Government hereby agrees in-principle for the diversion of 660.749 ha of forest land for mining of bauxite ore in Lanjigarh Bauxite mines in favour of Orissa Mining Corporation (OMCL) in Kalahandi and Rayagada Districts in Orissa, subject to the fulfilment of conditions.

It further stated that

After receipt of the compliance report on the fulfilment of the above mentioned conditions contained in Para 2 above, from the State Government of Orissa, formal approval will be issued in this regard under Section-2 of the Forest (conservation) Act, 1980. The transfer of forest land to the User Agency shall not be effected by the State Government till formal orders approving the diversion of forest land are issued by the Central Government.⁴

On 10 September, 2009, the State Government confirmed compliance with the conditions of the in-principle approval for 660.749 ha of the forest land.⁵ Further, the State Government also confirmed compliance with the conditions of the in-principle approval for diversion of 33.73 ha of village forest of Kalahandi district for construction of the conveyer corridor and the mines access road to Lanjigarh Bauxite Mining project of OMC. Vedanta, in its letter dated 24 February, 2010, to the Office of the Prime Minister of India, stated that

³ Supreme Court order, 8 August 2008, on Interim Application No. 2134 of 2007, Writ Petition (Civil) No. 202 of 1995.

⁴ Government of India, Ministry of Environment and Forests. 'Diversion of 660.749 ha of forest land for mining of bauxite in Lanjigarh Bauxite mines in favour of Orissa Mining Corporation Ltd. (OMCL) in Kalahandi and Rayagada districts' F. No. 8-23/2005-FC.

⁵ Government of Orissa, Forest and Environment Department, 'Diversion of 660.749 ha of forest land for mining of bauxite in Lanjigarh Bauxite mines in favour of Orissa Mining Corporation Ltd. (OMCL) in Kalahandi and Rayagada districts'. No. 10F(Cons)-50/2009/13804/F&E. dated 10 February, 2009.

All stipulations laid down by the MoEF, GoI have been complied and the proposal has been recommended by the Government of Orissa since August 2009 for grant of the forest clearance. (Vedanta/SIIL letter to PMO, 24 February 2010)

However, a site inspection of the PML and adjoining areas undertaken on behalf of the Forest Advisory Committee of the MoEF in January-February 2010 had found several instances of violation of environmental laws, of which the most severe were cases of non-compliance with the Forest Rights Act 2006. This led the MoEF, vide its order dated the 29 June, 2010, and as amended on 19 July, 2010, to constitute a Four Member Committee comprising of:

1. Dr N.C. Saxena, IAS (Retd), Member, National Advisory Council;
2. Prof. S. Parasuraman, Director, Tata Institute of Social Sciences;
3. Dr Promode Kant, Indian Forest Service (Retd); and
4. Dr Amita Baviskar, Associate Professor of Sociology, Institute of Economic Growth.

The Committee was mandated to examine, in detail, the proposal submitted by the Orissa Mining Corporation Limited, under the provisions of the Forest (Conservation) Act, 1980, for diversion of 660.749 ha of forest land for the Lanjigarh bauxite mines in the Kalahandi and Rayagada Districts of the State of Orissa.

The terms of reference for the Committee were as follows:

1. Investigation and ascertainment of the status of implementation of the Forest Rights Act of 2006 in and around the proposed area of the project;
2. Investigation of likely physical and economic displacement due to the project, including the resource displacement of forest users and their rehabilitation plan;
3. Investigation of likely impact on the cultural and social lives of the primitive tribe of Dongaria Kondh;
4. Investigation of potential impact on the biodiversity, wildlife and the ecology of the land;
5. The Committee shall be free to enquire or investigate any issue which the Committee Members might feel necessary for the purpose of the report.

The following is the brief chronology of related events:

1. On 19 March, 2003, M/s Sterlite filed an application for environmental clearance for the aluminium refinery to the MoEF. In the application it was categorically stated that no forest land was involved in the project and that there was no reserve forest within a radius of 10 km of the project site.
2. On 24 March, 2004, MoEF wrote to M/s Sterlite, informing them that since the functioning of the aluminium refinery would be dependent on the mining proposal, it had been decided to consider the proposal for the aluminium refinery and the mine together.
3. On 25 March, 2004, M/s Sterlite requested the MoEF to grant environmental clearance for the aluminium refinery separately on the ground that it would take three

years to construct the aluminium refinery whereas only one year would be required to set up the bauxite mines.

4. On 16 August, 2004, M/s Sterlite filed a separate forest clearance application for 58.943 ha of forest land (consisting of 28.943 ha of village forest and 30 ha of reserve forest) for further construction on the refinery and also a road and conveyor belt to connect the refinery and the mine.

5. On 22 September, 2004, environment clearance was granted by the MoEF for refinery project. While granting the environmental clearance, the IA Division (which handles environmental clearances) was not informed of the fact that the application for forest clearance was also pending. This is evidenced by the fact that the environmental clearance letter clearly stated that no forest land is involved in the project.

6. On 28 February, 2005, a proposal was forwarded by the State Government of Orissa for the diversion of 660.749 ha of forest land for mining of bauxite ore in Lanjigarh Bauxite Reserve in favour of OMC in Kalahandi and Rayagada districts.

7. On 2 March, 2005, the Supreme Court-established Central Empowered Committee questioned the validity of the environmental clearance granted by the MoEF and requested the Ministry to withhold the forest clearance on the project till the issue is examined by the CEC and report was submitted to the Hon'ble Supreme Court. MoEF agreed to this request.

8. On 3 March, 2005, MoEF directed that a site inspection be carried out by the MoEF's Regional Office. M/s Vedanta informed the environment branch of the Ministry for the first time that forest land was involved in the aluminium refinery project.

9. Between 23-28 March, 2005, the MoEF directed that construction of the aluminium refinery be stopped until clearance was obtained under the Forest (Conservation) Act 1980. M/s Vedanta, in a letter dated 24 March, 2005, informed the MoEF that they would implement the project without using forest land and therefore the 'stop work' order should not be applied to them. The State of Orissa also recommended that the forest clearance application be withdrawn from the MoEF. On 28 March, 2005, the MoEF allowed the forest clearance proposal to be withdrawn and the stop work order of the Ministry was cancelled.

10. On 11 April, 2005, the Site Inspection Report of the MoEF's Regional Office was submitted. It observed that the non-forest area included under the mining lease application was also covered by good forest. The State Government was asked to prepare a revised proposal to consider this area as well under the FC Act.

11. On 21 September, 2005, the CEC submitted its report to the Supreme Court recommending that the mining operations should not be granted forest clearance since there had been a violation of the FC Act.

12. On 23 November, 2007, the Supreme Court issued orders laying down certain conditions that had to be fulfilled by the Company before forest clearance could be

granted. One condition was that Sterlite or Orissa Mining Corporation be charged with the execution of the project while Vedanta, in all its forms, was not to be involved.

13. On 8 August, 2008, the Supreme Court granted forest clearance subject to satisfaction of conditions prescribed in its current and earlier judgment dated 23 November, 2007.

SECTION 1: POTENTIAL IMPACT ON THE BIODIVERSITY, WILDLIFE AND THE ECOLOGY OF THE LAND

1.A. Ecological Profile of the Niyamgiri Hills

The full scope of the environmental costs related to the mining proposal can be only comprehended by understanding the ecological characteristics of Niyamgiri Hills.

1.A.i. Plant Biodiversity: The total PML area involves 721.323 ha of land including 672.018 ha of forest land in the Niyamgiri hills which are a part of the northern Eastern Ghats hill ranges and form Biotic Province 6C of the Deccan Plateau Zone 6 of the Biogeographic Classification of the Wildlife Institute of India (WII). The forest cover in the general area is very dense and consists of a number of ecological communities such as tropical evergreen forests, tropical moist deciduous forests, dry deciduous mixed forests, moist peninsular sal forests, dense bamboo forests, scrub woodlands and open grasslands. In addition, tropical semi-evergreen forests are also found along the stream courses.

The PML site itself is largely grassland surrounded by Sal forests which is an edaphic climax⁶ for this type of land. Under the Champion & Seth system of forest ecological classification this forest is classified as **3C. North Indian Tropical Moist deciduous Forests – C2e(i). Moist Peninsular High Level Sal**. Sal is the predominant crop. Usual associates of Sal in these forests are *Terminalia tomentosa*, *Terminalia chebula*, *Xylia xylocarpa*, *Cedrella toona*, *Pterocarpus marsupium*, *Adina cardifolia*, *Syzizium cuminii*, *Grewia taelifolia*, *G. elastic*, *Aegle marmelos*, *Bauhinia retusa*, *Colebrookia oppositifolia*, *Butea monosperma*, *Careya arborea*, *Embelica officinalis*.



The Niyamgiri hills, Orissa

Grasses form the main cover along with *Phoenix acaulis*, *Gardinia cummiferra*, *Woodfordia fruticosa* and *Zyziphus rugosa*. Most commonly met grasses are *Themeda*

⁶ : Edaphic refers to soil conditions as they influence biodiversity. Edaphic climax is an ecological climax resulting from soil factors and commonly persisting through cycles of climatic and physiographic change.

laxa, *Themeda arundinacea* and *Cymbopogon martini*. This type of grassy meadow eco-system is usually found on lateritic zones on upper reaches at about 700 meters and above. The fact that this eco-system is mostly prevalent in Dongaria Kondh inhabited areas suggests that besides natural geological and climatic factors, human factors such as burning for grasses and collection of Minor Forest Produce (MFP) practiced over a long period by the hill tribe may have also been a determining factor. Fires are an annual feature leading to establishment of grasslands which leads to increased grazing both by wild herbivores and by cattle.



The Niyamgiri hills, Orissa: Mining Lease Area

1.A.ii. Fauna: The Niyamgiri Massif is important for its rich bio-diversity. In addition, it also plays the critical function of linking forests of Kandhamal district to forests of Rayagada, Kalahandi and Koraput districts. Its forests also provide links with Karlapat wildlife sanctuary in the North West and Kotagarh wildlife sanctuary in the North East. These forests thus have high functional importance in providing an uninterrupted forest tract outside the protected area forming a continuous long corridor. Such corridors are particularly important for the conservation of wildlife species like elephant and tiger found in this region.

The committee during its visit found evidence of droppings of Sambar Deer and Sloth Bear in the region. In May 2006, a team from Wildlife Institute of India (WII) in its detailed analysis found that widespread evidence indicated that the habitat was used by Sambar, Chital, Barking Deer, Four Horned Antelope, Gaur, Wild Boar, Porcupine, Sloth Bear and Elephant. In addition, according to local people, tigers and leopards were also found here, particularly large numbers of the latter⁷.

⁷ Wildlife Institute of India, Studies on Impact of Proposed Lanjigarh Bauxite Mining on Biodiversity including Wildlife and its Habitat, Dehra Dun, 2006-2007, Section 4.4 provides detailed account of animal presence and habitat use of the PML site wildlife species. The WII report concludes that “in the nutshell (sic), it can be stated that the Niyamgiri and its adjoining area are excellent remnants forests and wildlife habitat available in the region. Occurrence of less shifting cultivation qualifies the forests and wildlife habitat much better than that of the existing Kotagarh WLS, which at present is suffering from shifting cultivation, fire and other human interferences pp15”. Our fieldwork confirms that extremely low density of population of Dongaria Khonds and low level of resource extraction (due to

The grasses are breeding and fawning ground for Four Horned Antelope (*Tetracerus quadricornis*), Barking Deer (*Muntiacus muntjac*), Indian Hare (*Lepus nigricollis*) as well as Spotted Deer (*Axis axis*). The wild life productivity of this habitat is particularly high because it provides the valuable “edge effect” to wild animals with open grasslands as feeding space and the neighbouring trees for shelter and escape.



Grasses and herbs on the plateau, the Proposed Mining Lease area

Among reptiles a rare lizard, Golden gecko (*Callodactylodes aureus*), is found on the proposed lease area. Other reptiles reported are Large Termite Hill Gecko (*Hemidactylus subtriedrus*) and Travancore Wolf snake (*Lycodon travancoricus*); besides a large number of reptile species common to tropical forests like the monitor lizard, King cobra, Indian cobra, banded krait, rat snake, and python etc.

Some 20 species of orchids like *Acampe carinata*, *Acampe praemorsa*, *Aerides odorata*, *Bulbophyllum cariniflorum*, *Cymbidium aloifolium*, *Dendrobium herbaceum*, *Eulophia spectabilis*, *Eria bambusifolia*, *Flickingeria macraei*, *Geodorum recurvum* and *Geodorum densiflorum* etc are found in and around the PML. The members of the Dongaria Kondh tribes use these plants as medicines to treat different ailments; like curing scorpion and snake bites, stomach disorders, arthritis, tuberculosis, paralysis, cholera, acidity, eczema, tumor, menstrual disorders, wounds and sores, diahorrea, dysentery, bone fractures, rheumatism, asthma, malaria, etc.

minimum material needs of the people and cultural values safeguarding integrity of the forests) enables the Niyamgiri hills to sustain thriving wildlife.



View of the Proposed Mining Lease area

1.B. Status of Conservation Efforts in the Region

The area covered under the PML falls under four different administrative blocks of forests representing three distinct legal categories of Reserve Forests, Proposed Reserve Forests and Unclassed Protected Forests, namely, (1) Niyamgiri Reserve Forests, Kalahandi; (2) Khambesi Proposed Reserve Forests, Rayagada; (3) Niyamgiri Proposed Reserve Forests, Rayagada; and (4) Jungle Block Unclassed Protected Forests, Rayagada. Recognising the wealth of biodiversity in the region, two plans were proposed by the government: the Niyamgiri Wildlife Sanctuary and the South Orissa Elephant Reserve. However, no action has been taken to implement these

sanctioned proposals, and the state administration seems reluctant to do so.



Soil composition, showing water retention and drainage, in the Proposed Mining Lease area



Decomposing scat showing the presence of wildlife in the Proposed Mining Lease area

1.B.i. Proposed Niyamgiri Wildlife Sanctuary: Recognizing the high wildlife value of this ecosystem, the Working Plan for the Kalahandi division for the period 1997-98 to 2006-07 by Shri K R Singh, IFS, proposed the setting up of Niyamgiri Wildlife sanctuary. The Plan argued that the district had only 2.2 per cent area under the protected areas system. It was necessary to create more sanctuaries in the division, and the rich biodiversity of the forests called for the creation of Niyamgiri Wildlife sanctuary over 9129.19 hectares. Even though the Plan was approved by the state government, the forest department has not taken appropriate legal steps required for the declaration of the Niyamgiri wildlife sanctuary during the currency of the Plan. Discussions with the forest officers of Orissa indicated that the main reason for this reluctance on the Forest Department's part to act in this matter was the Vedanta proposal for mining in the Niyamgiri hills.

1.B.ii. South Orissa Elephant Reserve: The Niyamgiri hill forests are an important elephant habitat. Recognising this, the Principal Secretary, Forest and Environment, Government of Orissa submitted a proposal under Ref No. 5752/FNE dated 16 April, 2004, for setting up the South Orissa Elephant Reserve. This proposal was accepted by the Ministry of Environment and Forests, Government of India vide their letter number 7-2/2000-PE dated 28 November, 2005, consenting to the establishment of the Elephant Reserve over an area of 9951.82 square kilometres. The estimated population of elephants in this reserve is 179 making it a very significant habitat of elephants in the country.

1.C. Ecological Impact of Mining on the Site

The mining site extends over more than 7 sq. km. Besides this area of excavation, the surrounding habitats would be severely disrupted by hundreds of people working continuously as part of the mining operations and living there, including those employed to protect the mining area and equipment from theft, etc. The consumption demands of this large human population would place an enormous burden on the surrounding bio-diverse forests and wildlife: extraction for firewood and other MFP including rare medicinal plants would increase several-fold. The increased presence of humans would disturb the wildlife population while simultaneously giving more people an opportunity to poach them. Even assuming best intentions on the part of the company to conserve these habitats, a higher incidence of wildlife poaching would be unavoidable.

The apprehension of environmental degradation of the Niyamgiri hills ecosystem by land degradation, geo-hydrological drainage change, air and water quality reduction and public health hazard caused by mining is based on extensive documentation by the Wildlife Institute of India (WII).⁸ The WII study stated that '...the threats posed by the proposed project to this important ecosystem will lead to irreversible changes in the ecological characteristics of the area'.⁹ Stressing the importance of ecosystem services, the WII report clearly stated that, 'This cost benefit value should not only take into account the material benefits of the bauxite ore mining over a period of 26 years but should take into account the perpetuity of the resources and ecosystem services that would be provided by these forest in the future. Comprising long term

⁸ Ibid.

⁹ Wildlife Institute of India report, commissioned by the MoEF, 'Studies on impact of proposed Lanjigarh bauxite mining on biodiversity including wildlife and its habitat, 2006-2007', Chapter 4, section 5.5 p. 19.

economic returns therefore cannot be an alternative for short term gains'.¹⁰

1.C.i. Tree Felling: According to the above mentioned WII study, as many as 1,21,337 trees will have to be cut if the mining lease is granted. Of these, 40 per cent will be in the PML area and the remaining 60 per cent will be outside the PML site. The trees in the latter area would have to be removed to construct the access road and conveyor belt and other planned activities. This count of trees only accounts for planned felling of trees, and does not include the illegal tree felling that invariably takes place once a large number of workers are able to access interior forest areas.

Further, this number of 1.21 lakh includes only trees, and not shrubs and herbs. Since the number of shrubs and large herbs in a rich tropical forest is at least three times the number of trees, it is reasonable to conclude that more than 3.63 lakh shrub and ground level flora would also be removed under the project. This is a massive ecological cost of the project.

1.C.ii. Disturbance of Wildlife: The PML area is part of an important habitat for elephants as well as other wildlife.¹¹ The mining operation of the kind and intensity proposed in the project would cause immense disturbance to the wildlife in this region. Mining operations such as blasting and excavation are accompanied by tremendous noise. Further disturbance is generated by the constant vehicular movement of large trucks transporting labourers and material connected to the mine. Hence the elephants and other wildlife populations would be perpetually disturbed.

The road and the conveyor belt connecting the mining site to the refinery would cut through a large part of the habitat, particularly the elephant corridors, leaving it all but useless for them. If mining at this large scale is permitted in this habitat it would be a severe blow to the important task of elephant conservation in south Orissa as has already been proved in Keonjhar district.

1.D. Hydrology and Hill Streams

As is well known, Kalahandi is one of the most drought-prone districts in the country and thus water in streams and rivers in this district is a precious commodity. In the Committee's discussions during the visit, we were informed that the bauxite-bearing soils have a highly porous structure that gives them an increased capacity for water retention. These hill-top bauxite-containing soils are sources of perennial water and are crucial for ensuring a continuous water supply in low rainfall seasons.¹² The PML area is known for its ability to absorb rain water and release it slowly, thereby making it an important contributor to the water that flows in rivers downstream. Several perennial springs appear to flow from below the top PML plateau. The hills form part of the catchment of two perennial rivers, the Vamsadhara and Nagavalli, with the PML as one of the main sources of the Vamsadhara. Similarly, Nagavalli, another

¹⁰ Wildlife Institute of India report, commissioned by the MoEF, Studies on impact of proposed Lanjigarh bauxite mining on biodiversity including wildlife and its habitat, 2006-2007, Chapter 4, section 5.5 p. 19.

¹¹ The Wildlife Institute of India concluded that 'bauxite mining in Niyamgiri plateau will destroy a specialized kind of wildlife habitat, dominated by grasslands and sparse tree communities. These kinds of sites are breeding habitats of many herbivores such as barking deer and four-horned antelopes'. WII report, p 17.

¹² 'Bauxite deposits are embedded in spongy leached material in the high plateaus of Niyamgiri. These plateau beds underlying lateritic cap retain huge quantity of rainwater and allow water discharges to continue at slow rate through the emanating streams from their bases. Mining on this mineralized plateau will impact these aquifers in their discharges'. WII report, p 18.

important river, also originates from the Niyamgiri hills as well as the Bijipur Hills of the Eastern Ghats near Lanjigarh. Mango and champa (*Michaelia champaca*) trees are found just below the plateau on the hillsides. Given that these trees usually grow along water courses, their presence suggests that they are able to access perennial sources of water just below the surface.

1.D.i. Impact of Mining on Hill Streams: There is substantial evidence showing that mining operations in the PML site would drastically alter the region's water supply, affecting both ecological systems and human communities dependent on this water.

The streams which originate from the top of the hills are the only source of water for communities who live in the Niyamgiri hills and a major source for others who live lower down the hill (some of these villages use tube wells whose subsurface reserves are recharged by these water flows). Any negative impacts on the streams, through changes in recharging and drainage patterns, pollution or any other effect which changes the quantity and quality of water could have disastrous consequences for these communities.

A very recent issue of Nature, Vol 466, dated 12 August, 2010, (Annexure 8) has presented a report that confirms that stripping off mountain tops for mining causes serious environmental damage. This is based on an extensive research in West Virginia in the USA that has conclusively proved the linkage between severe water pollution and mountain-top mining and found that even relatively small mining operations can cause serious harm to ecosystems. To expose seams of ores the forests have to be stripped away and rocks broken with explosives. The rubble is dumped in the valleys, often burying streams. The loss of vegetation and topsoil can cause flooding, and the water emerging from the debris contains toxic solutes including selenium, metals and sulphates.

The Central Empowered Committee noted that the protected Niyamgiri Hills constitute the 'origin of Vamsadhara River and other rivulets' and there is a likelihood of 'adverse effect of mining on biodiversity and availability of water for the local people'.¹³ The CEC also noted that the mining project would cause soil erosion, and the consequent changes in the hydrological regime would adversely affect the flora and fauna in the entire region. While inspecting the PML site, the Chief Conservator of Forests at the MoEF's regional office in Bhubaneswar noted that mining may impair the water system in the area by altering the inflow of precipitation and by affecting natural drainage systems.¹⁴ The Wildlife Institute of India assessed that mining operations might result in desiccation, reducing the flow of the Vamsadhara and Nagavalli rivers.¹⁵ Mining would also cause increased erosion and pollution of the water systems, which in turn would result in deteriorated water quality and damage to riverine habitats. The study further stated: '...the threats posed by the proposed project to this important ecosystem will lead to irreversible changes in the ecological characteristics of the area'.

It is clear that the likely impacts of the proposed project on the availability and quality of water, through reducing groundwater recharge in the area and through changes in

¹³ CEC report to India's Supreme Court in IA No. 1324, New Delhi, 21 September 2005, para 30 (xiii).

¹⁴ Wildlife Institute of India, Studies on Impact of Proposed Lanjigarh Bauxite Mining on Biodiversity including Wildlife and its Habitat, Dehra Dun, 2006-2007, Section 4.

¹⁵ Wildlife Institute of India, Studies on Impact of Proposed Lanjigarh Bauxite Mining on Biodiversity including Wildlife and its Habitat, Dehra Dun, 2006-2007, Section 4.

natural drainage patterns, have not been studied in sufficient depth during the environmental clearance process. Both the 2002 and 2005 Environmental Impact Assessments have notable lacunae in this regard.¹⁶ The applicant company consumes a very large amount of water at its refinery, and will require more water for the proposed mining (and for the proposed expansion of the refinery). This water is to be sourced from the Vamsadhara River. Given the seriousness of the water scarcity in Kalahandi district, it is remarkable that the EIA conducted in 2002 at the time of setting up the refinery did not examine the impact of this water usage on biodiversity and human populations in the area and further downstream. There is no record of discussions on the company's projected water usage during the public hearings on the project held as a part of the environmental clearance process. This is likely to have been the case because the EIA on which the public hearing was based was a 'rapid assessment', instead of the globally-established best practice of a comprehensive EIA that records likely impacts in all the three seasons.¹⁷ The inadequacy of the rapid EIA becomes even more striking in drought-prone areas, since an EIA undertaken in a non-drought year cannot represent the true picture during the drought period. This omission is a grave neglect on part of the applicant company, as well as government officials charged with the responsibility of ensuring environmental safeguards. The potential impacts of the mining project on perennial streams that form the catchments of two important rivers extend beyond local human and wildlife populations to a far wider area, indicating that great caution must be exercised in this regard. These concerns become even more significant in the context of climate change-induced fluctuations in rainfall and weather patterns.

SECTION 2: Likely Physical and Economic Displacement due to the Project, Including the Resource Displacement of Forest Users

2.A. The Kondh: Social Identity and Livelihoods

The forested slopes of the Niyamgiri hills and the many streams that flow through them provide the means of living for Dongaria Kondh and Kutia Kondh, Scheduled Tribes that are notified by the government as 'Primitive Tribal Groups'¹⁸ and thus eligible for special protection. In addition, the Dongaria Kondh, whose total population is 7952 according to the 2001 census,¹⁹ are regarded as an endangered tribe. Schedule V of the Indian Constitution which enjoins the government to respect and uphold the land rights of Scheduled Tribes applies to the entire Niyamgiri hills region.

¹⁶ Tata AIG Risk Management Services Ltd, Rapid EIA Report for bauxite mine proposed by Sterlite Industries India Limited near Lanjigarh in Orissa, Mumbai, August 2002; Revised Executive Summary of Rapid EIA Report for Lanjigarh Bauxite Mining Project in Kalahandi district, Mumbai, January 2003; Vimta Labs, Rapid EIA for the proposed bauxite mines at Lanjigarh, Hyderabad, 2005.

¹⁷ Section 1.3 of the MoEF's EIA Manual states 'The difference between a Comprehensive EIA and a Rapid EIA is in the time-scale of the data supplied (NEERI 2001). The Rapid EIA is meant for a speedier appraisal process. While both types of EIAs require the coverage of all significant environmental impacts and their mitigation, a Rapid EIA achieves this through the collection of 'one season' (other than monsoon) data only to reduce the time required'. Thus, in a comprehensive EIA, the time scale of the primary data supplied is three seasons' baseline data. Reference for above is NEERI. 2001. *Environmental Impact Assessment Manual*. Impact Assessment Division, Ministry of Environment and Forests, New Delhi.

¹⁸ According to the Ministry of Tribal Affairs, 'Primitive Tribal Groups' are communities among the Scheduled Tribes that live in near isolation in inaccessible habitat.

¹⁹ 3458 males and 4529 females.

While the Kutia Kondh inhabit the foothills, the Dongaria Kondh live in the upper reaches of the Niyamgiri hills which is their only habitat.²⁰ In the polytheistic animist worldview of the Kondh, the hilltops and their associated forests are regarded as supreme deities. The highest hill peak, which is under the proposed mining lease area, is the home of their most revered god, Niyam Raja, ‘the giver of law’.²¹ They worship the mountains (*dongar* from which the Dongaria Kondh derive their name) along with the earth (*dharini*). These male and female principles come together to grant the Kondh prosperity, fertility and health. As Narendra Majhi, a Kutia Kondh from Similibhata village, said, ‘We worship Niyam Raja and Dharini Penu. That is why we don’t fall ill’. Sikoka Lodo, a Dongaria Kondh from Lakpadar village said, ‘As long as the mountain is alive, we will not die’. Dongaria Kondh art and craft reflect the importance of the mountains to their community—their triangular shapes recur in the designs painted on the walls of the village shrine as well as in the colourful shawls that they wear.



Dongaria Kondh girls, Lakpadar village, district Rayagada

²⁰ For anthropological studies of the Dongaria and Kutia Kondh, see: Felix Padel, 1995, *The Sacrifice of Human Being: British Rule and the Konds of Orissa*. Delhi: Oxford University Press; Anon., 2006, *The Kandha of Orissa*, Bhubaneswar: SC and ST Research and Training Institute; A.B. Ota and A. C. Sahoo, 2010, *Kutia Kandha*, Bhubaneswar: SC and ST Research and Training Institute; Mihir Jena et al., 2006, *Forest Tribes of Orissa, volume 2: Kuttia Kondh*, New Delhi: DK Printworld; P.S. Daspattanaik, 1984, ‘Ownership Pattern, Land Survey and Settlement and Its Impact on the Dongaria Kondhas of Orissa’, *Adibasi*, 23 (4): 26.

²¹ The toposheet of the proposed mining lease area also mentions Niyam Dongar, which indicates that this particular hill top is the Niyamraja Penu. Collector Rayagada informed the Committee that the Dongaria Kondh worship not the Niyamgiri hill which is to be blasted, but Nimagiri hill which is located to the south of the PML area. However, this argument is not convincing as Nimagiri hill is not as high as the Niyamgiri hill, which is the highest peak in that range.



Dongria Kondh girls, Lakpadar village, district Rayagada

All the Dongria and Kutia Kondh villagers that the Committee conversed with emphasized the connection between their culture and the forest ecology of the Niyamgiri hills. Their belief in the sacredness of the hills is rooted in a strong dependence on the natural resources that the mountains provide. Their customary practices in the area include agriculture, grazing and the collection of minor forest produce (MFP). The Kutia Kondh in Similibhata village and Kendubardi²² use the foothills to cultivate cereals such as *mandia* (ragi, finger millet), *kosla* (foxtail millet), *kango* and *kedjana*, pulses such as *kandlo* (tuar, pigeon pea), *biri* (urad, black Gram), *kulath* (horse Gram) and *jhudungo*, as well as oilseeds like castor and linseed (*alsi*). Two women, Malladi Majhi and Balo Majhi, while showing us their millet stores said, ‘This is why we need the forest. All these things come only from the forest’. We can buy rice [at Rs 2 per kilo], but these [millets] are tastier and more filling’. Their cows and buffaloes spend six months grazing in the forest.²³ They listed some of the items that they collect from the forest: different kinds of edible tubers (*bhatkand*, *pitakand*, *mundikand*); mahua flowers, *siali* (Bauhinia) leaves and *jhunu* (aromatic resin from the sal tree) for sale; and bamboo and wood (for implements and fuel) for their own use. Different parts of the PML are identified by specific local names depending on the nature of the vegetation. The grassland edge area of the PML is locally known as Aonlabhata for the large number of amla (*Embllica officinalis*) trees found on the plateau which the Kondh harvest for medicinal use and for sale.²⁴ With small land holdings that average 1-2 acres, the Kutia Kondh of Similibhata depend heavily on the

²² A hamlet of Jagannathpur village, with 86 Kutia Kondh households.

²³ Villagers’ ability to exercise these rights in the Reserved Forests of the area is recognized in the Forest Working Plans.

²⁴ The villagers of Rengopali claimed that earlier these amla trees were even more numerous, and that in the recent years many of these trees have been deliberately felled. The forest officers who accompanied us to the PML area did not substantiate or deny these claims. They did agree that both Dongria and Kutia Kondh tribal communities were free to collect amla from the forests of PML as well as its surrounds.

forest for their livelihoods. Since the forest resource satisfy the bulk of their material needs, only four households out of 50 supplement their income with wage labour.



Dongaria Kondh girls, Lakpadar village, district Rayagada

The tiny community of Dongaria Kondh, who live in the upland areas of the Niyamgiri hills, depend on the hills even more intensely. Their distinctive cultural identity is intrinsically linked to the Niyamgiri hills where they have crafted a diverse and intricate agro-forestry system that uses mountain slopes and streams to great



Sikoka Lodo, Sikoka Budhga and other Dongaria Kondh men from Lakpadar village, district Rayagada

advantage. Dongaria Kondh cultivate patches of land cleared from the forest, that are rotated to maintain soil fertility. Since their population is very small, they regard land as plentiful and leave most of it forested. Besides the crops mentioned above, the Dongaria Kondh also cultivate bajra (pearl millet) and beans such as *kating* (lobhia, cow pea) and *sem* (broad bean, *Lablab purpureus*). However, the skill that they are renowned for is horticulture: pineapple, banana, orange, lime, mango, jackfruit, turmeric and ginger. This produce grown on forest plots fetch them a handsome income throughout the year. In addition, they collect a variety of forest produce: all the ones mentioned above as well as edible mushrooms and honey (both these items are important sources of nutrition in the Kondh diet as well as marketable commodities that fetch them a good income), edible leaves (*koliari*, *betka* and *kodi kucha*) and tubers, grasses for making brooms, and herbs for medicinal use. They also rear chicken, pigs, goats and buffaloes.

Special mention must be made to the livestock that the Dongaria Kondh rear, especially the buffaloes that have particular cultural importance for them. Livestock is not reared for milk but for draught and meat. Buffaloes are highly valued for ritual purposes—religious and wedding-related festivities involve the sacrifice of buffaloes. Their biggest festival, Meria, is celebrated every three years in the month of Magh (January-February). During this festival, buffaloes are offered to Niyam Raja and their blood is allowed to seep into the earth. Buffalo meat is eaten fresh and dried for later use. Payments of bride-price also usually include one or two buffaloes.



Buffaloes grazing in the Proposed Mining Lease area, showing Dongaria Kondh villagers' customary use of the forests on the plateau. Buffalo sacrifice is a central element of Dongaria Kondh religious practice



Buffaloes grazing in the Proposed Mining Lease area. Buffalo rearing among the Kondh is not for milk but for ritual sacrifice and meat.

The maintenance of buffaloes is a challenge, because pasturage is scarce on the hill slopes where the villages are located. Hence villagers' customary rights to graze livestock in the forest is crucial for their livelihood economy. When the Committee visited the grassy plateau that forms the PML area, we found a herd of fifty buffaloes grazing. Since they were unaccompanied by any person, the village they belonged to could not be ascertained. Traces of old campfires at the edge of the plateau indicated that the area is used extensively and regularly by cattle and their herders. Given that the PML has excellent grass growth, this large number of buffaloes on the site was not surprising. In discussions with villagers in the neighbouring villages of Rengopali, Bandhaguda and Kendupardi, the Committee was repeatedly informed that their cattle graze on the PML for substantial lengths of time, ranging from four months to eight months each year, as part of their customary rights.

The Dongaria Kondh from Kurli, Khambesi and Lakpadar villages to whom we spoke appeared to be substantially better off than the Kutia Kondh of Similibhata and Kendubardi villages. Their crops, animals and forest produce not only provide them with enough food for self-consumption (*mandia* and *kosla* are their staples), but also fetch them substantial returns from the market. One indication of this economic well-being is the bride-price recently paid in the Dongaria Kondh village of Lakpadar. Besides a *jhaul* payment of Rs 8000 to the bride's village for a community feast, the bride's family was given a *maula* payment of Rs 50,000 in cash, two buffaloes, 20 kg of rice, 10 kg of ragi, salt, chillies and two canisters of mahua liquor. Despite the scale of such outlay, no funds were borrowed from moneylenders. This self-sufficiency is a testimony to the prosperity of the upland hill economy. This entire sum was raised by the sale of agricultural and forest produce. Notably, no one in the village has ever



Bala Majhi, a Kutia Kondh woman in Kendubardi village, district Kalahandi, holds out the cereals that they grow on forest plots: 'This is why we cannot leave the forest. All these things only come from there'

worked for wages.²⁵ The Dongaria Kondh we met were proud of their economic independence and freedom from want. Over and over again, they attributed their well-being and contentment to the Niyamgiri hills and their bounty.



Cereals grown on forest fields by Kutia Kondh in Kendubardi village, district Kalahandi



Dalit men and women in Khambesi village, district Rayagada, preparing pineapples grown by the Dongaria Kondh residents of the villages for sale in the local market

²⁵ In some cases, part of the bride-price can be paid off by the prospective groom working for the bride's family for a few months. However, this is regarded as quite different from working as wage labour since it occurs within the context of kinship relations and no money actually changes hands.



Dalit men and women in Khambesi village, district Rayagada, preparing pineapples grown by the Dongaria Kondh residents of the villages for sale in the local market



Dongaria Kondh women with mushrooms collected from the forest, near Parsali, district Rayagada



Dongaria Kondh women with mushrooms collected from the forest, near Parsali, district Rayagada



Dongaria Kondh women at the market in Muniguda, Rayagada district

All Dongaria Kondh that the Committee spoke to expressed their strong attachment to the Niyamgiri hills, their stewardship of the land, and the legitimacy of their rights

arising from their long-standing presence in these hills. They strongly voiced their contentment with life and their opposition to any destructive change of the ecology threatening their culture. As Sikoka Budhga said, 'We can never leave Niyamgiri. If the mountains are mined, the water will dry up. The crops won't ripen. The medicinal plants will disappear. The air will turn bad. Our gods will be angry. How will we live? We cannot leave Niyamgiri.

2.B. Effects of Mining on People

2.B.i. Kutia Kondh and Dongaria Kondh

As stated above, the two communities believe that that the hills are sacred and that their survival is dependent on the integrity of this ecosystem. The proposed mining lease site is among the highest points in the hills and is considered especially important as a sacred site. The PML area is used by both Dongaria and Kutia Kondh for their livelihoods as well as religious practices. Their customary use of the area, including for grazing and the collection of forest produce, is well-documented.²⁶ Mining operations will have significant adverse impacts on the livelihoods of these communities. Mining will destroy significant tracts of forest. According to the assessment of the Wildlife Institute of India in its 2006 study, as many as 1,21,337 trees will have to be cut if the mining lease is granted. Of these, 40 per cent will be in the PML area and the remaining 60 per cent would have to be removed to make the access road and other planned activities. Since the Kutia and Dongaria Kondh are heavily dependent on forest produce for their livelihood, this forest cover loss will cause a significant decline in their economic well-being. It must be noted that the Vedanta proposal assumes that no displacement will be caused by the mining project whereas there is overwhelming evidence that mining will not only result in widespread resource displacement but may well permanently undermine the survival of the Dongaria Kondh.²⁷

While **both** Kutia and Dongaria Kondh communities will be adversely affected by mining in the area, the likely negative impacts on the Dongaria Kondh are a particular cause of concern. The Niyamgiri hills are the sole and unique habitat of this tiny community. Any major disruption of their relationship with their environment is not only a serious violation of their rights under the Indian Constitution and forest laws, but also a grievous threat to their cultural integrity and their ability to survive as a distinct social group. The Committee found convincing evidence that mining will destroy Dongaria Kondh livelihoods and culture.

²⁶ These practices have been asserted and legally claimed under the 'community rights' provision of the Forest Rights Act by Dongaria Kondh as well as by Kutia Kondh. According to information provided by Shri Bhakta Charan Das, Member of Parliament for Kalahandi, the PML area figures in the community claims filed by Kadamguda, Balabhadrapur, Similibhata, Kendubardi, Rengopali, Basantpada, Dengsargi, Phuldumer, Palberi and Konakadu villages. At the time of writing, no action had been taken by the district administration to verify and recognize these community claims of these Kutia Kondh villages.

²⁷ Instead, the Vedanta proposal reduces displacement to only mean physical displacement from residential homes. It does not consider the effects of mining on the exercise of grazing and other usufruct rights. Nor does it mention the effects on Kondh agriculture due to changes in the hydrology and ecology of the area. The proposal does not include rehabilitation plans for resource displacement caused by the diversion of village forest land. Instead, it uses the rehabilitation plan for the refinery project interchangeably with the rehabilitation plan for the mining land diversion, while claiming at the same time, that the refinery and the mining lease are two separate proposals.



Kutia Kondh women in Kendubardi village, district Kalahandi



Bala Majhi, a Kutia Kondh woman in Kendubardi village, district Kalahandi, holds out the cereals that they grow on forest plots: 'This is why we cannot leave the forest. All these things only come from there'

Villages/hamlets inside the boundaries of forest blocks and village/hamlets adjoining forest blocks

(Names in bold indicate villages with Dongaria Kondh populations, as per information provided by DKDA Parsali and Chatikona. Names in italics indicate villages with Kutia Kondh populations, as per information provided by KKDA Lanjigarh. Figures in parentheses indicate number of DK and KK households. Spellings have been made consistent with DKDA and KKDA usage.)

Rayagada Division

Name of the Forest Block	Name of the village/hamlets inside the boundaries of Forest Block (as per PRF Notification)	Name of the village/hamlets inside the boundaries of Forest Block (as per Topo Sheet)	Name of the villages adjoining the Forest Block (as per Topo Sheet)
Khambesi PRF	1. Ashrupoda 2. Pabunybda 3. Kesarapadi (18) 4. Serkapadi (21) 5. Khambesi II (29)	1. Jasropa	1. Keshraparhu 2. Serakaparhi 3. Ankurubali (0) 4. Dholi
Niamgiri PRF	1. Railima (47) 2. Upperpalli 3. Dhamanapanga (34) 4. Baliapadu 5. Bondali (32) 6. Lamba (24)	1. Nishikhal (19) 2. Keltipadar (6)	1. Sikapadar (8) 2. Kudrukeri (1) 3. Panchakadi (7) 4. Bhaleri (2) 5. Bangapadi (14) 6. Pakeri (54) 7. Nirgundi (9) 8. Lasmba
Jungle Block (Undemarcated Protected Forests)	-	-	1. Lakpadar (27)

Kalahandi South Division

Name of the Forest Block	Name of the village/hamlets inside the boundaries of Forest Block (as per PRF Notification)	Name of the village/hamlets inside the boundaries of Forest Block (as per Topo Sheet)	Name of the villages adjoining the Forest Block (as per Topo Sheet)
Niamgiri RF	Ijrupa	Ijrupa	1. Phuldumer 2. Trilochanpur 3. Khemundipadar 4. Tentulipadar 5. Balabhadrapur 6. <i>Similibhata</i> (50) 7. Patloma 8. Kendubardi 9. <i>Rengopali</i> (65) 10. Basantpada

Name of the Forest Block	Name of the village/ hamlets inside the boundaries of Forest Block (as per PRF Notification)	Name of the village/ hamlets inside the boundaries of Forest Block (as per Topo Sheet)	Name of the villages adjoining the Forest Block (as per Topo Sheet)
			11. <i>Dangsargi</i> (29) 12. Kansari 13. <i>Bandhaguda</i> (26) 14. Konakadu
NB: Forest Block information reported by the D.F.O. Rayagada and Kalahandi South Divisions in their memo no. 5436 dt.15.7.10 and no. 3408 dt. 14.7.10 respectively, and based on the report of the Forest Range Officer, Biswanathpur range, with reference to present field observation and reference to Topo sheet No. 65M/6 of Survey of India.			

Data collated from the DKDA (Dongaria Kondh Development Agency, a government body) and the Forest Department (see table 1) shows that, of the total Dongaria population of the 7952, at least 1453 Dongaria Kondh live in villages in and around the Forest Blocks of the proposed mining lease area.²⁸ Their cultivated lands lie in close proximity to the PML area. Mining-related activities such as tree-felling, blasting, removal of soil, road building, and the movement of heavy machinery will deny them access to lands that they have used for generations. Further, these activities will also adversely affect the surrounding slopes and streams that are crucial for their agriculture. Given the almost total dependence of these villages on the eco-systems of the Niyamgiri hills, mining operations will severely threaten the livelihoods and basic survival of the Dongaria Kondh. In addition, the influx of migrant workers and the demands that their presence will make on the landscape will entail major disruptions in the economic and social well-being of these small and self-contained groups.²⁹

As stated above, if permitted, mining will directly affect a substantial section—almost 20 per cent—of the Dongaria community. An impact on such a significant fraction of the population of the community will have repercussions for the overall viability of the group and its biological and social reproduction. All the 104 Dongaria Kondh villages are linked by marriage, since the member of a clan must seek a spouse from another clan. The circulation of women and bride-price between villages is essential for maintaining the social and economic integrity of the community as a whole. It is clearly indicated that if the economic and social life of one-fifth of Dongaria Kondh population is directly affected by the mining, it will threaten the survival of the entire community. All the Dongaria Kondh that the Committee spoke to stressed that mining would destroy their economic, social and cultural life. ‘Niyam Raja has given us everything. If they take the *dongar* away, we will die’.

²⁸ Since this estimate is based on incomplete information, the actual number is likely to be larger.

²⁹ In addition to the increased burden of firewood and water placed on the Dongaria Kondh habitat by migrant workers, there is the social burden of diseases, especially sexually transmitted ones. Like several other Scheduled Tribe groups, Dongaria Kondh women are vulnerable to sexual exploitation by non-tribals who can take advantage of their customary practice of socially-sanctioned premarital sexual relations between members of different clans.



Shrine and sacrificial altar to Niyam Raja and Dharini in Khambesi village, district Rayagada (note the triangular motif on the prayer-house wall, signifying the Niyamgiri hills)



Dongaria Kondh prayer-house walls, showing the triangular motif signifying the Niyamgiri hills, in Kurli village, district Rayagada



Timi Vadakka, a Dongaria Kondh woman in Khambesi village, district Rayagada: 'Even if they cut our throats, we cannot be separated from Niyamgiri'

Anthropologists who have conducted research among the Dongaria Kondh are of the view that they are a unique community whose distinctive identity is evident in their language, kinship relations, expertise in agro-forestry, and customary practices. For example, Dongaria Kondh speak two languages, called Kuyi and Kuvi, with a proto-Dravidian structure and vocabulary which is unrelated to Oriya, the state's official language.³⁰ Their religious practices anchor them in the landscape of the Niyamgiri hills and any severance or disruption of that relationship will be a grievous blow to the community's self-identity as well as material well-being. As a Primitive Tribal Group the welfare of the Dongaria Kondh is mandated for special protection by the government. It is clear that the government is responsible for protecting their rights and that mining in this region would seriously undermine the fulfilment of this responsibility.

2.B.ii. Harming the Livelihood of the Dalit Forest Dweller:

Besides the Dongaria Kondh and the Kutia Kondh Scheduled Tribes, mining is also likely to adversely affect other vulnerable communities particularly the Dalits, majority of whom belong to the Dom Scheduled Caste. So far the extent of this impact on Dalits has not been adequately studied even though their population is also quite large and in some hamlets they even outnumber the tribal communities. The Dalits that the Committee met were landless; and earned their living by providing various services including trading in the horticultural produce grown by the Dongaria Kondh. Since they are migrants to the area, with most now living here for past several

³⁰ P. S. Daspattnaik, Ownership Pattern, Land Survey and Settlement and its impact on the Dongaria Kondh of Orissa, Adibasi, *Journal of Anthropological Research*, Vol. XXIII, No. 4, January 1984, p. 23-26; C. Maheswaran, Descriptive Grammar of the Kui Language, 2008; Interview with Felix Padel, anthropologist, Bissamcuttack, India, March 2009.

decades, and do not own land, there is no administrative record of their rights, relating to access to fuel, fodder and other MFP. But the fact of their living among the Dongaria Kondh is a clear indication of the fact that their lives are as intertwined with the forests as that of the Kondh. The disruption of Dongaria Kondh agriculture is likely to result in the Dalits also losing their means of livelihood. During discussions with the Dalits and state officials it was clear that no compensation of any kind is being offered to the Dalits except where their homestead lands have been acquired for the establishment of aluminium refinery and connecting roads and conveyor belt. The Committee is of the considered view that even if the Dalits have no claims under the FRA the truth of their defacto dependence on the Niyamgiri forests for the past several decades can be ignored by the central and state governments only at the cost of betrayal of the promise of inclusive growth and justice and dignity for all Indians.

2.B.iii. The Displaced: From Self-Sufficiency to Destitution

The present well-being of the Kondh, who continue to have access to the resources of the PML area and adjoining forests is in stark contrast with the status of the Kutia Kondh and Dalit households in Rengopali and Bandhaguda villages, whose lands have been acquired by the Vedanta aluminium refinery. In both villages, Kutia Kondh and Dalit households have sold their agricultural lands to the company, and are left only with their homestead land. Officially, they are classified as Project Affected Persons (PAPs), who lost their agricultural land but not their homes.

In Rengopali with a total number of 96 households, twentyfour households each have one member who is casually employed outside the refinery. The income from this employment is low and unstable (averaging Rs 4,000 to 5,000 per month) and is not enough for regular sustenance. According to Lingaraj Majhi, a few household used their compensation money to buy land in nearby villages such as Patarguda. However, they were coerced into giving it up it by the villagers there. As a result, no one at present has any access to agricultural land. In Bandhaguda, Moti Majhi (a Kutia



Bandhaguda village, district Kalahandi, adjoining the refinery: dispossessed yet not 'displaced'

Kondh woman) described how they used to grow a variety of crops on their land before it was acquired. Seven years have passed since then, but middle-aged people like Moti Majhi still yearn for the past: ‘We used to grow vegetables. Now we have to buy them. We live here in the factory’s shadow, but there’s no comfort here. It gives us nothing except sickness’. When asked if she wanted the factory to give her a job, Moti Majhi shook her head. When asked whether she would like land, she firmly assented.



Bandhaguda village, district Kalahandi, adjoining the refinery: dispossessed yet not ‘displaced’

However, most people in Rengopali and Bandhaguda hold a different view from Moti Majhi. They want to be categorized as ‘Displaced’—those who have lost everything. This category of project-affected households is entitled to a job and a housing quarter; and it has been applied to villagers whose agricultural lands and homesteads were acquired by the refinery. On deeper reflection, the demand by PAP households to be categorized as ‘Displaced’ is not paradoxical. Deprived of their agricultural land and livelihoods but forced to live in close proximity to the refinery, these villagers live an abject existence. According to them, their only prospect of betterment lies in getting a job provided by the company and a housing quarter. As a result, the chief demand of ‘Project-Affected’ villagers before the Committee was: ‘Please displace us’.

For Project-Affected villages, while the nearby presence of the refinery has brought some irregular employment, its benefits have been outweighed by the decline in health and nutrition. Bandhaguda is closest to the refinery and complaints about dust and water pollution here are more numerous. The fine dust flying from the red mud pond attached to the factory, has been reported to cause asthma and other respiratory illnesses amongst a large number of villagers. The Committee met Bogo Majhi and Laksha Majhi, two Kutia Kondh men who had severe breathing difficulties and had become emaciated as a result. Skin diseases attributed to drinking polluted water were

observed on Krishna Harijan (Scheduled Caste) and Nabi Majhi (a Kutia Kondh). Other villagers also complained that water in the bore well was polluted and not fit for drinking. The refinery complex also inconveniences villagers in other ways: once the second red mud pond becomes operational, it will cut off the road from Rengopali village to the school, forcing young children to take a circuitous route that involves walking long distances.



Men with diseases in Bandhaguda village, district Kalahandi (TB and asthma, skin infections) that they attributed to the dust and water pollution from the refinery



Men with diseases in Bandhaguda village, district Kalahandi (TB and asthma, skin infections) that they attributed to the dust and water pollution from the refinery

Villagers in Rengopali and Bandhuguda reported that reduced access to a varied and nutritious diet and increased exposure to pollution has made their lives miserable. They feel that their children in particular were vulnerable to disease and malnutrition. As Lachhma, a Dalit woman explained, 'First, we didn't want to give our lands. Then we thought our children would get jobs in the factory. So we co-operated with the company and with the government. But now we are worse off than we ever were. We don't have land, we don't have jobs, we have nothing'.

SECTION 3: Status of Implementation of the Forest Rights Act 2006 in and around the Proposed Area of the Project

3.A. Forest Rights Act (FRA)

The FRA is visionary in its scope. In intent, it has four objectives that are relevant to the case at hand:

First, it recognized that forest dwellers were treated as encroachers in their own ancestral lands; and this denial of their customary rights was an act of historical injustice. The Act therefore was a corrective measure that **recognized** (NOT settled) pre-existing rights. As a result, it was applicable in retrospect.

Second, the Act differentiated between individual claims, community forests and habitat. In doing so, it aimed at developing a holistic understanding of the rights of forest dwellers as individuals, as users of the resources of these eco-systems; and as existing within these environments. As a result, it recognized that natural resources can be claimed by communities, as well as by individuals. It also recognized that displacement was not just the loss of homestead land for forest dwellers, but also access and control over the environment [forests, pastures, rivers] in which they live in.

Third, the Act recognized that the governance of the eco-systems must be led by local governance structures. In keeping with this principle, the Act constituted local governance structures (Gram Sabhas) as authorities to file claims for village forest lands and individuals. The act also laid down clear procedures to verify these claims.

Four, the Act clearly recognized that free, informed, prior consent of the communities is essential in governing these eco-systems and therefore laid out clear and transparent administrative procedures for obtaining this consent. In framing the issue of consent, the Act clearly indicates that the community had the rights of refusal, if the proposed development project was injurious to their well-being.

3.A.i. Correction of Historical Injustice

The FRA clearly states that the large number of the forest rights it recognizes are pre-existing; i.e., these rights have existed for generations and have a legal status in custom, tradition and practice. By enacting the FRA, the government does not 'grant' or 'give' rights under this Act, but belatedly recognizes them to undo a historical injustice against forest dwellers who were treated as encroachers in their own ancestral lands, in spite their legal rights admitted in the Preamble. It states that the forest rights on ancestral lands and their habitat were not adequately recognized in the colonial period as well as in independent India resulting in historical injustice. It is in this context of 'historical injustice' done to forest communities that the Preamble of the FRA recognizes the pre-existing rights of forest dwellers 'who have been residing in such forests for generations but whose rights could not be recorded'.

The Preamble goes on to recognize that forest dwelling Scheduled Tribes and other traditional forest dwellers are 'integral to the very survival and sustainability of the forest ecosystem'. It further states that this law is 'necessary to address the longstanding insecurity of tenurial and access rights' of such forest dwelling communities. Such rights, according to the Preamble of FRA, 'include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling

Scheduled Tribes and other traditional forest dwellers'. The principles in the Preamble become particularly important while interpreting this Act's provisions, particularly about the aspect of awarding of rights retrospectively.

The Kondh are obviously covered within the definition of 'forest dwelling Scheduled Tribes' (FDST), as defined in section 2 (c) of the FRA, which reads as follows:

'forest dwelling Scheduled Tribes' means the members or community of the Scheduled Tribes who primarily reside³¹ in and who depend on the forests or forest lands for *bona fide* livelihood needs and includes the Scheduled Tribe pastoralist communities'

3.A.ii. Recognition of Kondh' Rights in Forest Records

The proposal for diversion of forest lands is silent on the rights of villagers over the proposed mining site. The Dongaria Kondh and Kutia Kondh have been living on forest lands and within and surrounding the forest boundaries and their economy is dependent on forests and these rights have been recognized in various Forest Settlements of the two districts. For instance, the 'Draft Final Report on the Survey and Settlement Operation in Lanjigarh ex-zamindari area of Kalahandi district 1976' recognizes rights of tribals, and states, 'Kondhas of Dangarla do not pay any Nistar cess but enjoy all the rights and concessions, but non-Kondha people pay Nistar cess at the rate of Rs 0-3-0 per plough or hala' (page 13).

In the Rayagada part of the PML also the situation is similar and the para 1.13.4.2 of the current Rayagada Working Plan (2006-07 to 2015-16) recognizes right to collect firewood, graze their cattle, collect and remove edible roots, fruits, minor forest produces, such as mahua, kendu, char, siali leaves and other except sandalwood and cashew nut free of cost while right to collect thatching grass is subject to payment of fees. Besides they have the right to enjoy fruits of horticulture plantation which implies that they have right to undertake horticulture plantations since the forest department does not raise horticulture plantations.

The Working Plan of Rayagada further notes the prevalence of Shifting cultivation among the tribals since time immemorial in most of the mountain parts of the division and the insistence of the tribal community to do so for establishing their customary and hereditary rights. (Pg 35, Working Plan Rayagada Forest Division).

.....Podu is generally on hills. Since the tribals engaged in Podu cultivation mostly have no legal rights over this occupation as well as the land of cultivation, they continue to do so establishing their customary and hereditary rights.....

The notification for the declaration of an area as RF also mentions the names of the villages from where the people can enjoy these rights. The PML area falling in district Rayagada is partly proposed RF (PRF), and partly unclassed protected forests. For instance, vide notification no. F.S. 22/80/34839/R dated 7th May 1980, 693 ha in Khambesi block is proposed to be declared as RF under section 4 of the Orissa Forest Act, and the villages Ashrupoda, Panimunda, Kesarapadi, Khambesi, and Serkapadi

³¹ It has been clarified by the Ministry of Tribal Affairs, which is the nodal Ministry for implementation of FR Act through it's letter dated June 9, 2008 to all state secretaries incharge of Tribal Welfare that the term 'primarily' reside in would include 'such Scheduled Tribes and other traditional forest dwellers who are not necessarily residing inside the forest but are depending on the forest for their *bona fide* livelihood needs ...'

are mentioned in the notification as being inside the forest boundaries. In addition, there would be villages (names given in Section 2.B.i) surrounding the PRF which will also enjoy these rights. During discussions the DFO Rayagada explained that both, villages inside and surrounding, will have all the rights that are recognized for RF area, and in practice these rights are observed even today, pending the final notification declaring Khambesi block as RF after completing the process of settlement of rights.

Similar notifications for Nimagiri RF in Rayagada district mentions villages inside the PRF which have rights extending over the PML area. These are Rayamma, Upparpalli, Baliapadu, Bondili, and Lamba. Here again the villages surrounding the PRF will also enjoy these rights. Such rights are customary in PRF and get formalized when the area gets notified as RF following the settlement of rights. As the FR Act recognizes customary rights, these rights have now to be formalized via the FR Act.

The third block in district Rayagada from where land is to be taken out for the PML area is an unclassed and unsurveyed protected forest, called Jungle block. Here all uses of forests are permitted to everyone, except felling of trees. Applying the same logic as for PRF, the village Lakpadar, which is adjoining to the block, will have traditional rights of access and gathering. In addition, being unclassed and unsurveyed forest, it would be treated as open access forests as per the prevalent practice.

Rights under Anchal Administration (pg, 32, Working Plan, Raygada Forest Division) are described as:

....With the vesting of ex Jeypore estate with the state of Orissa vide govt. notification no. 8231/R dt. 29.12.1951, the Protected Lands and Unsurveyed lands continued to be right burdened as they were earlier. At the same time, few rights such as right to use specified footpath and cart tracks, **rights to worship at the specified shrines inside the Reserved lands** and the rights to use water and fishing in hill streams were admitted.....

The statement in section 2.B.i describes the names of the villages that are inside the four forest blocks mentioned above, and it also gives the names of the villages that are adjoining to the forest blocks in question.

In the meetings that were held with the officials, both at Rayagada and Bhawanipatna, all forest officers present, including the DFOs, readily accepted that people do go to the hill top and collect various types of MFPs, and that the Forest Department does allow people free and unfettered rights to the PML area for use by the forest dwellers.

It has to be noted here that two blocks of the forests in the Rayagada part of the PML are merely notified as proposed RF and settlement process has not been completed which means that the tribal and other inhabitants have the right to continue to undertake all the activities that they were doing at the time of notification of proposal to notify these forests as RF issued in 1980.

The third block in district Rayagada from where land is to be taken out for the PML area is an unclassed and unsurveyed protected forest, called Jungle block and has not been notified as a proposed RF. Here all traditional and customary usage of forests continue as claimed by the forest dwelling communities.

During our visit we found large number of buffaloes grazing on the site. This was only to be expected since the PML has excellent grass growth. During our discussions with villagers in the neighboring villages of Rengopalli, Bandhuguda, Kendupardi we

were repeatedly informed that their cattle graze on the PML for a substantial length of time, which was variously described from four months to eight months, each year. The PML is locally known as Amla Bhatta for the large number of a very valuable MFP tree, Amla (*Embllica officinalis*), trees found on the PML.

The PML and the neighboring forests are also known to be home to a large number of edible fungi which forms a valuable part of the tribal food as well as a marketable commodity that provides them significant income. Another MFP product of note is honey which is both an important food for tribal children as well as a product that fetches them good income. The forest officers who accompanied us to the PML agreed that tribal people belonging to both the Dongaria and Kutia Kondh communities could collect MFP from the forests of PML as well as its surrounds as they pleased.

Therefore, it is established beyond dispute that Dongaria Kondh and Kutia Kondh have had traditional, customary and, often, formalized access not only to the numerous forest produce available in the proposed mining lease area, and on the surrounding thick forests on the slopes, but on the forest land itself for shifting cultivation, which will be extinguished if the area is transferred for mining.

But the proposal for diversion is silent on these rights for timber nistar, shifting cultivation, grazing cattle and MFP. They seem to have taken displacement to mean only physical displacement from the residential huts of the tribal people. There is no rehabilitation plan for this diversion project and the rehabilitation plan for the refinery project is often discussed as the rehabilitation plan for this mining land diversion also even while at the same time claiming that the refinery and this mining lease are two separate proposals.

3.A.iii. Forest Rights

According to Section 3(1) of FRA, the following among others are 'Forest Rights' of forest dwelling Scheduled Tribes (FDST):

- Community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes [Section 3 (1)(b)];
- Right of ownership, access to collect, use and dispose of minor forest produce which have traditionally been collected **within or outside village boundaries**. [Section 3 (1)(c)];
- Rights, including community tenures of habitat and habitations for primitive tribal groups and pre-agricultural communities [3(1)(e)];
- Right to protect, regenerate or conserve or manage community forest resources which they have traditionally been protecting and conserving for sustainable use. [(3(1)(i)];
- Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity [(3(1)(k)]; and
- Any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right

of hunting or trapping or extracting a part of the body of any species of wild animal [(3(1)(l)].

Apart from customary rights, there are also a large number of pre-existing legal administrative mandates that accrue from earlier settlements and agreements that recognizes the rights of these communities to use the forests. However, before the enactment of the FRA, the forest law enactment had led to numerous anomalous situations where rights flowing from such legally binding instruments were not recognized adequately by the forest administration. These led to serious anomalies on the ground, resulting in the perpetuation of the historical injustice against tribals. The FRA specifically recognized this, noting that clear statutory recognition was required given that the existing forest administration followed the colonial tradition and refused to recognize and formalize these rights of forest dwellers; and the purpose of the FRA is to rectify this deprivation.

Since the FRA is intended to rectify the gaps in other legal mandates, its rulings override other relevant legal mandates. According to Section 4(1) of the Act, *notwithstanding anything contained in any other law for the time being in force*,³² the Central government recognizes and vests the forest rights in the Forest Dwelling Scheduled Tribes (FDSTs) in respect of all forest rights as mentioned in Section 3. Sub Section (5) of Section 4 provides that ‘Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted from the forest land under his occupation till the recognition and verification procedure is complete. The term occupation has to be interpreted here in a wider sense so as to cover rights of access, use, habitation, and habitat as defined in section 3 of the Act. Any other interpretation would defeat the purpose of the FRA as stated in the Preamble of the FR Act as well as in section 3(1)(b) to 3(1)(k).

3.A.iv. Differentiation between CFR and Habitat

Critically, the FRA differentiated in the definitions of the terms of the Community Forest Resources. Whereas CFR usually belongs to just one village or two, habitat may be common to a large number of villages or an entire tribe. Section 2(a) of FRA defines ‘Community Forest Resource’ (CFR) to include customary forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forest, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access’. This should be read along with section 3(1)(c) which defines forest rights as inclusive of ‘Right of ownership, access to collect, use and dispose of minor forest produce which have traditionally been collected **within or outside village boundaries**’. As established above, the entire PML area would fall in the category of CFR for the Primitive Tribal Groups living in the villages inside the four blocks and in the adjoining villages.

The FRA’s definition of Habitat determining the right to community tenures of habitat is even more pivotal. Habitat is defined in Section 2(h) of FRA as: ‘*Habitat*’ includes the area comprising the customary habitat and such other habitats in Reserve Forests and Protected Forests of Primitive Tribal Groups and pre-agricultural communities

³² This phrase is important, as in the meeting with the Chief Secretary on the 10th July, the two Collectors and some other officers asserted that the FR Act is not attracted for cases of diversion of forests pending before 2006. However, the state government did not take this line of argument in their correspondence with the MoEF.

and other forest dwelling Scheduled Tribes. Therefore the PML area would also be classified as the habitat of the Kutia and Dongaria Kondh, living in not just one village but in all their villages which are either inside the four forest blocks or close to them, from where people have been customarily coming to the PML area for their various needs.

The FR Act is an important step in recognizing the pre-existing rights of forest dwelling communities. It recognizes the concept of 'Community Forest Resources' which is broader in scope than current definitions. These current definitions are limited and only consider the area actually occupied by the village homesteads as the sole basis for determination of rights and claims. The inclusion of customary boundaries of usufructory rights, which includes Reserve Forests to which the community had traditional access, is a significant shift; since it recognizes that a community's rights to its environments is not merely to be limited to the area that it actually lives on, but also includes holistically customary access to eco-systems where peoples' lives are embedded.

3.A.v. Community as Statutory Authority

The FRA recognizes that *the community as a statutory forest management authority under the Forest Rights Act.* Two sections of the Act refer to the right and power of forest dwelling communities to manage, control and protect forests - section 3(1)(i) and section 5. According to section 3(1)(i) FDSTs (in this case the Kondh) have a 'right to protect, regenerate or conserve or manage community forest resources which they have traditionally been protecting and conserving for sustainable use'. Section 5 of the Act makes the Gram Sabha and the forest rights holders into statutory authorities; where the Gram Sabha enjoys an *inherent* power to protect forests, wildlife, biodiversity, water catchment areas and their cultural and natural heritage. This section is subject only to one condition; that the area must have '*holders of any forest right under this Act*' (again, note that a forest rights holder is one from the January 1, 2008, not from the date on which his/her rights are recorded). Section 5 of FRA is reproduced below:

5. The holders of any forest right, Gram Sabha and village level institutions in **areas** where there are holders of any forest right under this Act are empowered to-

- (a) protect the wild life, forest and biodiversity;
- (b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;
- (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;
- (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

The word **areas** used in the first line of the section has to be interpreted as inclusive of the entire village boundary and its surrounding areas, and cannot just be restricted to the PML area. Collectors' own reports (see annexure 5 for reports from Rayagada villages) sent to the chairperson of the Committee in July 2010 confirm that they are a large number of individual holders of forest rights in the villages in question. Similarly in the villages of Rengopali, Dengsargi, and Similibhata, all from

Kalahandi, the individual right holders under the FRA occupy 14.59, 31.24, and 51.68 acres of land, as per a statement given to the Chairperson at the time of his visit to the area. The districts have also received applications for community rights which are under different stages of being approved. Thus all the conditions given in section 5 are satisfied and the Gram Sabhas have become statutory authorities to enforce their responsibilities given in this section.

Under the Act, the Gram Sabha has the authority ‘to initiate the process for determining the nature and extent of individual or community forest rights or both’ (section 6(1) of the Act). No other authority has the power to initiate the process of recognition or to invite claims for rights. Hence, the Gram Sabha clearly determines whether or not right holders exist in the area; and who these are. The State government or its officials cannot usurp this authority. If the Gram Sabha opines that there are rights holders and/or that claims are being received, the question of whether or not those rights holders are eligible, in turn, can only be decided through the procedures laid down in section 6 of the FRA. This decision making power also cannot be usurped by any other authority, particularly the state administration.

3.A.vi. Procedural Clarity for Claim Filing and Verification

The FRA has two kinds of rulings on the matter of customary forest and habitat rights: the vesting of rights and the legal procedure for recognition of rights. One, sections 3 to 5 of the Act vest rights in FDSTs by GoI. Two, section 6 of the FRA describes the procedure to be followed by the state government to ensure that the rights of villages are recorded, so that they can be recognized and vested in the community. To comply with this legal mandate, the district level committees appointed under section 6 must undertake the following procedures to formally recognize these rights: the committees must collect resolutions from various Gram Sabhas, collate these resolutions under rule 6(b) of the FR Rules, adjudicate between the Gram Sabhas under rule 6(e) of the FR Rules, and finally issue directions for incorporation of the forest rights in the relevant government records including record of rights. The district administration is also mandated to facilitate a meeting of multiple concerned villages being called under rule 12(3). According to this rule, if a forest area is used by more than one Gram Sabha, the Forest Rights Committees of the respective Gram Sabhas shall meet jointly to consider the nature of enjoyment of such claims and submit the findings to the respective Gram Sabhas in writing. The rule further states: *‘Provided that if the Gram Sabhas are not able to resolve the conflicting claims, it shall be referred by the Gram Sabha to the Sub-Divisional Level Committee for its resolution’*.

Although there are a number of resolutions of Gram Sabhas dated January 2010 asking for community and habitat rights from the villages of Kalahandi district (see Table 1 for dates, the English translation of some of the resolutions is given as annexure 4, and summary of some of the resolutions is given at annexure 7. These clearly show that Gram Sabhas wanted recognition of their community and habitat rights over the PML area), none of the procedure stated above was followed by the district authorities. Instead they certified that there were no claims over the PML area. The Administration’s role is to fulfil the requirement of law, both in letter and spirit. It is unlawful for the district committees to be indifferent to the rights recognized under law by GoI, under the false pretext that communities on their own have not claimed such rights. On the other hand, it is their duty under rule 6 and 7 of

the FR Rules to help and guide their Gram Sabhas to make such claims, where applicable.

3.A.vii. Recognition and Verification for Displacement

The Forest Rights Act implies that forest dwellers have rights—as indisputably the Kutia and Dongaria Kondh communities do over the PML site and its forest lands. It clearly lays down the basis on which the state administration can sanction the displacement of tribal forest dwellers. According to section 4(5) of FRA, there can be no removal or eviction from forest land unless the tribal rights under FRA have been recognized and the verification procedure is complete; and the community consent after following due procedures is obtained in writing. These due procedures include the following: a series of documented consultations and meetings in local languages, written consent from the Gram Sabhas agreeing to the proposal, and the state government certification of safeguards for PTG groups. The Chief Secretary, Orissa, too in a general direction dated 24 Oct 2009 to all Collectors had desired that proposals for diversion of forest land should be put before the Gram Sabhas, their consent or rejection should be attached, and the English translation of such consent should be sent to GoI. Hence their free, prior and informed consent is a prerequisite for the diversion/destruction of that forest.

In order to ensure the compliance of this section of the FRA , the state government has to submit to the GoI, as per its directive vide MoEF circular F.No. 11-9/1998-FC (pt) dated 3 August, 2009, the following certificates. In doing so, it must give special attention to sections 3(1)(i), 3(1)(e) and 4(5) of the FRA before a proposal for diversion under the Forest (Conservation) Act, 1980 can be considered:

- a. A letter from the State Government certifying that the complete process for identification and settlement of rights under the FRA has been carried out for the entire forest area proposed for diversion, with a record of all consultations and meetings held;
- b. A letter from the State Government certifying that proposals for such diversion (with full details of the project and its implications, in vernacular / local languages) have been placed before each concerned Gram Sabha of forest-dwellers, who are eligible under the FRA;
- c. **A letter from each of the concerned Gram Sabhas**, indicating that all formalities/processes under the FRA have been carried out, and **that they have given their consent to the proposed diversion** and the compensatory and ameliorative measures if any, having understood the purposes and details of proposed diversion.
- d. A letter from the State Government certifying that the diversion of forest land for facilities managed by the Government as required under section 3(2) of the FRA have been completed and that the Gram Sabhas have consented to it.
- e. A letter from the State Government certifying that discussions and decisions on such proposals had taken place only when there was a quorum of minimum 50% of members of the Gram Sabha present;
- f. Obtaining the **written consent or rejection of the Gram Sabha** to the proposal.

- g. A letter from the State Government certifying that the rights of Primitive Tribal Groups and Pre-Agricultural Communities, where applicable, have been specifically safeguarded as per section 3(1)(e) of the FRA.
- h. Any other aspect having bearing on operationalisation of the FRA.

Any action that would have the implications of destroying the forests therefore clearly requires the consent of the Gram Sabha, as it would of any other statutory authority with such powers. Clearances to destroy the forests without the voluntary consent of the right holders would expropriate their authority and cannot take place except with their voluntary consent. The State Administration cannot modify the Forest Rights Act for the said purpose of the project. The only purpose for which the FRA permits modification of recognized rights is for relocation in critical wildlife habitats, which in turn is subject to the requirements of section 4(2). The FR Act does not provide for modification of rights for any other purpose, nor does any other statute do so. Compulsory expropriation of such rights against the will of the rights holders, in the absence of any statutory authorisation for the same, is clearly illegal. This compulsory appropriation of rights is analogous to the violation of the explicit protection offered to property rights by Article 300A of the Constitution, which states that 'No person shall be deprived of his property save by authority of law'.

3.B. Existing Village Claims

There are several villages within one to three km aerial distance from the proposed mining lease (PML) area. A statement about distances is attached as annexure 3. The statement that the PML area is too far from the villages to affect them, is false and is clearly motivated by partisan interests. These villages have been mentioned in the statement in Section 2.B.i. All these villages have habitat and community forest rights (as defined in the FRA) over the entire block of forest to which they have customary access.

Rule 13 of the FR Rules describes the evidence which should be taken into account for recognising rights (both habitat and CFR). In addition to oral evidence of elders, it includes public documents, Government records such as Gazetteers, Census, survey and settlement reports, maps, satellite imagery, working plans, management plans, micro-plans, forest enquiry reports, other forest records, record of rights by whatever name called, *pattas* or leases, reports of committees and commissions constituted by the Government, Government orders, notifications, circulars, and resolutions. Evidence also includes research studies, documentation of customs and traditions that illustrate the enjoyment of any forest rights and having the force of customary law, by reputed institutions, such as Anthropological Survey of India. Several such anthropological studies describe how the Dongaria Kondh have been protecting the Niyama Raja hill top and surrounding hills.

There is more than adequate recorded documentary evidence of the customary rights of these villages, both anthropological and administrative evidence (already discussed in previous sections), to prove that the PML area has been a part of the traditional habitat of the two PTGs - Dongaria Kondh and Kutia Kondh - in addition to being the Community Forest Resource for several villages. Based on this evidence, the Committee concludes that the rights of these villages have to be recognized adequately as per the FRA requirements before clearance under the Forest conservation Act can be considered for diversion of forest area. **Since reports of committees and commissions constituted by the Government are also to be taken**

as conclusive evidence in rule 13, the district administration must take the report of this committee as evidence in support of habitat rights of the villages, in addition to other evidence, including oral evidence of elders, which exists on this point.

Historically, the Dongaria Kondh not only use forest resources, but also safeguard and nurture them. Hence, they exemplify the idea of the forest dwellers integral to the forest ecology and their habitats, as stated in the Preamble and also set out in several provisions of the FRA. Through their traditional practices, beliefs and customs, these forest dwellers have preserved intricate ecosystems. This customary stewardship only reinforces the authority vested in them by Section 5 of the FRA, wherein these very forest dwellers are the custodians of their forests. Section 5 of the FRA empowers the right holders to protect the wildlife, forest and biodiversity of Niyamgiri hill top and surrounding areas by constitution of committees for the protection of wildlife, forest and biodiversity in the villages through Gram Sabhas as required by Rule 4 (e). This also places a duty on the State to seek their informed consent before permitting any diversion of the forest land under Forest Conservation Act (FCA) (as also already required by MoEF's August 3, 2009 order).

Their existing customary rights have to be recognized under section 3(1)(b) and (c). Further, for the defining rights on habitat as defined in section 2(h) of the FR Act, the entire PML area (including all the four blocks) is clearly the habitat of the two Primitive Tribal Groups, namely, Dongaria Kondh and Kutia Kondh. These rights have to be recognized under section 3(1)(e) and (i) of the FRA for the entire Primitive Tribal Groups (PTG). As holders of these rights, the entire Dongaria Kondh community and Kutia Kondh living close to the four forest blocks in the PML site are empowered under section 5(c) of the Act to ensure that their habitat is preserved from any form of destructive practices affecting their cultural and natural heritage. Therefore no action can be taken by state government to destroy any part, especially a sacred area of their habitat without their free, prior and informed consent.

Since it is established that the entire PML area is the habitat as well as CFR of the Kutia and Dongaria Kondh Primitive Tribal Groups, forest rights have already been recognized and vested by the GoI under section 4(1) of the FRA, which reads as follows: *4(1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognizes and vests forest rights in the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3.* Section 6 of the FRA describes the procedure to be followed by the state government to ensure that the rights of villages are recorded, so that they can be recognized and vested in the community. To comply with this legal mandate, the district level committees appointed under section 6 must undertake the required procedures to formally recognize these rights.

3.C. Violations of the FRA

The state government's role is to fulfil the requirement of law, both in letter and spirit in the implementation of the FRA. However, there is clear evidence that the District Administration is reluctant to implement the FRA in the PML site. Both the district administrations have been negligent in informing communities about the legal recognition of forest dweller rights through filing claims and verifications, and have neither informed nor initiated the claim filing and verification procedures. This has also been the finding of Dr Usha Ramanathan at the conclusion of site inspection

undertaken by her in January, 2010, along with Dr Vinod Rishi and Mr J K Tewari as a member of a Committee appointed by the MoEF vide letter No. 8-23/2005-FC, dated 1 January, 2010, to address concerns regarding possible ecological damage and violation of tribal rights in the diversion of forest lands for this purpose. The indifference of the district committees to undertake these procedures for the resolution of forest rights is illegal. This negligence is surprising given the general standards of FRA implementation in the Orissa State, where in general, the administration has even been punitive to its staff to ensure timely FRA claim procedure filing and verification. The district administration's reluctance to comply with the legal mandates of FRA was clearly evident; and the Orissa State Administration has not acted to correct this reluctance. On the contrary, it has been negligent to the illegal actions of its district administrations, and in one instance has even explicitly supported such action. One reason for this could be that the state has already decided to sanction the mining site proposal, irrespective of claims of villages on the PML site.

District Collectors of Kalahandi and Rayagada have certified in writing that there are no claims under the FRA for the area under PML. While justifying the issue of these certificates without proposing the matter of diversion of forest land before the Gram Sabhas, the Collectors and government officials argued on several grounds. First they claimed that there were no claims on the PML area. In doing so, they ignored the overwhelming evidence of individual and community claims that have been filed in the Gram Sabhas (see Table 1, annexures 4 and 7). They have stated that communities on their own have not claimed such rights. This justification is irrelevant, given that the district committees are required by rule 6 and 7 of the FR Rules to help and guide Gram Sabhas under their jurisdiction to file these resolutions. Part of this support that the bureaucracy is responsible to deliver is information about the FRA and filing and verification of claims. This was completely ignored. In any case, communities on their own have filed several claims for the PML area from a number of villages of Kalahandi district, as discussed later in the report.

Then the district administration shifted their stance in the Chief Secretary's meeting on 10 July, 2010, to state that they had issued this certification, based on the understanding that the FRA was not retrogressively applicable, and since the site transfer was proposed before its enactment; it did not come under its legal purview. This understanding denied the very purpose of the FRA, viz. to correct historical injustice. They also did not clearly understand the definitions of key terms: claimants, CFR and Habitat differences. This lack of understanding becomes paradoxical, when considered against the fact that the Orissa administration is otherwise punitively pressurizing its officials to complete the FRA verification processes; and knowledge and competency is available.

3.C.i. Reluctance to Recognize Community Claims for the PML Area

Orissa has done excellent work in implementation of FR Act, particularly because of the excellent leadership of the SC & ST Department. Though the state started late in granting community rights,³³ they may also catch up, especially in the administration of revenue forests. Generally, in other instances, the state administration realizes that people on their own, being non-literate and unaware of rules and procedures, will not

³³ For instance, in district Rayagada no action for recognizing and vesting community rights has been finalized till June 2010.

be able to file applications despite training camps, hence retired administrators and other officials have been hired to complete all the formalities. The distribution of deeds is reviewed by the secretariat through video conferencing, and negligence is corrected.

In fact, the pressure put by the state administration on the retired officials is so high, that it often becomes counter-productive. In order to complete their targets, the officials sometimes take the FRC and Gram Sabha for granted, ignore them and write the field reports themselves. In fact Special Secretary ST & SC Department vide his letter dated 3 April, 2010, had to reprimand the District Collectors in the following terms: *'It is found that field verification and mapping of claims is being done without involvement of the FRC members and Gram Sabha, and the reports are being sent to the SDLC (sub-divisional level committee) without sharing them with the FRC and getting them approved by the Gram Sabha. Such activities will be considered to be infringement of the right and authority of the Gram Sabha and persons involved will be punished'*.

The State administration's approach to the implementation of the FRA is radically different in the PML area from its implementation in the Orissa State in general. The people and the Gram Sabhas are forced to bear the entire burden for filing claims in this area. Where in non-PML areas, the state administration is threatening field staff with punishment if they do not consult Gram Sabhas, in the area proposed for mining the government is not only not providing any assistance, but is even refusing to consult the Gram Sabhas altogether on the issue of mining.

Given the general context in the State, it can be assumed that this negligence to implement the FRA procedures in PML area does not arise from lack of knowledge on the part of administration, or lack of capable staff. Instead, it raises the question as to whether the state administration intends to recognize the rights of the peoples living in the Niyamgiri Hills.

While admitting to this difference in approach on part of the State Government to the affected villages, Collector of Rayagada district stated in a meeting with the chairperson on 9 July, 2010, that this particular approach was due to the position taken by the state government in favour of the granting of mining lease.³⁴ Because the state government has already decided to transfer the said land for mining, it was not keen to grant community and habitat rights over the PML area to the PTGs. This is despite the undisputed fact that it has been their habitat for several generations, and the FR Act gives no discretion to government authorities to ignore the law. Other statements made by various senior officers in the Chief Secretary's meeting on 10 July, 2010, reflected this position. For instance, the Principal Chief Conservator of Forests, Wildlife, Government of Orissa, in the meeting on 10 July, 2010, stated that the Supreme Court had already given clearance to the mining operations under the Forest Conservation Act, and therefore no further enquiry was needed by GoI regarding completing the formalities of the FR Act.³⁵ This transfer of a community resource for mining without seeking their consent is not just unfair but also illegal after the enactment of the FR Act. In fact these officers are guilty of violating the law

³⁴ Soon after making this statement, the Collector realized that he should not have said so. Therefore he said 'I would like to withdraw my statement'.

³⁵ It needs to be noted that the Supreme Court asked MoEF to grant forest clearance 'in accordance with the law' and the FRA is now a law in force which applies to all types of forest land and requires recognition of rights irrespective of any other law in force.

that makes them liable for prosecution under section 7 of the FR Act for contravening the provisions of the Act and the Rules. However, we are not recommending their prosecution but would strongly suggest that they be sent for a specially designed training programme on 'Forest Rights Act and Tribal Development'.

3.C.ii. Informed consent

Rights such as the right to habitat, and the right to conserve, protect and manage community forest resources, automatically imply that the consent of the community is required prior to authorizing any damage or destruction of their habitat or community forest resource. Without this, such rights would obviously have no meaning. Therefore the state government is legally bound to attach the certificates of the Gram Sabha meetings and consent, irrespective of the decision of the district committee under section 6 of the FRA. The Chief Secretary's circular of October 2009 also reinforced the mandate that consent or rejection of the Gram Sabha has to be attached while considering cases for diversion of land use under the Forest Conservation Act supports this mandate.

Yet, the procedures laid out to obtain free, prior and informed consent were not followed. Under rule 6(b) of FR Rules, maps and electoral rolls are required to be given to the concerned Palli Sabhas by the district administration to present the proposal for the diversion of land in vernacular language to the Gram Sabhas. The administration in writing informed the Committee Chairperson that this requirement had been fulfilled. However, in the meeting on 8 July, 2010, at Kalahandi, Mr Rao, the concerned official admitted that no such map or electoral roll has been given to any Palli Sabha. Mr Nayak, Special Secretary ST & SC Department, present in the meeting that day admitted that maps were not being given to Palli Sabhas. He also indicated his inability to provide such maps, as these had to come from the Forest department. The district administration seemed reluctant to give these maps and electoral roles. For instance, the Collector of Rayagada District emphatically said that these maps should not be provided to the Gram Sabha at the initial stage, as it would lead to lot of conflict within the village. Only when a claim is formally recognized, should a rough map be attached with the title. This proposal by the Collector is in violation of rule 6(b) of the FR Rules that makes it mandatory to give the maps before Forest Rights Committee makes up its mind and decides the claims.

Both the Collectors admitted that there had been no public consultation with the concerned Gram Sabhas after 2008 informing them how the proposed diversion of forest for mining would affect their lives and cultures, and seeking their views. While justifying the denial of rights to the PTGs of consultation as mandated by the FRA, the Collector of Rayagada maintained that the proposal to divert forests for mining was placed before some Gram Sabhas in 2003, and their consent to transfer the land was received under PESA. Therefore, he did not find it necessary to seek their approval again.

There appeared to be hesitation on the part of the district administration to engage with people on this issue. It was also mentioned in our several meetings with the officials and people that forest dwellers living in villages close to the PML area are very resentful, do not trust the administration, and this has in itself reduced the people-bureaucracy interaction, which further increases their unhappiness with government. The Collector of Rayagada district in the meeting with officials on the 9th July said that he did not know whether people are happy or unhappy, as he had been in the district only for the last six months. This was an obvious evasion given that the

resentment tribals have against the mining proposal has been strongly expressed.

3.C.iii. Denial of Claims

The Collectors of the two concerned districts have certified that there are no claims on the PML site. In the first place, the district administration does not have the authority to determine whether there are claims or not; since the Gram Sabhas have been vested with this authority by the FRA. Hence, the Gram Sabha clearly determines whether or not right holders exist in the area.

Second, the certification from the Collectors that there were no claims for the PML area under the FRA is obviously false in view of the overwhelming evidence to the contrary (see Table 1 and annexures 4 & 7). It has been contested on several grounds before many district officials by the Member of Parliament of that area, Sri Bhakta Charan Das, and other representations. These representations have named several villages where claims under the FRA for the area under PML have been filed. These rights have been asserted and legally claimed under the 'community rights' and habitat provisions of the Forest Rights Act by the Dongaria Kondh as well as by the Kutia Kondh communities.

As the PML area does not have any plot number, the only way to describe the mining lease area has been through local names that have been used in the Gram Sabha (palli Sabha) resolutions. According to information provided by Shri Bhakta Charan Das, Member of Parliament for Kalahandi, the PML area with the local name Aonlabhata (due to the large number of amla trees there) is listed in the community claims filed by Kadamguda, Balabhadrapur, Similibhata, Kendubardi, Rengopali, Basantpada, Dengsargi, Phuldumer, Palberi and Konakadu villages.³⁶ For instance, Sikoka Budhga of Lakpadar village stated that they had filed claims for legal rights of the land under the Forest Rights Act for individually cultivated plots with the assistance of the DKDA. However the State Administration has not undertaken the procedures necessary to recognize these Community Claims, and often these claims have been remanded back to the village.

The Collectors' own reports sent to the committee in late July 2010 confirm that they are a large number of individual holders of forest rights in the villages in question. They have also received applications for community rights which are under different stages of being approved. Thus all the conditions given in section 5 for claims are satisfied; and the Gram Sabhas are now the statutory authorities to enforce their responsibilities given in this section. This is irrespective of whether they are able to invoke this power on their own.

Finally, by claiming that no one inhabits the PML, and therefore people are not affected, the Collectors completely ignore issues of community's dependence on their habitat. They deny the cultural and economic dependence of the two PTGs on forests that are part of their habitat. They also completely deny the objectives of the FRA as laid down in its Preamble and they fail to differentiate between administration of 'CFR' in the Forest Rights Act and 'habitat' of the FRA. Whereas CFR usually belongs to just one village or two, habitat may be common to a large number of villages or an entire tribe. On clarification by the Committee Chairperson in the

³⁶ At the time of writing, no action had been taken by the district administration to verify and recognize these community claims of these Kutia Kondh villages. However, because of the Committee's visit, the claims of the Gram Sabhas made in January 2010 were acknowledged by the sub-divisional committee on 12 July, 2010.

meeting, the Chief Secretary agreed to this definition of habitat as per the FRA. According to Special Secretary, Sri Vinod Kumar, so far in the state only one case of habitat rights had been recognized for the Mankadia PTG, a nomadic tribe in district Mayurbhanj. This example could be repeated elsewhere too. The SC & ST dept were directed by the Chief Secretary to issue guidelines as to how to deal with claims relating to habitat.

3.C.iv. Representations on Claims to the Committee

The Committee received resolutions of several Gram Sabhas of Lanjigarh and Trilochanpur panchayats through the Member of Parliament (MP) of Kalahandi, Shri Bhakta Charan Das. These resolutions claimed community and habitat rights over a large area, including the area proposed to be leased out for mining. The Gram Sabha resolutions included topo sheets, clearly establishing that their claims included the PML area. The names of these villages and the date of passing of the Gram Sabha³⁷ resolutions are given below:

Table 1: Gram Sabhas who claimed rights over the PML area before March 2010

Name of the Village ³⁸	Name of the Panchayat	Date of Gram Sabha resolution
Rengopali	Lanjigarh	3 January 2010
Dengsargi	Lanjigarh	5 January 2010
Palberi	Trilochanpur	12 January 2010
Basantpada	Lanjigarh	10 January 2010
Balabhadrapur	Lanjigarh	9 January 2010
Semelbhatta	Lanjigarh	14 January 2010
Phuldumer	Trilochanpur	8 January 2010
Kunakadu	Lanjigarh	13 January 2010

Other villages where such claims are said to have included the area under PML were Juang, Jagannathpur, and Amguda. The resolutions for the PML area listed above were passed in Jan 2010 and have been duly received in the SDLC office (annexure 7). In the Chief Secretary's meeting, the Committee chairperson read out the names of these villages and requested the Collector Kalahandi to send English translations of the Palli Sabha's resolutions on CFR and habitat from these villages. He followed it up with several, regular, reminder emails to the Collector from 11th July, 2010 onwards. She sent some resolutions passed in April 2010 which did not pertain to the PML area. She also wrote back saying that as the resolutions required pertained to the

³⁷ According to Orissa laws, Gram Sabha in the villages is called at the level of Palli Sabha, which could be a hamlet (Palli Sabhas are organized at the revenue village level. As the majority of revenue villages in Orissa are quite small, this doesn't pose a problem but in some of the larger villages, hamlet level Gram Sabhas need to be specially permitted under existing state orders), and hence there are several Gram Sabhas within the jurisdiction of a panchayat. due to the large size of panchayats in Orissa.

³⁸ Most of the villages given in this Table are also mentioned in the list of villages given in section 2.B.(i).

period before she joined the district, she has sent them to the state government, but not to the chairperson. The state government has not responded to the Committee Chairperson either. The chairperson spoke to Mr Behera, Principal Secretary of Forests & Environment Department of Orissa, and also sent him a mail, but he seemed evasive. It is obvious that the Collector and the state administration are aware that they have sent a false certificate to GoI. Hence, they were unwilling to cooperate with the Committee. **The state government's attitude of deliberate non-cooperation is itself a sufficient ground for rejection of their application under the FCA.**

These claims over PML area passed by the Gram Sabha in January 2010 had not been entertained in the Sub-Collector or SDLC (sub-divisional level committee) office. It was only after the visit of the Chairperson to the district that these were accepted there on 12 July, 2010. Irrespective of when the Sub-Collector received these claims, according to section 6(1) of the FR Act, the claim filed has to be judged from the date of Gram Sabha resolution.

The Chairperson visited three villages in the field in Kalahandi district, namely Rengopali, Bandhaguda, and Phuldumer with DFO Kalahandi. Some people in Rengopalli and Phuldumer stated that their claim application under FRA included the PML area, but the records for these applications were not in their possession, and hence they could not show the resolution to the team. Later the Chairperson was able to collect these resolutions, and the dates of the Gram Sabhas resolutions are shown in Table 1.

3.C.iv.1. Kendubardi in Lanjigarh Gram Panchayat (Kalahandi): The Committee Chairperson raised the issue about the application from village Kendubardi in Lanjigarh Gram Panchayat (Kalahandi) with the Chief Secretary of Government of Orissa in the meeting on 10 July, 2010. The inhabitants of this village had filed a Claim Form for Community Rights under the FRA. In this community claims application, villages claimed that they collect minor forest produces from Niyamgiri Hills, like *Kumar jana, Bariha Khol, Kusum padar, Dadi Jhor, Bhalu Koda, Jharmunda, Amla chuan, Jhimidi Jhamjhola, Mundi Bhata, amtha Padar, Ijurupa, Paharala, Amla Bhata* for their livelihood purposes. They have also said in their application that they graze their livestock in the *Niyamgiri Pahad/hills*. They have demanded rights for grazing of animals over *Mahulbhatta (rainy season), top of Niyamgiri (whole Year), Kamalabagicha and Hathikhamar*. Further, they have said that they use 5 acres of *Pudamundi jungle* which lies to the North West of their village, and 5 acres of *Kempabhatta jungle* falling in Niyamgiri Reserve forest area which lies south to their village as cremation ground, and that they collect red soil from *Tatikuda Raja Jharana* of Niyamgiri Reserve Forest. This application was received by the Clerk of Welfare Section, Sub-Collector Office, Bhawanipatna on behalf of SDLC on 28 August, 2009. A copy of the application given to the committee by the village establishes that the Forest Rights Committee's resolution and request has been forwarded to the SDLC.

Despite these resolutions passed by several Gram Sabhas in Kalahandi by the end of January 2010, the Collector of Kalahandi district gave a certificate (see annexure 1) in March 2010 that stated 'It is certified that the complete process for diversion and settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been carried out for the entire forest area of 353.136 Ha of Niyamgiri Reserve Forest in Kalahandi District proposed for

diversion for the Lanjigarh Bauxite Mining Project of Orissa Mining Corporation Limited.’ Further the certificate stated, *‘It is revealed from the records that, so far there are no claims of individual or community rights under the ST. & Other Traditional Dwellers (Recognition of Forest Rights) Act 2006 over the above 353.136 ha area proposed for diversion’*. Both parts of the certificate are false. The process of recognition of rights under FRA has hardly begun, and applications are still being received in both the districts (see section 3.C.iv.2). The second part of the certificate is also patently false as the dates given in the above Table show.

The Committee Chairperson vide an email sent to the Collector of Kalahandi district on 13 July, 2010 raised this community claims issue again, urging her to respond to the Committee’s request for English translation of this application. He also sought confirmation on whether the places that this village people claim to be their habitat (mentioned above in local names in bold and italics) are the same areas that are proposed to be given as mining leases to Orissa Mining Corporation (OMC). If this was so, the Chairperson also requested the Collector to mark these areas in a map, showing the boundary of the proposed mining lease area. Finally, the Chairperson urged an urgent acknowledgement and response within 24 hours. There has been no response from the Collector on the information asked for, despite several reminders, showing utter disregard to a duly appointed GoI Committee mandated to act.

3.C.iv.2. Dongaria Kondh of the Parsali GP: The two Collectors said that they had received no representation from the tribal community or their palli Sabhas as regards the mining project. However, the Dongarias of the Parsali GP, Rayagada travelled several miles to meet the chairperson on 8 July, 2010 and handed over their representation signed by the Sarpanch of Parsali GP against the mining project. Their representation alleged that they *‘have been exploited and cheated by the Government officials. We have been told that patta over forest land of the Reserve Forest and Niyamgiri Forest cannot be given to us. We were not aware of the Forest Right Act at that time. When we came to know about the provisions of the Act, the Government Officers told that the time for filing of applications has already been over and no further time will be allowed’*.

The Dongaria in their meeting with the chairperson claimed that several such representations in the past one year on behalf of the village have been submitted but these have been ignored by the administration. Further, the formalities of FR Act were still incomplete, as *‘No community land meant for our holy gods and community use, graveyard, grazing ground, bathing places, etc was allotted in any village’* by the district administration. The representation also specifically requested the chairperson to counsel the Government to restrain the handing over of the said land from the community to the Vedanta Company.

In a letter following this representation to the Collector of Rayagada on 9 July, 2010, during his camp in this district, the Chairperson informed the Collector about the petition dated 8 July, 2010 from the Sarpanch of Parsali Gram Panchayat stating that the land proposed to be given to OMC for mining is the forest that Dongaria claim they have been using for collection of various NTFPs, and that they would not survive if this land is given to Vedanta. This petition had been signed by tribals from Kalyansinghpur and Muniguda blocks also. The chairperson also communicated the sense of resentment that villagers expressed against the proposed diversion of forests for mining.

In the light of the Parsali GP representation, the Chairperson in his mail to the

Collector of Rayagada on 9 July, 2010, directed him to revisit the certificate issues earlier and correct it appropriately. *'As Collector of Rayagada district, you have furnished a certificate in 2010 certifying that 'there are no claims of any individual or community for the area proposed for diversion. Clearly the situation has changed now. Please inform the Orissa government accordingly'*. However, the Collector refused to inform the state government that the certificate was now invalid. He replied on the 5th Aug that 'I believe the whole issue of the certificate valid then and not valid now simply doesn't arise'.

The Rayagada district Collector's subsequent contention that this was the first such representation is unfortunate. This is indicative of the deep rifts in communication and rapport between the state administration and the villages. If people see the administration as being completely hostile to their interests, it is unlikely that they would ever expect to get a response to their representation to the district administration to express their perspectives and feelings.

After the visit of the committee members to the village Khambesi in district Rayagada, their Palli Sabha too passed a resolution on 30 July 2010 stating, 'It was unanimously decided that as the proposed area is the primary source of our life and livelihood as well as the basis of our culture, the mining would be protested. Through this Gram Sabha resolution this message would be conveyed to the committee constituted by the Ministry of Environment and Forest, Government of India, not to allow the VEDANTA company for the extraction of bauxite from the Niyamagiri reserve forest, Proposed Khambesi reserve forest, proposed Nimagiri reserve forest and other adjacent forest areas'.

3.C.v. Administrative Resistance to Implementing FRA

In the three meetings with the officials at Bhawanipatna, Rayagada, and Bhubaneswar, it was obvious that the administration (especially the two Collectors and Principal Secretary Forests, Mr Behera) was not keen to entertain applications under FRA for the PML area.

In the Chairperson's meeting with the Chief Secretary and other senior secretaries, several doubts were raised about the implementation of the FRA; that indicated that the Administration were resistant to implementing the FRA on several grounds. Some were of intent, whether it was intending to implement the FRA or not in the PML site. Others were around definitional clarity, about who a claimant is (individual and community) and what the claim is (individual, CRF and habitat). Some were around the viability of the FRA. For instance, in the meeting with Chief Secretary on the 10th July, the Collector of Rayagada district stated that the FRA was ambiguous and unworkable.

When confronted with the overwhelming documentary evidence of the existence of claims, the Collectors changed their stance in the meeting on the 10th July, from stating that there were no claims to stating that the FRA did not apply to old pending cases. The Collector of Rayagada district in the meeting with officials on the 9th July said that the FR Act was not applicable for diversion of forest lands for mining. This is because the proposal for diversion predates Jan 2008, when the FR Act came into force. This stance ignores the very historical purpose of the FRA, to remedy historical injustice done to forest dwellers over centuries through non-recognition of their rights. Therefore it is certainly applicable to areas over which faulty decisions were taken even decades ago. Section 4(5) of FRA clearly lays down this principle when it

maintains that the procedure of completing the verification of forest rights has to be followed first before land can be diverted under the FC Act.

In spite of this, the Chief Secretary and many other secretaries present in the meeting on the 10th July supported this stance of the Collectors. They maintained that the provisions of FR Act, the circular dated 3rd Aug from MOEF, and Chief Secretary's own circular dated Oct 2009 were not applicable to the issue of land diversion for the PML site. According to them, these circulars and the Act applied to only those proposals that were received after the date of the Act or circulars, and not to old proposals pending since before 2008. The Chief Secretary further said that he would make a reference to GoI enquiring whether FRA applied to old pending cases too.

Many officers in the meeting with the Chief Secretary expressed apprehension that the open-ended FRA process would harm the industrialization interests of the state. They proposed a strict time frame (a month or so) within which all claims must be filed. Such a proposed time frame would be in violation of the FRA. According to the FRA, while the Gram Sabha can extend the time beyond three months under rule 11(1)(a) for individual claims; for community claims under rule 11(1)(b) there was no such time limit. Further, given the very hesitation of the field officials to entertain habitat applications, it was not desirable to impose any such administrative time frame. The FRA itself does not provide for any deadline by which the recognition of rights must be completed. The Chief Secretary agreed with this clarification on time frame for filing habitat claims.

Further clarification was required on the broader nature of the habitat, particularly the need for a meeting of multiple concerned villages being called under rule 12(3). Following this clarification given by the Chairperson in the meeting on the 10th July, the Chief Secretary directed the Collectors to organize such a meeting about rights to the habitat. Such a collective Gram Sabha meeting of all the Primitive Tribal Group's clans in one location for demarcating the boundaries of their habitat and the boundaries of their CFRs within the habitat boundary is essential in recognizing community claims. In addition, these Gram Sabha meetings have to be convened to list out community forest resources, habitat, sacred groves, ecologically sensitive areas, water bodies, catchment areas. (This list can be prepared on the basis of claim details). These meeting must also identify threats/destructive practices/projects which threaten the community forest resources, habitat of communities, ecologically sensitive areas. Supportive evidence/records need to be collected to substantiate the threat elements; and can include Government reports like reports by CEC and WII on Niyamgiri, as well as the report of this Committee.

3.C.vi. Administrative Non-Compliance to FRA

By certifying that there are no claims, the two district administrations have not shown legal compliance with MoEF's mandates required by the FRA. They have not presented the proposal for diversion in the vernacular language to the Gram Sabhas. The Collector's reports do not include the certificates required from the Gram Sabhas before conversion of land is permitted. The direction of the Chief Secretary, Orissa dated 24 Oct 2009 to all Collectors has also been ignored by the district administration, and no letter from the Gram Sabhas was attached with the certificate given by the Collectors in March 2010. The Collectors are guilty of violating instructions from both GoI as well as the Chief Secretary.

Given that the State Administration was already determined to not implement the

FRA mandates, it did not challenge the authority of GoI to ask for certificates indicating compliance with FRA regulations. Instead, it chose to give incorrect and false information vide the enclosures to its letter dated 11 March, 2010, by permitting the filing of incomplete and false certificates (attached as annexure 1) by the Collectors to the GoI. It has routinely forwarded the incomplete certificates without checking if the Collectors have attached the consents or rejections of the Gram Sabha as per the MoEF and Chief Secretary's directions. By forwarding incorrect and false certificates to GoI, the Forest Department of the state government is guilty of failing to observe its own state's guidelines.

3.C.vii. Violations under PESA:

The Panchayats (Extension to Scheduled Areas) Act, or PESA is a key federal statute enacted in 1996. The PML site is a schedule V area where PESA is applicable.

Hence, the state government has to ensure the compliance of the following provisions of PESA:

Section 4(i): 'The Gram Sabha (village level meeting) or the Panchayats (local councils) at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects'.

section 4(d) : every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;

section 4(m) (iii), according to which Gram Sabha has the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.

This act requires the authorities to consult the *Panchayat* (the elected village councils) or the *Gram Sabha* (which is made up of all adult members of the village - persons whose names are included in the electoral roll for the *Panchayat* at the village level), before acquisition of land for any development projects located in Adivasi territories listed under Schedule V.³⁹ Authorities also have to consult the *Gram Sabha* or *Panchayat* as appropriate before resettling and rehabilitating persons affected by such projects.⁴⁰

As regards land acquisition, detailed executive instructions (annexure 6) were issued by Secretary Rural Development, GoI sometime in 1998 to describe the modalities of consultation with the Gram Sabhas or with the Panchayats where more than one Gram Sabha is involved. The procedure to be followed for acquisition of land in Schedule V areas was deliberately made difficult so as to discourage projects to displace tribals. For instance, it provided that the company requiring land must produce a letter of

³⁹ PESA was enacted with the aim of extending the effects of these above amendment to these protected territories. The Government of India set up a parliamentary committee to recommend steps towards this end (One of the committee's recommendations was that prior consent of local bodies should be made mandatory while drawing up of development projects and grant of leases for mineral extraction. However, the final legislation did not include these provisions for prior consent of local communities, and the phrase consent was changed to consultation). Also, in 1998, the Indian government enlarged the consultation process to include all village councils in the lands, which could be affected by the projects.

⁴⁰ Section 4 (i) of the PESA, 1996.

consent from each of the concerned Gram Panchayat, in favour of the proposed acquisition of land (see annexure for the complete order). Unfortunately state government has not followed these instructions that have the force of law, as these are issued under a central legislation.

In July 1997, India's Supreme Court in the *Samatha v. State of Andhra Pradesh* held that the provisions of Schedule V also applied to the transfer of private or government land in Scheduled areas to non-tribals.⁴¹ It ruled that the relevant Andhra Pradesh legislation read along with Schedule V of the Constitution prohibited the transfer of land in Scheduled Areas by way of a lease for mining purposes in favour of non-tribals. The Court further also ruled that 20 per cent of all profits, including past profits, accruing from privately run mines or industries set up in these territories to be 'set apart' for Adivasis. In July 2002, the Orissa state government decided that the decision in the Andhra Pradesh case was not relevant to Orissa. It claimed that the state's laws were already sufficient to protect Adivasi communities.⁴²

According to the Collector, while justifying the lack of the procedures for consultation as mandated by the FRA, the proposal to divert forests for mining was placed before some Gram Sabhas in 2003 and their approval was taken under PESA. As it had been already done once, he did not consider it necessary to do it again, and the proposal for diversion was not placed before the Gram Sabha; and gave a certificate in 2010 stating that there were no claims on the PML area by villages. Both the district Collectors have not responded to the Committee Chairman's directive to send the English translation of all the Gram Sabha resolutions claimed to have been passed in 2003 under PESA.

⁴¹ *Samatha v. State of Andhra Pradesh*, para 108.

⁴² See Department of Steel and Mines, Government of Orissa, Proceedings of the meeting of the Orissa cabinet sub-committee held on 8 July 2002 in the conference room of Chief Minister, Orissa, to consider issues pertaining to the judgement in the case *Samata vs. State of Andhra Pradesh*, 1 August 2002. The sub-committee decided that relevant law in Andhra Pradesh which prohibited transfer of lands under Schedule V to non-Adivasis 'may not be replicated in Orissa as adequate care has been taken to protect the tribal interests in the existing laws of the state'. It also decided that 'mining or mineral-based industries coming up in the Scheduled Areas should mark five per cent of their equity towards preferential equity shares of the company, for the displaced tribal persons, based on the value of their land acquired for the project and 15 per cent of the project's annual profit should be spent on health, education, communication, irrigation and culture of the said Scheduled Area within a radius of 50 km'.

SECTION 4: Compliance with Other Relevant Mandates

Vedanta Alumina Limited has consistently shown contempt for legal mandates that govern it and is in violation of several relevant laws. The company has illegally occupied Village Forest Land for the construction of its refinery. It obtained clearance from the Ministry of Environment and Forests by claiming that the land for Refinery was not forested, in spite of being aware that this information was false. In this falsification of information, it was supported by the district administration.

The company has also violated the mandates of the Environment Protection Act (EPA). The Environmental Impact Assessments (EIAs) required under the EPA are inadequate and do not examine the full implications of the refinery and the mining project on the environment, particularly those related to hydrology. They pay little attention to the socio-economic impacts of the project on affected people and do not also attend to the loss of cultural heritage. Not only are the EIAs completely inadequate, in one instance, the information contained therein was falsified where it described forested land as being unproductive and tree deficient.

No effort has been made in the Vedanta mining project (and the aluminium refinery) to solicit the informed consent of affected villages. They have not held the required number of public hearings. The EIAs which contain data essential for informed decision-making and consent were not made available to people. Even critical information, such as the fact that the project would occupy their village forest lands, was not disclosed. There was minimal effort to ensure that the affected people get jobs in the project. In the 2003 public hearing, no Dongaria Kondh were recorded as being present—a basic violation of their right to consultation and informed consent. Besides suffering from the same shortcomings as the 2003 public hearings, the public hearing in 2009 for refinery expansion distorted and reinterpreted the proceedings: the official minutes of the meeting record that the project met with widespread community support even though only one person out of 27 spoke in favour of the project. **Free and fully informed prior consent, an essential condition for granting project approval, has neither been sought nor obtained.**

When the MoEF granted environmental clearance to the refinery, it stated that the clearance was subject to strict compliance and identified a list of other key conditions for management of waste from the refinery.⁴³ It also required that the company ‘strictly adhere’ to the stipulations made by the OSPCB.⁴⁴ The OSPCB also set out various conditions that the company must comply with in order to retain the ‘consent to operate’ status granted on 29 December 2006 under India's environment and pollution control norms and laws.⁴⁵

In February-March 2003, the Orissa State Pollution Control Board (OSPCB) conducted two public hearings on the refinery-mining project after which the company applied for environmental clearance for the same. In September 2004, the Ministry of Environment and Forests (MoEF) granted environmental clearance for the refinery. In the operations of the refinery between 2006 and 2009, Vedanta Alumina repeatedly failed to adhere to these requirements. Between 2006 and 2009, the Orissa State Pollution Control Board (OSPCB) documented numerous instances where the company had failed to put in place adequate pollution control measures to meet the

⁴³ MoEF, Government of India, Letter No. J-11011/81.2003-IA/II, 22 September 2004.

⁴⁴ OSPCB Memo No. 7149 to Vedanta Aluminium, 31 March 2007.

⁴⁵ OSPCB Memo No. 7149 to Vedanta Aluminium, 31 March 2007.

conditions stipulated by itself, the MoEF and OSPCB. OSPCB findings indicate that the company commenced operations without putting in place the necessary systems to adequately manage waste and pollution. Some processing and waste management systems were not built or operated in conformity with applicable regulatory requirements.

The company has already started the work on the six-fold expansion of the refinery capacity without clearance from the MoEF. In spite of OSPCB strictures in its 12 January 2009 memo, asking the company to immediately cease construction related to expansion of the refinery as it had not obtain the required permissions, including the environmental clearance for expansion,⁴⁶ the company is showing no signs of doing so.

4.A. Illegal Occupation of Forest Land by Existing Refinery

On 16 August, 2004, Vedanta Alumina submitted a proposal for diversion of 58.943 ha of forest land for setting up a refinery at Lanjigarh and for a conveyor belt which included 26.123 ha of forest lands for the refinery and the rest for conveyor belt and a road to the mining site. The forest lands required for the refinery were entirely village forests in a number of small patches that traditionally belonged to the tribal and other communities in the neighbouring villages. However, while filing for environmental clearance on 19 March, 2003, the company claimed that no forest lands were needed and that there were no reserve forests within ten km of the proposed refinery. This claim was patently false since the reserve forests is less than two km from the refinery site. Even the factory is located on forest lands belonging to the villagers. The MoEF accorded Environmental Clearance to the refinery on 22 September, 2004, **on the basis that the project did not involve diversion of forest lands. Since this MoEF clearance was acquired by submitting false information, it is not valid and should be revoked.**

The Central Empowerment Committee questioned the MoEF during the hearing of a petition held on 28 February, 2005, asking why it granted clearance to the project when it was clearly evident that the Vedanta Refinery was being set up on forest lands application for which was pending in the same Ministry and the Ministry was thus in violation of its own guidelines. In its reply to the CEC, the MoEF stated that the company had not brought the fact that forest land was also involved to its notice prior to the grant of environmental clearance in September, 2004. The MoEF vide notice dated 23 May, 2005, directed M/s Vedanta that further construction should be undertaken only after getting the requisite clearances under the Forest Conservation Act. Instead of obeying the orders of the MoEF, the company informed the MoEF that they did not need the use of 58.943 hectares of forest land. They also continued to claim that the refinery project does use any forest land. The refinery, however, continues to occupy all the lands including the 26.123 hectares of forest land, with the full knowledge of the district administration who have allowed their continued illegal occupation.

According to Sri Rao, Special Officer, Kutia Kondh Development Agency, Government of Orissa, 2.17 acres of forest land is under the occupation of Vedanta Alumina in village Bandhaguda (his letter is attached as annexure 7). When the chairperson of the Committee went to this village, the people said that they have no

⁴⁶ OSPCB Memo to Vedanta Aluminium, 12 January 2009.

access to this land and it has become part of the aluminium refinery. This issue was raised in the meeting with the State Chief Secretary too, and he asked the Collector to find out why access to the people had been barred. This violation of Forest Conservation by Vedanta Alumina was pointed out in 2005 too, but unfortunately GoI chose to ignore this.

4.A.i. Concealment and Falsification of Information: All the actors—the company, administration, villagers and political leaders—know that the claim of the company that the refinery site was unforested is clearly false. That the site is on village forest lands was admitted by the company and the district administration as early as 6 June, 2002 when the Collector, in his land acquisition notice of this date, had categorically mentioned that 118 acres of village forest lands were needed for the refinery project as these lands fell within the project boundary. Further, the company on 16 August, 2004, submitted a proposal for diversion of 58.943 ha of forest land for the setting up of the refinery at Lanjigarh and for the conveyor belt (of which 26.123 ha of forest lands were for the refinery and the rest for conveyor belt and road to the mining site). The forest lands required for the refinery consisted entirely of village forests in a large number of small patches that traditionally belonged to the tribal and other villagers in the neighbouring villages and was under heavy use by them for meeting their various forest based needs.

Even when this proposal for diversion of forest lands for setting up the refinery was pending before the MoEF, the Ministry accorded environmental clearance to the refinery on 22 September, 2004, on the basis that the project did not involve diversion of forest lands. The Ministry's Guidelines for grant of clearances under EPA forbid clearances of cases that involve forest lands for which clearance under the Forest Conservation Act has not been obtained. The approval was thus obtained by deliberately falsifying crucial information.

4.A.ii. Illegal Occupation: Vedanta Alumina Limited, instead of obeying the orders of the MoEF, informed the Ministry that they would implement the refinery project without involving the use of 58.943 hectares of forest land. They continued to claim that the refinery project does not include any forest land and that the Ministry's directions to stop the work are thus not applicable to them. The refinery, however, continues to occupy all the lands including the 26.123 hectares of forest land. This fact is accepted by the district administration and by the company. The company has also encroached upon several patches of forest lands that total up to 10.41 acres (4.212 ha) belonging to both the revenue and the forest departments that presumably fall within the 26.123 hectares of forest lands referred to above. This has been treated as an encroachment offence by the revenue and forest departments and the company has been allowed to continue its illegal occupation.



Village forest (*gram jogya jangal*) illegally taken over and enclosed by the Vedanta refinery



Village forest (*gram jogya jangal*) illegally taken over and enclosed by the Vedanta refinery



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Village forest (*gram jogya jangal*) illegally taken over and enclosed by the Vedanta refinery



Village forest (*gram jogya jangal*) illegally taken over and enclosed by the Vedanta refinery

Almost all the villagers from Rengopali and Bandhaguda near the refinery on 19 July, 2010, reported severe discontent with the Vedanta refinery. Their specific allegation was that the refinery had taken over their village forest lands and denied access to them. They claimed that the factory has cornered and marginalized them with the knowledge of the district administration. The latter did not intervene to support them, and might have even supported the refinery's unfair action. The MP of Kalahandi, Shri Bhakta Charan Das, in a later meeting with the Committee stated that the company has illegally occupied forest lands belonging to tribal and Dalit villagers. He claimed that the clearances granted to the company by MoEF under the EPA are illegal, because these were granted on the basis of false information.

The claim by the company that they have only enclosed the forest lands within their factory premises for protecting these lands as desired by the state government is completely unacceptable. Even their claim that the total extent of 26.123 hectares of lands within their premises is being retained as forests, and access is being allowed to the villagers to whom these lands belonged is completely false. These lands spread over a number of small and big discrete parcels, provided the forest-based needs of the tribal and non-tribal villagers living in the neighbourhood. The fact is that they have enclosed the entire 26.123 ha of forest lands within the high walls of the refinery and their claim of allowing access to the villagers to these lands is totally false as there was no sign of the lands having been used by the villagers at all when the Committee visited two forest patches on the 20th July, 2010. The villagers alleged that in place of their well spread out forest patches the Company has kept patches of land convenient to it under tree cover and is claiming that to be the original village forests. The forest officials on the spot were unable to state whether the lands being shown to us as village forests were the original forest lands or some other lands were being shown as village forests. The state government officials stated that the company was

protecting these forests well which, even if true, is hardly the point. These were forest lands under the ownership and usage of tribal, Dalit and other poor with convenient access from all sides. That a private business entity was allowed to corner lands over which tribal and other poor villagers have well-recognized ownership rights without the due process of law and without consulting the villagers for whom they are supposedly protecting these forests is a clear instance of illegal occupation which has been aided and abetted by the state administration. This action is not only a gross violation of the Forest Conservation Act and the FRA but also an unbelievable act of moral impropriety on the part of the state administration. It was very hard for the Committee Members to believe that government officials could go to this extent in order to favour a private company. The forcible eviction of the Scheduled Caste and Scheduled Tribe villagers from their lands, and thereby preventing them from exercising their rights over their village forest lands, must attract punitive legal action against all concerned officials as well as the Company.

It is clear that the refinery has been accorded clearance under the Environmental Protection Act by falsifying and concealing information about the nature/designation of land acquired for the purpose of constructing the refinery. From the beginning, the State Administration and Vedanta Alumina both knew that large tracts of forest land were required for the refinery as well as for mining. However, they deliberately misled the MoEF on this point. Rule 4 of the Ministry of Environment and Forests Environment Impact Assessment Notification S.O.60(E), dated 27 January, 1994, specifically states that *'concealing factual data or submission of false, misleading data/reports, decisions or recommendations would lead to the project being rejected. Approval, if granted earlier on the basis of false data, would also be revoked. Misleading and wrong information will cover (i) false information, (ii) false data, (iii) engineered reports, (iv) concealing of factual data and (v) false recommendations or decisions'*. Revoking of the EPA approval granted to the company would thus be the most appropriate action at this stage.

4.A.iii. Use of Bauxite from Mines without Environmental Clearance: The MoEF granted clearance to the Vedanta Alumina refinery to start production in the absence of clearance for the mining component, on the condition that 'Industry source bauxite from indigenous mining which have already been awarded environmental clearance'.⁴⁷ A monitoring report from May 2010 shows that, of the 14 supplier firms from the eastern region that currently supply bauxite ore to the Lanjigarh refinery, only 3 have environmental clearance. The report lists the rest as 'No information available'. The Committee requested Vedanta officials to provide information about the status of these environmental clearances during its visit. So far, this has not been provided. This leads to the suspicion that the refinery is in violation of the MoEF condition of sourcing bauxite from mines with environmental clearance, and instead is sourcing bauxite from illegal mines that do not have such clearance.

4.B. Other Violations of the Forest Conservation Act:

The Committee also recorded statements from a number of villagers and others about other alleged violations of the FCA by the company. Later, Sri Bhakta Charan Das, Member of Parliament, also spoke of these violations. Some violations of the FCA pertain to new construction inside the forest, including the building of a 3.5 km long

⁴⁷ See page 2 of the 'Monitoring Report of Vedanta Alumina Refinery, Lanjigarh, Distt Kalahandi Orissa', sent to Dr Nalini Bhat of the IA Division, with a cover letter (dated 25.05.2010, signed Dr V P Upadhyay, Director (S), ERO, No. 106-21/EPE).

approach road to the PML, the conveyor corridor and the mine access road running parallel to the conveyor corridor.

4.B.i. Four Wheel Approach Road:

During the Committee's inspections, it noted that there was a kutchra road from foothill near Ejrupa to the PML site at hill top. This road is about 3.5 km long, and very steep. It is motorable only by a four-wheel drive vehicle. The average width of the road was about 6 metres. This road is not shown in the Survey of India map, and has thus been constructed after the revision of the SOI maps. Given that the vegetation on the side-cuts appeared older than two or three years, it could be concluded that the road was definitely not constructed within the past 2-3 years also. The Committee, however, could not pinpoint the time when this road was constructed. It is possible that the company might have constructed this road in 2002 during the survey of the PML. The Collector of Kalahandi was categorical that this was an old road, and that it was not a violation of the FCA at all. In the absence of any evidence to the contrary, we may accept the Collector's version and treat this as a closed case. However, the closure of this case is contingent on the condition that no further access to the mining site by this road is allowed for company vehicles now or any time in the future.

4.B.ii. Conveyor Corridor: Vedanta Alumina Limited has constructed a conveyor corridor over the non-forested part of the land involving a total of 47 pillars and also laid a steel framework for the conveyor belt above these pillars. This is a clear case of violation of para 4.4 of the FCA guidelines which forbids work in non-forest lands till the FCA clearance is given, if both forested and non forested lands are involved in the project.

A more serious violation was evident on the road running parallel to the conveyor corridor through what were described as plot no: 157(P) measuring 1.0 acre in extent and plot no: 133 measuring 0.11 acres which formed part of the village forest lands. Both the Collector and the DFO of Kalahandi division, who were present during the inspection, agreed that these were violations of the FCA. The Committee notes that this occupation of land by the company was not just a clear case of violation of FCA. Even more seriously, the occupation of village forest lands belonging to the tribal people is symptomatic of contempt for the rights of tribal people on the part of the company and of reluctance on the part of the state administration to act firmly to prevent such illegal acts.

4.C. Non-Compliance with the Orissa Forest Act

The formalities of section 6 onwards under the Orissa Forest Act in respect of Khambesi and Nimagiri PRF have not been completed. This is in spite of the GoI mandate to the State Administration to comply with all other relevant legal rules that are applicable before the transfer of forest land. The clause defining the condition (xvii) imposed by GoI in its order dated 11 December, 2008, reads as follows: '*All other provisions under different Acts, rules, and regulations including environmental clearance shall be complied with before transfer of forest land*'.

The Orissa Forest Act, 1972, lays down a clear and transparent process for settling rights by the Forest Settlement Officer (FSO). However, the past experience of such a settlement on the ground has not been satisfactory. This fact is borne out by the very fact that Niyamgiri and Khambesi forests in Rayagada, have remained 'proposed Reserve Forest' for three decades now (notification u/s 4 was issued in 1980). In this

period, the state administration has not determined tribal peoples' rights in spite of these forests being in a Schedule V area, indicating complete indifference towards procedures recognizing their rights.

Under Article 48A of the Constitution, the government is under an obligation to protect forests and the environment; this Article is the Constitutional basis of the Forest (Conservation) Act. As per the Preamble of the Forest Rights Act, forest dwellers are 'integral to the very survival and sustainability of the forest ecosystem'. Therefore, in law, forests now include forest dwellers and are not limited to trees and wildlife. As the term 'forest' now includes forest dwellers, therefore the MoEF is under a Constitutional obligation to protect these communities as well, especially groups such as the Kutia and Dongaria Kondh who have historically exercised their customary rights in the area.

By granting permission in question for diversion of forest for non-forest purpose, the Ministry will directly impact the property and cultural rights of the Kondh. These rights, particularly the non-land religious and cultural rights, are inextricably linked to the existence of the forest, water bodies, etc. Since the MoEF is now vested with the responsibility of regulating the destruction or protection of *forests* (which now include forest dwellers) by the Forest (Conservation) Act, it cannot just consider forests alone, but must take into account their human dwellers as well.

The rights of the people over their traditional habitat have to be recognized first under the FR Act (which is a special Act) and then under the Orissa Forest Act, section 6 to 21 (which is a general Act). The FRA is treated as the superior law now as it overrides all other laws. Formalities of both the Acts have to be completed before the state government can certify that the directives of GoI order dated 11 December, 2008, have been completed. This mandate is based on the principle of harmonious construction, required when two laws are read together. One law cannot be read in such a way as to destroy the provisions of another. In short, by granting permission for the forest to be destroyed under the Forest Conservation Act, the Environment Ministry is permitting the destruction of people's rights under the Forest Rights Act, which will cease to exist. Such a step would clearly be illegal.

In the light of the fact that the Gram Sabhas are statutory bodies and their consent has not been obtained, how can one statutory authority—the Environment Ministry acting under the Forest (Conservation) Act—ignore or override the opinions of another statutory authority—the Gram Sabha under the Forest Rights Act? It is thus clear that the Environment Ministry cannot issue clearance without the consent of the Gram Sabha as the representative body of forest dwellers, even if the process of implementing the Act is reported by the Collectors to be complete.

4.D. Violations of the Environmental Protection Act

Environmental and forest laws in India make it mandatory for private firms and public agencies to obtain prior clearances for new industrial and development projects. The MoEF evaluates applications and grants these clearances. To obtain these clearances, the project must fulfil the EPA mandates based on Environmental Impact Assessments (EIAs). In addition, given that the concerned project falls within forest land, it would also need clearance under the Forest Conservation Act, 1980. As per the Environment Protection Act (EPA) 1986 and, under it, the EIA notification of 1994 and 2006, development projects should apply for environmental clearance. For this, they must execute an EIA report. The EIA also details the steps that the proposal

will take to address environmental and social impacts, and mitigate them through measures such as installing and running pollution control measures and technologies.

Further, the state-level pollution control authorities are required to set up public hearings or consultations with the local communities likely to be affected by the environmental impacts of the project. After giving due notice, they must 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 administrative opportunity for affected communities to obtain information about the project's potential risks and likely negative impact and to make their views known.⁴⁸

When environmental clearance is granted, in addition to measures suggested by the project proponent in the EIA, the MoEF along with the state pollution control board lays down conditions and stipulations that legally bind the proposal. These also include project-specific conditions and compliance to pollution control norms and law under the Air Act and Water Act.

4.D.i. Environmental Impact Assessments

The EIAs submitted by Vedanta Alumina Limited were inadequate and did not study the full implications of the refinery and the mining project on the environment, particularly those related to hydrology. They paid little attention to the socio-economic impact on affected people and did not also address the loss of cultural heritage. Not only were the EIAs seriously inadequate, in one instance, they also contained false information.

Refinery: The two EIAs carried out for the refinery—the rapid EIA commissioned by Sterlite Industries India Limited (SIIL) and conducted by Tata AIG in 2002 and the comprehensive EIA commissioned by Vedanta Alumina Limited and conducted by Vimta Labs in 2005⁴⁹--were both inadequate for ascertaining or addressing many of the likely impacts of the refinery on the local communities. Issues such as livelihoods, patterns of access to water and the importance of communal land resources to communities are either not mentioned or only referenced superficially in these EIAs.

Mining: For the purpose of mining, the SIIL prepared two EIA reports. The first was prepared in August 2002 and the second in March 2005.⁵⁰ Analysis of these EIAs reveals serious flaws in their scope and their adequacy for determining the full environmental impacts of the proposed mine. In the 2002 EIA, SIIL was the project proponent, while in 2005 EIA, the project was proposed by the Orissa Mining Corporation, a Government of Orissa undertaking. The EIA report of the aluminium

⁴⁸ While the notification as amended in 2002 requires the communities to have access to the full EIA in English and its summary in advance of the public hearing, both in English and the respective local language/s, the 2006 amendment limits the mandatory access to the draft version of the EIA in English and the respective local language/s.

⁴⁹ Tata AIG Risk Management Services Ltd, Rapid EIA Report for 1.0 MPTA Aluminium Refinery and 75 MW captive power plant proposed by Sterlite Industries India Limited, August 2002; Executive Summary of the Rapid EIA Report for 1.0 MPTA Alumina Refinery and 75 MW captive power plant proposed by Sterlite Industries India Limited, August 2002; Vimta Labs, Comprehensive EIA for Vedanta Aluminium Limited's 1.0 MPTA alumina refinery and captive power plant at Lanjigarh, Kalahandi district, Orissa, September 2005.

⁵⁰ Tata AIG Risk Management Services Ltd, Rapid EIA Report for bauxite mine proposed by Sterlite Industries India Limited near Lanjigarh, Orissa, August 2002. (Revised Executive Summary of Rapid EIA Report for Lanjigarh Bauxite Mining Project, Kalahandi, January 2003); Vimta Labs, Rapid EIA Report for the proposed bauxite mine at Lanjigarh, Kalahandi District, Hyderabad, March 2005.

refinery prepared in August 2002 states that the mining of bauxite is part of the project. It also states that the refinery should be preferably located near the bauxite mine.

The second EIA was prepared after the OMC and Vedanta Alumina Limited (VAL), a subsidiary of SIIL, entered into an agreement to develop the Lanjigarh bauxite mines through a joint venture and supply bauxite exclusively to the aluminium refinery at 1.0 Million tonnes per annum. In this agreement, the sole beneficiary was SIIL. Though the mining lease was in the name of the OMC which would be responsible for complying with all the statutory and legal requirements, the VAL de-facto manages the mines and is the principal beneficiary.

4.D.i.1. Inadequate EIAs: The EIAs are deficient in even the minimum requirement of information and analyses. They lack detailed description of groundwater in the area, information about the location and quality of water resources, and omission of key information on surface water drainage from hill and proposed mine site. The 2005 EIA failed to include important information such as a detailed contour plan of the hills showing existing natural drainage channels near the mine site. It also did not describe the physical, hydrological and biological features of these channels. Neither the 2002 nor 2005 EIAs refer to or analyse the religious and cultural significance of the proposed mine site for the Dongaria Kondh. The implications of the mines to nearby communities cannot be properly assessed without such information thus making the EIAs seriously deficient.

Chapter 1.2.4 , 1.3 and Chapter 2 , section 2.8 and 2.9 of the MoEF's EIA Manual⁵¹ state that, in a EIA, socio-economic impact prediction should cover impact on the local community including demographic changes, impact on economic status and impact on human health. Both the mining EIAs give only limited attention to socio-economic issues and none to human rights. The EIA for the refinery expansion does not assess the risks posed by the proposed expansion to the rights to water, health, food and work of the local communities and how such risks would be mitigated and managed. Therefore, many issues of critical importance to the well-being and the human rights of affected individuals and communities are not captured in EIAs.

Further, both these EIAs were rapid EIAs; instead of a comprehensive EIA (as is global best practice) that records likely impacts in all the three seasons (except monsoons)⁵². The inadequacy of the rapid EIA becomes even more important in drought-prone areas, since an EIA undertaken in a non-drought season cannot represent the true picture during the drought period. This omission is a grave neglect on part of the applicant Company, as well as government officials charged with the responsibility of ensuring environmental safeguards.

4.D.i.2. Falsification of Information in 2005 EIA related to the mining: The EIA report mentions the PML site as *unproductive and tree deficient area not useful for*

⁵¹ NEERI. 2001. *Environmental Impact Assessment Manual*. Impact Assessment Division, Ministry of Environment and Forests, New Delhi, states that this would involve collection of demographic and related socio-economic data; projection of anticipated changes in the socio-economic conditions due to the project and related activities including traffic congestion and delineation of measures to minimize adverse impacts; assessment of impact on significant historical, cultural and archaeological sites/places in the area; assessment of economic benefits arising out of the project; assessment of rehabilitation requirements with special emphasis on scheduled areas, if any.

⁵² Refer to the discussion in section 1.D.i. earlier in this Report.

wildlife and forests. The WII specifically refers to this statement and refutes this claim. It states that the same is not true and that in reality ‘these plateaus are very productive and with high occurrence of several herbivore and carnivore species’.⁵³ The rules of the MoEF regarding the falsification of information have already been discussed in sections 4.A.i. and 4.A.ii. and apply in this case as well. **Given that there have been several deliberate attempts on the part of Vedanta Alumina Limited to conceal information and falsify it in order to get the project approved, withdrawal of approval of the project as a result of the above would thus appear to be the most appropriate action at this stage.**

4.D.ii. Public Hearings

No effort has been made in the Vedanta mining project (and the aluminium refinery) to solicit the informed consent of affected villages. They have not held the required number of public hearings. The EIAs which contain data essential for informed decision-making and consent were not made available to people. Even critical information, such as the fact that the project would occupy their village forest lands, was not disclosed. There was minimal effort to ensure that the affected people get jobs in the project. In the 2003 public hearing, no Dongaria Kondh were recorded as being present—a basic violation of their right to consultation and informed consent. Besides suffering from the same shortcomings as the 2003 public hearings, the public hearing in 2009 for refinery expansion distorted and reinterpreted the proceedings: the official minutes of the meeting record that the project met with widespread community support even though only one person out of 27 spoke in favour of the project. Free and fully informed prior consent has neither been sought nor obtained.

There have been no public hearings with regards to the mining since 17 March, 2003. This hearing was held in relation to the ‘proposed aluminium refinery captive power plant and bauxite mine’. It is noteworthy that no Environmental Impact Assessment was presented prior to or during the public hearing on 17 March, 2003 for the bauxite mining project. Those villagers who attended the meeting therefore did not know any details about the project or its likely impacts on the environment. Critical information such as the area that the refinery would consume was not disclosed during the public hearing. For instance, at the time of public hearing for the grant of clearance under the EPA to set up the refinery, the fact that the company would occupy 26.123 ha of forest lands belonging to the villagers, and thus infringe their rights, was not revealed to the affected people either by the company or by the state administration. Without this information, it is unlikely that they would have been able to participate in a full and informed manner in the public hearing. To make matters worse, the information about the public hearing itself was evidently not circulated in advance among the people most likely to be adversely affected. **None of the Dongaria Kondh were recorded as being present at the hearing.** Such omissions make a mockery of the Environmental Protection Act.

The public opinion expressed in the public hearing on 25 April, 2009, for the proposed expansion of the refinery from 1 to 6 MTPA was grossly distorted in the recording of its minutes. Out of 27 people recorded as speaking, only **one** supported the project. Yet the minutes of the meeting conclude stating that the overall public

⁵³ A Wildlife Institute of India report, commissioned by the MoEF, corroborates this. Wildlife Institute of India, Dehra Dun, ‘Studies on impact of proposed Lanjigarh bauxite mining on biodiversity including wildlife and its habitat, 2006-2007’, Chapter 4, section 4.3, p. 13.

opinion is favourable to the project (p. 21). This conclusion cannot flow from the proceedings or the public hearing. The CD of the public hearing clearly testifies to the mood of the speakers being defiant.⁵⁴ This failure to correctly record the views of the local community shows the clear bias of the administration favouring the project. In the case of the mining project and the refinery, free and fully informed prior consent has neither been sought nor obtained. Without this crucial condition being fulfilled, the mining project and the refinery are in grave violation of the EPA.

4.D.iii. Violations in refinery expansion: Vedanta Alumina Limited has already started the work on the six-fold expansion of the refinery capacity without clearance from the MoEF. In spite of the OSPCB, in its 12 January, 2009, memo asking the company to immediately cease construction related to expansion of the refinery as it had not obtained the required permissions, including the environmental clearance for expansion;⁵⁵ the company is showing no signs of doing so. A subsequent OSPCB report dated 31 March 2009 notes that the expansion activities were continuing.⁵⁶ This is a serious offence, and the MOEF is authorized to cancel the project during the course of such a violation.

In October 2007, Vedanta Aluminium sought environmental clearance from the Ministry of Environment and Forests (MoEF) for a six-fold expansion of the refinery's capacity. Even before this clearance was awarded, the OSPCB documented the fact that Vedanta Aluminium had started construction work for expansion of the refinery without the company having obtained the necessary regulatory permissions, including the environmental clearance, to proceed with an expansion.⁵⁷

The Committee found evidence of extensive construction when it visited the Vedanta refinery compound. Upon enquiring, we were told that it was part of the expansion of the refinery from 1 MT per annum to 6 MT. This six-fold expansion has not been approved by the Ministry of Environment and Forests. The details of this illegal construction have been provided in the monitoring report of Dr V P Upadhyay, under section 2, Violations and court cases: '*Violations: a. M/s Vedanta Alumina Limited has already proceeded with construction activity for expansion project without obtaining environmental clearance as per provisions of EIA Notification, 2006 that amount to violation of the provisions of the Environment (Protection) Act*'.⁵⁸

This expansion of the refinery, its extensive scale and advanced nature, is in complete violation of the law. Its intention appears to be to present a *fait accompli* to the authorities and then to plead for retrospective approval. Vedanta has, on several instances, followed precisely this strategy to achieve its targets, in clear violation of legal mandates and procedures. By itself, this illegal expansion warrants strict action against the company, including the shutting down of the entire plant. This continuation of expansion activities is a serious offence. MOEF can also cancel the project for committing such a violation.

⁵⁴ Site visit report of Ms Usha Ramanathan dated 11 February, 2010.

⁵⁵ OSPCB Memo to Vedanta Aluminium, 12 January, 2009.

⁵⁶ OSPCB Inspection Report on Vedanta Aluminium, 31 March 2009. This refers to the compliance letter No. VAL/HSE/Env/2009/172 dated 29 January 2009 submitted by Vedanta in this connection

⁵⁷ OSPCB Inspection Report on Vedanta Aluminium, 3-5 December, 2008.

⁵⁸ See page 1 of the 'Monitoring Report of Vedanta Alumina Refinery', Lanjigarh, Distt Kalahandi Orissa' was sent to Dr Nalini Bhat of the IA Division, with a cover letter (dated 25 May, 2010, signed Dr V P Upadhyay, Director (S), ERO, No. 106-21/EPE).



Vedanta Alumina factory showing illegal chimney and other construction

4.D.iv. Violation of Pollution Control Norms and Laws at the Aluminium Refinery (August 2002)

When the MoEF granted environmental clearance to the refinery, it stated that the clearance was subject to strict compliance and identified a list of other key conditions for management of waste from the refinery.⁵⁹ It also required that the company ‘strictly adhere’ to the stipulations made by the Orissa State Pollution Control Board.⁶⁰ The OSPCB also set out various conditions that the company must comply with in order to retain the ‘consent to operate’ status granted on 29 December 2006 under India’s environment and pollution control norms and laws.⁶¹

In the operations of the refinery between 2006 and 2009, Vedanta Aluminium repeatedly failed to adhere to these requirements. Between 2006 and 2009, the Orissa State Pollution Control Board documented numerous instances where the company failed to put in place adequate pollution control measures to meet the conditions stipulated by itself, the MoEF and OSPCB. OSPCB findings indicate that the company commenced operations without installing all the necessary systems to adequately manage waste and pollution. Some processing and waste management systems were not built or operated in conformity with applicable regulatory requirements.

4.D.iv.1. Water Pollution: In 2007, OSPCB tested the water at various points of the river. The test results indicated that water accumulated near the boundary wall of the refinery (outside the factory) adjacent to the river had a pH value of 10.5 and 11

⁵⁹ MoEF, Government of India, Letter No. J-11011/81.2003-IA/II, 22 September 2004.

⁶⁰ OSPCB Memo No. 7149 to Vedanta Aluminium, 31 March 2007.

⁶¹ OSPCB Memo No. 7149 to Vedanta Aluminium, 31 March 2007.

(according to the OSPCB, the normal pH range for this class of river is between 6 and 8.5).⁶² OSPCB recommended that the clear water pond be repaired immediately; that the company be more vigilant in monitoring leakages, spillage and overflow of caustic, chemicals etc, inside the plant; and that the company take immediate steps to prevent any contamination of storm water with caustic water.

In a more detailed inspection two months later, however, the OSPCB found the water in the storm water drains inside the plant, which discharged to river Vamsadhara, had a pH value of 9.46.⁶³ It stated that this pH value was possibly due to alkali contamination linked to spillages from the plant process areas. It noted that the online monitoring system for pH had not yet been installed in all storm water drains.



Red mud pond of the Vedanta Alumina refinery at Lanjigarh, Kalahandi district (responsible for dust pollution)

On 23 November 2007, the OSPCB issued a 'show cause' notice on these issues to Vedanta Alumina and also issued a direction under Section 33 of the Water Act requiring the company to immediately raise the parapet walls of the different process areas to ensure containment of alkaline waste water and prevent any spillages or leakages from the containment area.⁶⁴

In December 2007, the company responded stating that parapet walls had been provided around all the process units, in accordance with the OSPCB's advice. In January 2008, the OSPCB conducted a detailed inspection and noted that though Vedanta Alumina had partly complied with its directions by raising some parapet walls, but this raising had not yet been done in other areas. Outside the boundary of the factory, the OSPCB found 'white patches of alkaline waste, which indicates that there has been discharge of alkaline wastewater to Vamsadhara River'.⁶⁵

⁶² OSPCB Inspection Report. 26-27 September 2007, pp. 1-2.

⁶³ OSPCB Inspection Report on Vedanta, 2-4 November 2007, Table 3b.

⁶⁴ Memo No. 27417 and Memo No. 27420 from OSPCB to Vedanta Aluminium, 23 November, 2007.

⁶⁵ OSPCB Inspection Report on Vedanta Aluminium, January 29-30, 2008.



Red mud pond of the Vedanta Alumina refinery at Lanjigarh, Kalahandi district (responsible for dust pollution)

The OSPCB contacted Vedanta Alumina directing it to explain why the OSPCB's directions had not been complied with, stating that it did not consider that the company had comprehensively addressed these concerns in its response.⁶⁶ Vedanta Alumina sent a response to the OSPCB in July 2008, stating that all parapet walls in the process areas had been raised; parts of the process units were being lined with steel; the recirculation system for ash pond filtered water was ready; and the clean water pond had been repaired.

A joint inspection conducted in March 2008 by the OSPCB, experts from the Indian Institute of Science, Bangalore, and the National Groundwater Research Institute, Hyderabad, found water with a pH value of 9 coming out of the ash pond. The inspection concluded that such discharge of alkaline water should be stopped.⁶⁷ Inspections by the OSPCB in April 2008 found no improvement in this regard, with water continuing to leak out of the ash pond, with a pH value of 9.5.⁶⁸ The OSPCB also noted that there had been leakage of caustic water near the process water lake, which had not been reported to the Board, and no progress had been made in repairing the flooring of the process areas.

4.D.iv.2. Impact on Groundwater and Streams: Prior to the refinery construction, the rapid EIA carried out in 2002 had recorded the pH values of surface water at Lanjigarh, upstream of the refinery site as 7.1, and at Harekrishnapur, a downstream village, as 7.2, and the pH values of groundwater at the same locations as 6.8 and 7.1

⁶⁶ Memo no. 4127 from OSPCB to Vedanta Aluminium, 23 February, 2008.

⁶⁷ Joint Inspection Report by OSPCB, NGRI and Indian Institute of Science, 17-18 March, 2009.

⁶⁸ OSPCB Inspection reports on Vedanta Aluminium, 7-8 and 26 April, 2008.

respectively.⁶⁹ In 2007-2008, the rapid EIA carried out for the refinery's proposed expansion, recorded pH values of surface water at Lanjigarh, upstream of the refinery site, and at Chhattarpur, a downstream village, as 7.01-7.5 to 7.58-8.25.⁷⁰ In November 2007, the OSPCB recorded that though the river upstream of the refinery had a pH of 7.37, downstream of the refinery this increased to 8–8.1.⁷¹ In its inspection in January 2008, the OSPCB confirmed this 'trend of increasing pH', and confirmed that this was due to seepage, leakage or discharge of alkaline wastewater from the plant and had to be addressed urgently.⁷² Although the alkalinity was still within the prescribed standard for that class of river, the OSPCB raised concerns about identifying and preventing leakages to prevent the situation becoming more serious in the future esp. with the expansion of the refinery.

4.D.iv.3. Air pollution: The OSPCB inspection reports have documented air pollution caused by the refinery. OSPCB officials found that particulate matter emitted from the boiler was recorded to be 795 mg/Nm³, more than five times the stipulated limit of 150 mg/Nm³. They stated: '*such high emission within a valley has the potential to cause atmospheric pollution in the vicinity and health hazards*'.⁷³ The OSPCB issued a direction under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 requiring Vedanta Alumina to immediately stop the operation of Boiler No. 3. The company was also issued a 'show cause' notice. It responded to this notice stating that the plant was on start up mode, and during the inspection the emission level was higher due to continuous pipe choking problem. This problem has since then been rectified.⁷⁴ In another inspection, one month later, the OSPCB found that the particulate matter emission from Boiler No. 3 was 385 mg/Nm³, which was still far above the stipulated limit. Its report noted that OSPCB's earlier directive to stop operation of Boiler No. 3 had not been complied with. The OSPCB also stated that the online monitoring system for measurement of particulate matter in both the boiler and calciner stack had not been installed'.⁷⁵

From the OSPCB Inspection Reports it is clear that the existing refinery is poorly constructed and maintained. It is clear that the company has failed on several occasions to implement directions given by the OSPCB to carry out repairs or undertake other actions in a timely manner, increasing the potential for ongoing pollution of water and air. The company is clearly not according any priority to complying with their own design criteria, to statements and commitments in the EIAs, or to operational environmental management. In light of the OSPCB findings of pollution related problems and the negative impacts already experienced by the surrounding communities, the proposed massive expansion of the refinery could greatly increase the risks to local communities and the environment.

⁶⁹ Tata AIG Risk Management Services, Rapid EIA of 1.0 MT alumina refinery and captive power plant of Sterlite at Kalahandi, Mumbai, August 2002, Section 2.1, Tables 2.2.1, 2.2.2, 2.2.3, 2.2.4 and 2.2.5.

⁷⁰ Global Experts, Rapid environmental impact assessment/environmental management plants report for expansion of alumina refinery plant from 1 MMPTA to 6 MMPTA of Vedanta Aluminium Limited, Lanjigarh, Orissa, August 2008.

⁷¹ OSPCB Inspection Report on Vedanta Aluminium, 2-4 November, 2007.

⁷² OSPCB Inspection Report on Vedanta Aluminium, 29-30, January 2008.

⁷³ OSPCB Inspection Report on Vedanta Aluminium, 2-4 November, 2007.

⁷⁴ Response from Vedanta to Member Secretary, OSPCB, 20 December, 2007.

⁷⁵ OSPCB Inspection Report on Vedanta Aluminium, 29-30 January 2008.

4.E Contempt of Supreme Court

On 23 November, 2007,⁷⁶ the Honourable Supreme Court of India dismissed the applications filed by M/s Vedanta Alumina Limited, hereinafter referred as M/s VAL for the grant of mining lease. This judgement was based on the grounds that the Court could not take the risk of handing over an important asset into the hands of the company 'unless we are satisfied about its credibility'. M/s VAL's credibility came under question in the first place because of accusations made by the Norwegian Governments Pension Fund against its parent company M/s Vedanta Resources. This Parent Company has mining operations in Australia, Zambia and Armenia among other countries. M/s Vedanta Resources was accused of causing environmental damage and contributed to human and labour rights violations.

In the same orders, the Honourable Supreme Court, while giving liberty to Sterlite Industries (India) Limited, hereinafter referred as M/s SIIL, to operate the mines under a set of conditions, specifically stated that the Court would not entertain any application made by M/s VAL or M/s Vedanta Resources. In the last paragraph of this order, the Honourable Court once again highlighted the distinction between M/s SIIL and M/s VAL by reiterating that the application filed by M/s VAL (for grant of permission to mine in Niyamgiri hills) stood dismissed. Only M/s SIIL could operate the mining lease and that M/s VAL could not do so.

The Committee in the field found no difference between M/s VAL and M/s SIIL, with all operations being carried out only by M/s VAL. This fact is known also to all officials including the Collector. Instead, the gravity of the Court judgement has been reduced to visiting cards. On July 19, 2010, while introducing himself to the members of the Committee, Dr Mukesh Kumar leading the group of people from the applicant company gave us his visiting card. His post on the card was Chief Operating Officer of M/s VAL. He profusely apologised that he was not able to give his M/s SIIL card.

The company continues to operate as Vedanta quite blatantly, and there is no evidence of Sterlite. This is in clear violation of the Supreme Court's order that it operate as Sterlite and not as Vedanta; clearly indicating contempt of the orders of the highest authority in the country, the Honourable Supreme Court of India. This is not surprising given the utter contempt with which this company has dealt with the laws of the land in general.

⁷⁶ Orders dated 23.11.2007 of the Honourable Supreme Court of India in IA Nos. 1324 and 1474 in WP (Civil) No. 202 of 1995 and IA Nos. 2081 and 2082 (Arising out of W.P (C) No. 549 of 2007); and in IA Nos. 1324 and 1474 in WP (Civil) No. 202 of 1995 and IA Nos. 2081 and 2082 (Arising out of W.P (C) No. 549 of 2007).

SECTION 5: Low Significance of the Proposed Mining Lease Area to Vedanta's Operations

Vedanta Aluminium Limited, Lanjigarh, and the Orissa government have repeatedly claimed that the Lanjigarh mining project is essential for the company's operations and profitability as it would provide ore to its refinery for 26 years. This was based on the estimates that the refinery needs 3 mtpa of ore for producing 1 mtpa of aluminium every year. It must be noted that the Vedanta aluminium refinery, where the mined ore is to be processed, with its current capacity of 1 million tonnes per annum (mtpa) is under expansion to 6 mtpa raising the refinery's annual requirement of raw ore to 18 million tonnes. Thus the entire reserve on the site, estimated to be 72 million tonnes, would last just about four years.

The same is also indicated by a presentation by Vedanta titled 'Empowering Community for a Better Tomorrow' indicating that the company expects to get a total of 1014 million tonnes of bauxite ore from deposits in Lanjigarh, Karlapat, Sijimali, Kutrumali, Saasbahumali, Majingamali, Krishunmali, Hatimali and Gandhamardan. Given the extent of these sources, the 72 million tonnes available at the PML site is insignificant since it amounts to a mere 7 per cent of the total 1014 mtpa.

Also, in their submissions to the MoEF while applying for environmental clearance in 2003, Vedanta Aluminium Limited had stated that the Lanjigarh mining project was not integral to the aluminium refinery project and that there were no linkages between the two. Later in its submissions to the Central Empowered Committee (CEC), the company further claimed that, in case mineral from Lanjigarh mines were not available, they would obtain bauxite from other sources.

Clearly mining activities in the PML site will have very limited relevance to the Vedanta Refinery. In balance against this are the severe adverse consequences on the environment, forests and people who inhabit these forests.

SECTION 6: Conclusions

The proposed mining lease (PML) area, located on the upper reaches of the Niyamgiri hills and locally known as Aonlabhata for the large number of Amla (*Phyllanthus emblica*) trees, is a rich habitat well known for its diverse species of plant and animal life. It plays the critical role of an elephant corridor linking forests of Rayagada and Kalahandi districts which then connect to the Karlapat wildlife sanctuary in the north-west and Kotagarh wildlife sanctuary in the north-east. It thus has a high functional importance in creating an uninterrupted forest tract that is particularly important for the conservation of larger mammals like elephant and tiger. The significance of the PML area for wildlife is particularly high because it provides the valuable 'edge effect' to animals with open grasslands as feeding space and the neighbouring dense forests for shelter and escape.

The tiny endangered primitive tribal group of the Dongaria Kondh, renowned for their skill in horticulture, live in the upland areas of the Niyamgiri hills and depend on its forests intensely. Their distinctive cultural identity is intrinsically linked to the Niyamgiri hills and they have crafted a diverse and intricate shifting cultivation based agro-forestry system that uses mountain slopes and streams to great advantage. In addition, they collect a variety of forest produce for self use as well as sale and also rear chicken, pigs, goats and buffaloes. Since their population is very small, they regard land as plentiful and leave most of it forested.

The other primitive tribal group that depends upon these forests is the Kutia Kondh who live on the margins of these forests. The PML site is amongst the highest points in the hills and it is considered especially important as a sacred site by both the Kutia and the Dongaria Kondh. Their reverence for the hills is rooted in their strong dependence on the natural resources that the mountains provide. The proposed mining lease (PML) area is used by both these communities and is part of their Community Reserved Forests as well as their habitat, since they depend on it for their livelihoods as well as socio-cultural practices. The age-old access of Kutia and Dongaria Kondh to the PML area and the surrounding forests has been recognised in several forest settlement reports and Working Plans.

Besides the Dongaria Kondh and the Kutia Kondh Scheduled Tribes, mining is also likely to adversely affect an almost equal number of Dalits living in the Kondh villages who are landless and earn their living by providing various services including trading in the horticultural produce grown by the Dongaria Kondh. The truth of their de facto dependence on the Niyamgiri forests for the past several decades can not be ignored by a just government aiming at inclusive growth.

Ecological Costs of Mining

- Mining operations of the intensity proposed in this project spread over more than 7 square km would severely disturb this important wildlife habitat that has been proposed as a part of the Niyamgiri Wildlife Sanctuary.
- More than 1.21 lakh trees would need to be cleared for mining besides many lakh more shrubs and herbal flora.
- Mining in the PML will destroy the valuable 'edge effect' of the grassland-forest landscape and adversely affect wildlife in the area.
- The grasses are breeding and fawning ground for Four-Horned Antelope (*Tetracerus quadricornis*), Barking Deer (*Muntiacus muntjac*), as well as Spotted

Deer (*Axis axis*). A rare lizard, Golden Gecko (*Callodactylodes aureus*), is found on the proposed lease area. The populations of all these species will decline if mining is allowed.

- The value of Niyamgiri hill forests as an important elephant habitat is well recognized by its inclusion in the South Orissa Elephant Reserve. Mining on the scale proposed in this habitat would severely disturb elephant habitats, and threaten the important task of elephant conservation in south Orissa.
- The mining operations in the PML site involves stripping off more than 7 square kilometres of the Niyamgiri hill top which would drastically alter the region's water supply, severely affecting both ecological systems and human communities dependent on this water.

Human Costs of Mining

- The PML area is intimately linked, by way of economic, religious and cultural ties, to 28 Kondh villages with a total population of 5148 persons. The affected include about 1453 Dongaria Kondh which constitutes 20 per cent of the total population of this tribe.
- If the economic, social and cultural life of one-fifth of the Dongaria Kondh population is directly affected by the mining, it will threaten the well being of the entire community.
- Since the Dongaria and Kutia Kondh are heavily dependent on forest produce for their livelihood, this forest cover loss will cause a significant decline in their economic well-being. Landless Dalits who live in these villages and are dependent upon the Kondh will also be similarly affected.
- Lands that the Dongaria Kondh cultivate lie in close proximity to the PML area. Mining-related activities such as tree-felling, blasting, the removal of soil, road building, and the movement of heavy machinery will deny them access to their lands that they have used for generations.
- These activities will also adversely affect the surrounding slopes and streams that are crucial for their agriculture.

Violations of the FRA

It is established beyond any doubt that the area proposed for mining lease (PML) and the surrounding thick forests are the cultural, religious and economic habitat of the Kondh Primitive Tribal Groups. Discouraging and denying the claims of the Primitive Tribal Groups without the due process of law is illegal on the part of district or sub-divisional committees. Since the provisions of the FR Act have not been followed by the state government, and the legitimate and well established rights of the Kondh Primitive Tribe Groups have been deliberately disregarded by the district administration and the state government, the only course of action open before the MoEF is to withdraw the Stage 1 clearance given under FCA for the said area.

From the evidence collected by the Committee, we conclude that the Orissa government is not likely to implement the FR Act in a fair and impartial manner as far as the PML area is concerned. Since it has gone to the extent of forwarding false certificates and may do so again in future, the MoEF would be well advised not to accept the contentions of the Orissa government without independent verification. GoI should, therefore, engage a credible professional authority to assist people in

filing their claims under the community clause for the PML area with the state administration.

In sum, the MOEF cannot grant clearance for diversion of forest land for non-forest purposes unless:

4. The process of recognition of rights under the Forest Rights Act is complete and satisfactory;
5. The consent of the concerned community has been granted; and
6. Both points have been certified by the Gram Sabha of the area concerned (which must be that of the hamlet being a Scheduled Area).

All of these conditions, not any one, must be satisfied. This is irrespective of the fact whether people have filed claims or not. In short, the circular of 3 August, 2009, by the Ministry of Environment and Forests, which lays down these conditions has articulated the correct legal position.

If mining is permitted on this site it will not only be illegal but it will also:

- Destroy one of the most sacred sites of the Kondh Primitive Tribal Groups;
- Destroy more than seven square kilometres of sacred, undisturbed forest land on top of the mountain that has been protected by the Dongaria Kondh for centuries as sacred to Niyam Raja and as essential to preserving the region's fertility;
- Endanger the self-sufficient forest-based livelihoods of these Primitive Tribal Groups;
- Seriously harm the livelihood of hundreds of Dalit families who indirectly depend upon these lands through their economic relationship with these Primitive Tribe Groups; and
- Build roads through the Dongaria Kondh's territories, making the area easily accessible to poachers of wildlife and timber smugglers threatening the rich biodiversity of the hills.

Violation of Forest Conservation Act

- The company is in illegal occupation of 26.123 ha of village forest lands enclosed within the factory premises. The claim by the company that they have only followed the state government orders and enclosed the forest lands within their factory premises to protect these lands and that they provide access to the tribal and other villagers to their village forest lands is completely false. **This is an act of total contempt for the law on the part of the company and shows an appalling degree of collusion on the part of the concerned officials.**
- For the construction of a road running parallel to the conveyor corridor, the company has illegally occupied plot number 157(P) measuring 1.0 acre and plot number 133 measuring 0.11 acres of village forest lands. This act is also similar to the above although the land involved is much smaller in extent.

Violation of the Environment Protection Act (EPA)

- The company M/s Vedanta Alumina Limited has already proceeded with construction activity for its expansion project that would increase its capacity six fold from 1 Mtpa to 6 Mtpa without obtaining environmental clearance as per

provisions of EIA Notification, 2006 under the EPA. This amounts to a serious violation of the provisions of the Environment (Protection) Act. This expansion, its extensive scale and advanced nature, is in complete violation of the EPA and is an expression of the contempt with which this company treats the laws of the land.

Violation of conditions of Clearance under EPA granted to Refinery

- The refinery was accorded clearance under the EPA on the condition that no forest land would be used for the establishment of the refinery. But now it is clearly established that the company has occupied 26.123 ha of village forest lands within the refinery boundary with the active collusion of concerned officials. Hence, the environmental clearance given to the company for setting up the refinery is legally invalid and has to be set aside.

Very limited relevance to the expanded Refinery:

- The mining activities in the PML site will have limited relevance to the refinery now under a six fold expansion as the 72 million ton ore deposit here would last only about four years for the increased needs of the expanded refinery. In balance against this are the severe adverse consequences on the primitive tribal people, environment, forests and wildlife that inhabit these forests.

In view of the above, this Committee is of the firm view that allowing mining in the proposed mining lease area by depriving two Primitive Tribal Groups of their rights over the proposed mining site in order to benefit a private company would shake the faith of tribal people in the laws of the land. Since the company in question has repeatedly violated the law, allowing it further access to the proposed mining lease area at the cost of the rights of the Kutia and Dongaria Kondh, will have serious consequences for the security and well being of the entire country.

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ANNEXURE - 1

CERTIFICATE TO BE FURNISHED BY THE COLLECTOR OF THE CONCERNED DISTRICT

1. It is certified that the complete process for diversion and settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been carried out for the entire forest area of 89.811 ha of Khambessi PRF, 68.447 of Nimagiri PRF and 149.355 Ha of jungle block (PF) in Rayagada District proposed for diversion for the Lanjigarh Bauxite Mining Project of Orissa Mining Corporation Ltd. It is revealed from the records that there are no claims either of any person or of any community residing around the total forest area of 307.613 ha proposed for diversion for the Lanjigarh Bauxite Mining Project of Orissa Mining Corporation Limited under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
2. It is certified that the proposals for such diversion have been placed before each of the Gram Sabhas of forest dwellers who are eligible under the Forest Rights Act. Details of the projects and its implications have been explained to them in vernacular language. ~ Not Applicable since there are no claims of any individual or community for the area proposed for diversion. Further there is no habitation or any revenue village boundary within the entire mining lease area of 313.128 Ha falling under Rayagada district.
3. It is certified that discussions and decisions on such proposals had taken place only when there was a quorum of minimum 50% of members of the Gram Sabha present.- Not applicable in view of 2 above.
4. It is certified that the rights of primitive tribal groups and pre-agricultural communities have been specifically safeguarded as per Section 3(1) (e) of the Forest Rights Act.
5. It is certified that the diversion of forest land for facilities managed by Government as required under Section 3 (2) of the Forest Rights Act (if any) have been completed and that the Gram Sabhas have consented to it.

Collector & District Magistrate, Rayagada
Chairman District Level Committee

CERTIFICATE TO BE FURNISHED BY THE COLLECTOR OF THE CONCERNED DISTRICT

1. It is certified that the complete process for diversion and settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been carried out for the entire forest area of 353.136 Ha of Niyamgiri Reserve Forest in Kalahandi District proposed for diversion for the Lanjigarh Bauxite Mining Project of Orissa Mining Corporation Limited. It is revealed from the records that, so far there are no claims of individual or community under the ST. & Other Traditional Dwellers (Recognition of Forest Rights) Act 2006 over the above 353.136 ha area proposed for diversion.
2. It is certified that the proposals for such diversion have been placed before each of the Gram Sabhas of forest dwellers who are eligible under the Forest Rights Act. Details of the projects and its implications have been explained to them in vernacular language. - Not Applicable since there are no claims of any individual or community for the proposed for diversion. Further there is no habitation in the area of 408.195 ha of mining lease falling in Kalahandi district.

3. It is certified that discussions and decisions on such proposals had taken place only when there was a quorum of minimum 50% of members of the Gram Sabha present.-
Not Applicable in view of Point No 2 above.
4. It is certified that the rights of primitive tribal groups and pre-agricultural communities have been specifically safeguarded as per Section 3(1) (e) of the Forest Rights Act.
5. It is certified that the diversion of forest land for facilities managed by Government as required under Section 3 (2) of the Forest Rights Act (if any) have been initiated and will be completed.

Collector & District Magistrate, Kalahandi

Chairman District Level Committee

NOTE ON IMPLEMENTATION OF F.R.A.2006 IN THE VILLAGE
RENGOPALI AND BANDHAGYDA

RENGOPALI:


FRC President: Sri Lacha Majhi S/O Sri Thakur
FRC Secretary: Sri Duta Majhi S/O Sri Pulli.

The village consists of 65 Kutia Kondha (ST) households. 62 Individual Claims were received by the FRC. The cases were placed before the Grama Sabha. After joint verification on possession of forest land, the Grama Sabha accepted the claims of 57 claimants and rejected 5 cases as they could not establish their possession of forest land. All the 57 claims along with the required documents sent to SDLC, Bhawanipatna, thereafter to DLC. All the 57 claims involving Ac.14.59 Dec. of Revenue forest have been approved in the DLC and the Title Deeds have also been distributed to the claimants.

BONDHAGUDA:

FRC President: Sri Doka Majhi S/O Sri Bali
FRC Secretary: Smt. Almoti Majhi W/O Sri Loba

27 Kutia Kondha (ST) families are residing in the village. 25 Claims application were received by the FRC. An extent of AC.140.45 Dec. forest land was claimed. The land which they are claiming is under the occupation of Vedant Aluminium Ltd., Lanjigarh and they have constructed Red Mud Pond. The Grama Sabha yet to be conveyed by the villagers to dispose the claims. Besides the above, he. 2.17 Dec. vide he. No. 52, Plot No. 11, Khasam. Revenue demand is bounded by vedanta Aluminium Ltd, Lanjigarh.


Special Officer
KKDA, Lanjigarh

ANNEXURE - 3

DETAILS OF LIST OF VILLAGES AROUND LANJIGARH BAUXITE MINING AREA			
RAYAGADA DISTRICT			
Sl No	Name of the Village	Appx Aerial Distance from ML boundary in Km	Population
1	Jarappa	1.00	188
2	Khambessi	1.50	90
3	Lakhpadar	1.50	290
4	Phattangpadar	2.00	360
5	Poribhatta	1.75	155
6	Lamba	4.00	96
7	Gumma	5.25	190
8	Surudipai	3.75	8
9	Sarkaparhi	3.50	36
KALAHANDI DISTRICT			
1	Palaberi	1.00	36
2	Phuldumer	1.00	77
3	Konakadu	1.00	0
4	Tadijholā	1.50	80
5	Trilochanpur	3.25	104
6	Golakuma	2.75	519
7	Ladang	4.00	54
8	Kadamgurha	2.25	145
9	Tentulipadar	2.00	48
10	Balabhadrapur	2.25	458
11	Semilibhatta	2.25	168
12	Patloma	3.75	74
13	Kendubardi	2.50	406
14	Kenduguda	3.25	223
15	Rengopalli	1.75	210
16	Basantpada	2.25	649
17	Dengsargi	2.25	91
18	Kansari	2.50	233
19	Bandhaguda	3.00	160

ST Rao
SO, KKDPA

ANNEXURE - 4

(English translation of gram sabha resolutions of village Kendu Bardi, Phuldumer, Dengasargi, Basantapada and Palberi from Kalahandi district)

To
The Sub-Collector
Chairperson, Sub-Divisional Level Committee

Sub: Submission of Claim form as per the Forest Rights Act

Sir

We are the habitants of Kendu Baradi Village of Lanjigarh Gram Panchayat. After constituion of Forest Rights Committee, we have received the claims and verified as per the Forest Rights Act, 2006 & Rule 2007. After the verification of claims on Individual rights and Community right, the Gram Sabha has duly approved it.

Therefore, we are hereby requesting you to accept our claim forms and ensure justice through recognising our rights.

Yours
faithfully,

Kumuti Majhi

President
Forest Rights Committee
G.P. Lanjigarh

Sadanda Naik (Villagers of Kendu Baradi Village)

Secretary
Forest Rights Committee
G.P. Lanjigarh

Annexures to the Application:

1. 75 numbers Individual Claim forms
2. 1 Community Right Claim Form
3. Evidences in support of Community Rights
4. List of Claimants
5. Resolution of Plaii Sabha (Gram Sabha)

Note: *This application is received by the Clerk of Welfare Section, Sub-Collector Office, Bhawanipatna on behalf of SDLC on 28th August 2009.*

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rule, 2007

Government of India
Ministry of Tribal Affairs
Form – B
Claim Form for Community Rights
[See Rule 11(1)(a) and (4)]

1. Name of the claimant(s):

Sl. No.	Name of the Claimants	Scheduled Tribes	Other Traditional Forest Dwellers
1	Kumuti Majhi	ST (Kandha)	
2	Jayasing Majhi	ST (Kandha)	
3	Rishma Majhi	ST (Kandha)	
	And all the villagers		

2. Village: Kendu Baradi
3. Gram Panchayat: Lanjigarh
4. Tahasil/Taluk: Lanjigarh
5. District: Kalahandi

Nature and Extent of Rights enjoyed:

1. Community rights such as nistar, if any:

{See Section 3(1) (b) of the Act}
BLANK

2. Rights over minor forest produce, if any: **(Pg No-4 of the claim form)**

{See Section 3(1)(c) of the Act}

We the villagers of Kenu Baradi collect minor forest produces like, Harada, Bahada, Amla, Mahua and etc. from **Niyamgiri Hills** like Kumar jana, Bariha Khol, Kusum padar, Dadi Jhor, Bhalu Koda, Jharmunda, Amla chuan, Jhimidi Jhamjhola, Mundi Bhata, amtha Padar, Ijurupa, Paharala, Amla Bhata of our livelihood purpose.

(The names of different types minor forest prouces they collect from Niyamgiri Hills has been mentioned in the claim form.

The words in red fonts indicate the local names of the hills, forests/places from where they collect MFPs.)

3. Right over Grazing (if any) **(pg No-5 of the claim form)**

We take our livestock for grazing in the Niyamgiri Pahad/hills. We demand rights for grazing of animals over Mahulbhatta (rainy season), top of Niyamgiri (whole Year), Kamalabagicha and Hathikhamar

- 4 Rights to access biodiversity, intellectual property and traditional knowledge (if any) – **(Pg No -6 of the claim form)**

We, the people of **Niyamgiri hill ranges**, have been living symbiotically with the wildlife of Niyamgiri hills. To keep the animals away from our shifting cultivation fields we use indogenous methods like 'beating of drums, kadkhadi, scarecrow (*manisaputala*) etc. Many of the people our village are traditional healers such as Konga Majhi, Father Tutula, Gudu Majhi (Father – Late Natha Majhi), Mindu Majhi (Husband – Bacchu), Mandar Majhi (Husband – Late Jama), Rajena Majhi (Father-Late Bana.) etc

They collect the medicinal plants and herbs like Bhui Karuan, satvari, bhui neem, kukuda danga, patakumuda etc from Niyamgiri hills to cure stomach pain, headache, malaria fever, diaorehhea, safe delivery, fever etc.

5. Other Traditional rights (**Pg No – 7 of the claim form**)

3rd point mentioned in the claim form –

We use 5 acres of Pudamundi jungle which lies to the North West of our village, and 5 acres of Kempabhata jungle falling in **Niyamgiri Reserve forest area** which lies south to our village as cremation ground.

4th point

Right to Passage to our Neighbouring village and to access our agricultural field in Niyamgiri Rserve Forest area

5th point

We collect red soil from **Tatikuda Raja Jharana of Niyamgiri Reserve Forest**

**Village- Phuldumer
GP- Trilochanpur
Block-Lanjigarh
Dist – Kalahandi**

FORM B (COMMUNITY CLAIM FORM)

1) Name of the claimants

Sl No	Name of the claimants	Scheduled Tribes	Other Traditional Forest Dwellers
1	Bogi majhi	Adivasi (Dongaria)	
2	Lani Majhi	”	
3	Bereke majhi	”	
4	Rama Majhi	” ”	
	Ratu Majhi	”	
	Mukula Majhi	”	
	Sitari Majhi	”	
	Kidma Majhi	”	
	Sundara Majhi	”	
	Gahana Majhi	”	
	Bacchu Majhi	”	
	Sadu Majhi	”	
	Dunda Majhi	”	
	Jana Majhi	”	
	Tia Majhi	”	
	Luta Majhi	”	
	Budara Majhi	”	
	Mahadev Harijan	”	Harijan
	Sahadev Harijan	”	Harijan
	Garia Nayak	”	”

2. Village – Phul Dumer

3. GP – Trilochanpur

4. Tehsil/Taluka – Bhawanipatna

5. District – Kalahandi

Nature of Community Rights

2. Minor Forest Produces Sec 3 (1) (c)

We, villagers of Phuldumer, collect NTFPs such as Harida, Bahada, Amla, Mahula, Tola, Kendu, Char, Siada Flower, Mango, Jackfruit, Pineapple, Banana, Naringi, Jhata, Jharpotal, Jungle kala, Kundru, Bhalia, Tangan fruit etc , different tubers like Pita kanda, Mundi Kanda, Bhata Kanda, Jungle kanda, Serenga Kanda, Kulia Kanda, Barel Kanda, Kadru Kanda, Jimi Kanda etc, different saag like Muti, Batuda, Kuler, mushroom, kendu leaves, Siali leaves, Sal leaves, etc from Amlabhata, Kinarbali, Narengaphala, Katabali, Sukupa, Karangasua, Amacharani, Keluaghati, Kadanipau, Sudurajuda, Pataradongar , Kinarbali areas of Niyamgiri hills.

We demand rights of NTFP collection, use and selling.

3. A. Rights over water bodies, fish etc (Sec 3 1 (d))

We use water for drinking, agriculture, livestock purpose from three of the nalas of Niyamgiri hill viz: **Melaalanala which is North West to our village , Karagusua nala which is west to the village and Aragubali nala towards the east of the village.**

We also collect fish, crabs and other water products from these water sources.

B. Grazing Sec 3 (1) (d)

We have been using about 25-30 acres of forestland of Niyamgiri hills since generations viz **Kinarbali lying towards south of our village, Melthal towards west, Tangri Dongar towards north and Patar Dongar towards east**
We use seasonally Dompadar (north east to our village) and Naringphala (South.) of our village for grazing.

4. PTG and Pre agricultural communities Sec 3 1 (e)

We have been practicing *Dongar/kudki chas* (pre agricultural cultivation practice) in Karagsua, Melathala, Sukupa, Adanabali, Tangari Dongar, Katabali, Kinerbali, Naringphala, Patara Dongar, Kanja Dongar areas of Niyamgiri hill for our livelihood

5. Other Traditional Rights (if any) Sec 3 1 (l)

We demand rights over sacred areas like Kaneri Penu which is at the middle of our village, **Bangeri Penu** located at **Melathala Dongar of Niyamgiri Hill**, and Kidki Devata' s Dharanigudi at Kudribali

We use 5 acres of land of **Purnapadar of Niyamgiri hills**, located towards north east of our village as creameation ground.

We use the following areas of Niyamgiri hills as roads (foot way) since generations – Karagachua rasta towards west, Melathala towards south, Tangiri jungle towards north, Palaber towards north east, Nariginipadar and Kinarbali dongar towards south

We collect Red soil from 2 acres of land near Sunajharan of Niyamgiri Hills

We use Amlabhata (Badabhata) the area of Niyamgiri which is the proposed mining lease area of Vedanta

Village – Dengasargi
G.P. : Lanjigarh
Block : Lanjigarh
Dist.: Kalahandi

FORM – B
Community Claim Form

1. Name of the Claimants:

No. of Claimants = 44 and other villagers, out of which 43 are PTG (Kutia Kondh) and 1 is OBC (Lohar)

Nature of Community Rights:

2. NTFP Rights (Sec 3(1) (c):

Traditionally, we the villagers have been collecting the NTFPs like Bahada, Harida, Amla, Mahula, Tola etc., different Sag like Muti, Badud, Kuler, Pandarisag,, Bahalsag etc., Mushrooms like Binchatu, Gobarchhatu, Kotrachhatu, Sargichhatu, Baelchhatu etc., Siali leaf, Fulbadun, Katabadun, Siali rasi, Honey like Kati, Sataphari, Jhuna, Karadi, Medicinal plants like Bhuinkaruan, Patalgaruda, Satabari etc , from the different Forest / Dongars of Niyamagiri hill like Dugubali, Gunthirani, Patardangar, Badaamba, Mundikala, Kilangatrali, Jamujhola, Uensamandabhata, Pajingeyu, Dhangadabhata, Kutladongar, Laharang Tukru, Kinikala, Singbali Kudanga, Kadoband, Karkisua, Dhobamali, Gamerghati as well as from Anlabhatta which is the proposed mininig areas of Niyamagiri hill by Vedanta Company for our life and livelihoods. So we demand rights to collect, use and dispose of Minor Forest Produces.

3. A. Rights over Water Bodies (Sec (3) (1) (d))

We the villagers of Dengsargi have been using the water of 6 nos. of nala / Jharana of Niyamagiri hill like Sahajapada nala (south), Mundijharan (towards west, Basantapada sandhi), Kinikala nala (towards east, Kansari sandhi), Gungijahala Jharan (South – east), Rembapatang nala (south – east), Daasbalka nala (south-west) etc. for bathing, washing and drinking purposes and also using the sand, stone of these nalas for our house and road construction work. Apart from that we have been using the fish, crab etc of these Nalas as our food since generations.

B. Grazing Rights (Sec (3) (1) (d))

We the villagers have used Anlabhatta, Dhangadabhata, Pajingeyu, Adeswali, Gundirani, Duguwali dongar / forest of Niyamagiri for grazing purposes since generations. But due to Vedanta Company now those areas are prohibited for us.

4. Rights including community tenures of habitat and habitation of PTG

(Sec 3(1) (e)):

We the villagers of Dengsargi have been traditionally cultivating Dongar / Kuduki cultivation on Dongars of Niyamagiri like Kinikiladongar, Gungukutidongar, Karighati, Eyumunding, Badaamba, Mundikala, Kamalawada, Kilangatrali, Katadakupali, Jamjhola, Daasabalka for our life and livelihood.

5. Right to access Biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and Cultural diversity if any:

We have been living together on Niyamagiri hill with different wildlife since generations. We have been using some strategies to ward off the wildlife like Thadthada bamboo, Dhol, Dangdanga, Putuli etc.

The persons of our village namely Sri Kumuti Majhi, Fater Late Sukru Majhi, Tumbe Bewa (Betuni), Husband – Late Tenaku Majhi, Kamali Bewa, Husband – Late Dina Majhi collect the medicinal plants from the Niyamagiri hill and making medicines for the treatment of different diseases.

6. Other Traditional Rights if any:

Sec 3(1) (I)

- a) We the villagers have been traditionally recognised from Kinikila to Karighati, Gungikuti, Eyumundi, Duguwali, Tundirani, Badaamaba, Daasabalka, Kilangatrali, Mundikala, Jamujhola, Kamalabada, Khutla dongar, Loharatukru, Poyotukuru, Sindbahalichhal, Eyuambabhata and again to Kinikila of Niyamagiri hill as our traditional boundary.
- b) We have traditionally recognised Sahajapada dharanigudi located towards the south of Gundirani of Niyamagiri hill, Kilangatrali dharani, Jamajhula dharani and Kamalawada dharani located towards West and Niyamarajagudi of Anlabhatta of Niyamagiri as our sacred places.
- c) We have been traditionally using the footways from our village to Niyamagiri like Gungikuti road, Eyumundi, Saajapada dharani road, Badaamba rod, Kilangatrali, Mundikhala road, Jamtrila road, Kamalagwida road located towards east of our village and Kutla dongar road towards West and Lohara tukuru road, Puyutukuru road towards north-west, Eyuambabhata road towards north etc. since generations.
- d) We have been using near about 5 / 7 acres of jungle land of **“the middle part of Loharangatukuru and Puyutukuru”** located towards north of our village as the cremation ground.
- e) We are collecting “redmud/ perumati” from Lalmati khala of Gundiraja jungle which is located near the Sahajapada dharani of Niyamagiri hill.
- f) We have traditionally using Kui Language as our local language and traditional dance and song for our entertainment.

7. Other Information:

The ancestors of our village had been living near the Sahajapada dharanigudi of Niyamagiri hill. Due to repeatedly attack of wild animals, the peoples came down from the top of Niyamagiri hill to the bottom of the hill and settled in the Dengasargi village. In the Princely time, the Prince of Lanjigarh had given **“Kuduki Patta”** to the Father of Kumuti Majhi – Late Sukru Jani and Jama’s father Late Lakanu Majhi for the Kuduki cultivation at **“Kutla Dongar”** and later the patta had given to Kumuti Majhi and Jama Majhi.

**Village – Basantapada
G.P. : Lanjigarh
Block : Lanjigarh
Dist.: Kalahandi**

FORM – B
Community Claim Form

1. Name of the Claimants:

No. of Claimants = 44 out of which 17 are PTG (Kutia Kondh) and 27 are the ST (Kondh Caste)

Nature of Community Rights:

2. Nistar Rights (Sec 3(1)(b):

Basantapada was settled by Sri Laxmidhar Naik during the reign of the king since last 300 years. The Prince of Kalahandi had given him Bronze patta for living on Niyamgiri hill. Till now his descendant Sri Duryodhan Naik, aged about 80 yrs is alive.

3. NTFP Rights (Sec 3(1) (c):

Traditionally, we the villagers of Basantapada have been collecting the NTFPs like Bahada, Harida, Amla, Mahula, Tola, Kendu, Chahara, Khajur, Siadaphal, Sarangiphal, Mango, Jackfruit, Pineapple, Salapa, Garudaphal, Orange, Banana, Naringa, Lemon, Jamu, Bela, Kusuma, Pudei, Bhalia, Maerlendi, Asurla, Arangel, Jhata, Jharapotal, Karkote, junglekunduru, Karla, Tanganphaln etc., different tubers like Bhatakanda, Mundikanda, Pitakanda, Banakanda, Kulipakanda, Serengakanda, Kudukanda, Jimikanda, Barelkanda, Sarukanda etc., different Sag like Goti, Bule, Gandarisag, Ludrusag, Baradasag, Bahalsag, Pipalsag, Tapdisag, Girilasag, Kokadisag, Birsingsag, Kandersag etc., Mushrooms like Binchati, Gobarchhati, Kotrachhati, Sargichhati, Baelchhati, Pualchhati, Banjichhati, Amruchhati, Mundechhati, Jamachhati, Panduchhati, Pitachhati, Majuradimachhati etc., Leaves like Siali leaf, Kendu leaf, Sargi leaf, Bundel leaf, Karei leaf, Saru leaf, Fulbaghun, Katabagun etc., Honey like Kati, Sataphari, Bichhana, Jain, Tiker , Gum like Bahada, Munde gum, Chahar gum etc., Karadi like Panikaradi, Banjkaradi, Kantakaradi etc., toothstick, Patalgaruda, Pataalkumuda, Bhuinkaruan, Tai, Bila etc. from the nearby different Forest / Dongar of Niyamagiri hill like Khutla dongar, Jamjhola, Gongijhola, Gondarichuan, Bijaghati, Sukulijharan, Surujhalijharan, Niyamagiri badajharan, Anlabhatta, Mundaamba, Wadapakadar, Mataamba etc. for our life and livelihoods. So we demand rights to collect, use and dispose of Minor Forest Produces.

4. A. Rights over Water Bodies (Sec (3) (1) (d))

We the villagers have been using the water of 3 Jharans like Gandarichuan (Khingachha), Surujhalijharan, Niyamagiri badajharan located towards the south for bathing, washing and drinking purposes and also cultivating the vegetables by irrigating the water of these Nalas. Apart from that we have been using the fish, crab, tortoise etc. of these Nalas as our food since generations.

B. Grazing Rights (Sec (3) (1) (d))

We the villagers have been using different places of Niyamagiri hill like Bambolima, Jamjhola, Gangijhola, Bijaghati, Sukulijharan, Surujhali, Niyamagiribadajharan, Mundaamba, Wadaka padar, Kandakari, Madaamba etc dongar near about 50 acres of forest land for grazing purposes since generations. So, we demand for grazing rights over these lands.

5. Rights including community tenures of habitat and habitation of PTG

(Sec 3(1) (e)):

We the villagers have been traditionally practicing dongar cultivation on Niyamagiri hill like Raggi, Kochala, Kango, Gandia, Suan, Khedjana, Badajana, Jhudunga, Kating, Blackgram, Redgram, Kandula, Baeljhata, Castor, Khursa, Chakarga, Bastariajhata, Kechketari, Semi, Halada, Zinger, Saru, Sweet potato, Cucumber, Kumuda, Pumpkin, Banak, Boda, Chilli, Tamato, Ladies finger, Papeya, Banana, Lemon, Orange, Naring, Pinapple, Jackfruit, Alasi, Til, Kojo, Guruji, Khandadhan, Jhari, Kokaddhapa etc. for our life and livelihood.

6. Right to access Biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and Cultural diversity if any:

We have been living together on Niyamagiri hill with different wildlife since generations. We use some traditional instruments like Thadthada bamboo, Dhol, Dangdanga, Putuli and to protect the crops from the wildlife like Monkey, wild boar, Elephant, Porcupine, Bear, Barking deer, Rabbit and Peacock, kiri bard, Gegda, Panaka, Mouse etc.

The persons namely Nabin Majhi, Lingi Majhi, Bhala Mali, Duryodhan Naik, Mendrani Majhi, Arama Haldar collect the leaves, fruits, roots etc. from medicinal plants like Harida, Bahada, Anla, Satabari, Patalgaruda, Bhuinlim etc. and prepare the medicine for different diseases like Markat, Murchha, Bata, Alati, Fever, Stomach pain, Ear Pain, Loose motion etc.

7. Other Traditional Rights if any:

- a) We the villagers have traditionally recognised Khotladongar, Jamjhola, Gungijhola, Bijaghati, Mukulijharan, Sulujhali, Niyamagiribadajharan, Mundaamba, Wadakapadar, Madaamba, Kotdwar, Aselkupuli, Rangdingra, Mudeghati, Kotnali, Pattamunda, Hatajholi, Piltajholi, Kumjhola, Similigachhajholi, Devtaghar mango field of Niyamagiri hill as our traditional boundary.
- b) We have traditionally recognised 5 Devipitha like **Banabhairaba pitha** located in the east of the village, **Dharanipitha**, Dharani of **Kandabasantpada**, Dharani of **Jamajhola** , **Ranikanda Dharani** located in the middle of the village as our sacred places.
- c) We have been using near about 3 acres of land located towards South west of the village as the cremation ground for our village.
- d) We are traditionally using the footway from our village to Dengsargi village located towards east, Khambes village, Lakpada (Raigada) and towards west south Fuldumer, Kunakadu, Pajiiyu as well as the way to Niyamagiri which is coming under Niyamagiri Reserve Forest.
- e) We are collecting redmud from near about 1 acre of land of Sahaspada located towards east of Niyamagiri Reserve forest which is near about 5 acre of land.
- f) We have traditionally observing different festivals like Maa Bolen, Mandiarani, Puspuni, Parabchitra, Bhanjatra, Dusserha, Nuankhai, Nankpuja (Bahuda car festival).

Village : Palberi
G.P. : Trilochanpur
Block : Lanjigarh
Dist.: Kalahandi

FORM – B
Community Claim Form

1. Name of the Claimants:

No. of Claimants = 25, all are PTG (Dongria Kondh)

Nature of Community Rights:

2. NTFP Rights (Sec 3(1) (c):

We the villagers of Palberi have been traditionally collecting the NTFPs like Bahada, Harida, Amla, Mahula, Tola, Kendu, Chahar, Khajur, Siadphal, Sargiphal, Mango, Jackfruit, Pinapple, Salap, Garudaphal, Orange, Banana, Naring, Lemon, Jamun, Bela, Kusum putei, Bhalia, Maerlendi, Armula, Arangel, Jhuta, Jharpele, Karkot, Junglekundar, Karla, Tangalphal etc. different tubers like Bhatkanda, Mundikanda, Pitakanda, Junglekanda, Serengkanda, Kuliakanda, Barelkanda, Kadrukanda, Jimikanda, Sarukanda etc., different Sag like Moti, Badud, Kuler, Gandarisag, Lujusag, Baradasag, Bahalsag, Pipalsag, Tapadisag, Girilisag, Kokotisag, Biringsag, Kandersag etc., Mushrooms like Binchatu, Mudechhati, Gobarchhati, Kuturachhati, Saragichhati, Baelchhati, Pualchhati, Banjichhati, Ambachhati, Mundechhati, Jamchhati, Pandochhati, Pitachhati, Majurdimchhati etc., Siali leaf, Fulbadun, Katabadun, Debagun, Kendu leaf, Sargi leaf, badel leaf, Kurei leaf, Saru leaf etc, Honey like Kati, Sataphari, Bichhana, Maen, Tiker, Jhuna, Gum like Bahadaatha, Mudeatha, Chaharatha, Sial rasi, Dhingiamal, Merdamal, Pitarasi, Kaunru, Demiriamal, Gandua etc. Karadi like Panikaradi, Banjkaradi, Kantakaradi, toothstick, Medicinal plants like Bhuinkaruan, Patalgaruda, Patalkumuda, Tai, Bila etc , from the different Forest / Dongars of Niyamagiri hill like Argubali, Sindibahili, Gudusuanga, Anlabhatta, Kanjababanda, Purtirayi, Niyamagiri hill, Fadudapampu, Tidabali, Atajalanga, Baelpadar, Pedabaling, Kachadakhuti etc. for our life and livelihoods. So we demand rights to collect, use and dispose of Minor Forest Produces.

3. A. Rights over Water Bodies (Sec (3) (1) (d))

We the villagers have been using the water of 3 nala / Jharana of Niyamagiri hill like Gadagada nala located near the Gunginasa, Kanpapdang near Satarakhala and Ladeli nala near Jhabadamba. for bathing, washing and drinking purposes and also using the sand, stone of these nalas for our house and road construction work. Apart from that we have been using the fish, crab etc of these Nalas as our food since generations.

B. Grazing Rights (Sec (3) (1) (d))

We the villagers have used different places like Toter dongar, Baelpadar, Niyamagiri etc dongar / forest of Niyamagiri which is near about 0.20 acre of forest land for grazing purposes since generations.

4. Rights including community tenures of habitat and habitation of PTG (Sec 3(1) (e)):

We the villagers of have been traditionally cultivating Dongar / Kuduki cultivation like raggi, Kosala, Kango, Gandia, Suan, Badjana, Tupush, Kating, Blackgram, Redgram, Kandula, Baeljhata, Jada, Khurusa, Chakarga, Basturiahara, Kechkedari, Semi, Turmeric, Zinger, Saru, Sweetpotato, Cucumber, Kumuda, Pumpkin, Banaka, Geba, Chilli, Tamato, Ladies finger, Papeya, Banana, Lemon, Orange, Naring, Pinapple, Jackfruit, Alasi, Rasi,

Kodo, Guruji, Khandadhan, Jhari, Kokodtapa etc. on Dongars of Niyamagiri like Purunabhata, Sindbahili, Argunali, Gudsuang, Satrakhala, Gungibasa, Krekarbali, Danglupala, Nisanabali, Tateri etc for our life and livelihood.

5. Right to access Biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and Cultural diversity if any:

We have been living together on Niyamagiri hill with different wildlife since generations. We have been using some strategies to ward off the wildlife like sound on Thadhada bamboo, Dhol, Dangdanga, making Putuli etc and protect crops from Monkey, Wild boar, Elephant, Porcupine, Bear, Barking deer, Rabbit and Peacock, Kira bird, Gebada panaka, Mouse etc.

The 3 persons of our village namely Sri Mukuna Majhi, Mohan Majhi and Bilu Majhi have collected the medicinal plants like Harada, Bahada, Anla, Satabari, Patalgaruda, Bhuinlik etc. from the Niyamagiri hill and making medicines by using their traditional knowledge for the treatment of different diseases like cancer, fever, stomachpain, earpain etc.

6. Other Traditional Rights if any:

Sec 3(1) (I)

- a) Our ancestors have been traditionally recognised starting from the Jimram jungle of Niyamagiri to Niasanabali, Madtkhala, Niyamagiri, Sadasuang, Murtirai, Argubalu, Sindibahali, from Nuapada to Tateri as the village traditional boundary.
- b) We have traditionally recognised 4 places like Melthala of Niyamagiri hill located towards north of our village, Dharanigudi like Dharani of Baelpadar, Dharani of Khargusuan and Jatrigudi located west of our villages of Niyamagiri as our sacred places.
- c) We have been traditionally using 6 footways from our village to Tater dongar, Tadijhala, Kunakadu, Niyamagiri hill, Phuldumer and Trilochanpur since generations.
- d) We have been using near about 2 acres of mixed land of “**Gadgadang and Jimrang**” located towards south-west of our village as the cremation ground.
- e) We are collecting “redmud” from Kadangbipka jungle which is located towards north-east of our village.
- f) We have traditionally observing different festivals like Maa Bolen, Mandiarani, Pushpuni parab, Chaitra bihana yatra, Dusserha, Nuakhai, Tangapuja(Bahuda car festival) etc.
- g) We have using Kui Language as our local language and traditional dance and song for our entertainment.

7. Other Information:

We the villagers of Palberi, Trilochanpur G.P., Lanjigarh Block, Kalahandi district have been living on Niyamagiri hill since generation. We have collecting different NTFPs from the proposed area by the Vedanta Company for the extraction of Bauxite on Niyamagiri Hill like Anlabhatta (Badabhata), Pajingeyu, Uensamandabhata and Dhangadabhata for our life and livelihood. During summer season, the livestock are dependent upon for their food for 4 months on the said proposed extraction areas.

Gram Sabha Resolutions under Forest Right Act. (district Rayagada)

Village: Lakhapadar
 Hamlets: Dangamati and Patangpadar
 G.P- Parsali, Block-K.Singpur
 Dated.23.12.2009.

The Gram Sabha meeting was convened by the Lakhapadar Forest Right Committee on dated.23.12.2009 at 10.00 AM. The Revenue Inspector, K.Singpur, Forester, Welfare Extension Officer were present. All the 62 applications applied by the beneficiaries have been verified by the Committee and it has been identified that they were cultivating the forest land .After the verification, all the 62 claimants has been found eligible for getting certificate of titles and no body is found ineligible under Forest Right Act.

This has been sent to SDLC for approval.

1.	Signature of Pramoda Sikaka, President
2.	L.T.I of Tahalu Sikaka
3.	L.T.I of Sikaka Dadi
4.	L.T.I of Sikaka Dama
5.	L.T.I of Sikaka Bamunu
6.	L.T.I of Larich Laombu
7.	L.T.I of Janju Sikaka
8.	L.T.I of Huika Samba
9.	L.T.I of Kadraka Sani
10.	L.T.I of Sikaka Padamane
11.	L.T.I of Jakesika Kamita

Sl. No	Name of the beneficiary	Name of Father/husband	Land schedule			Kissam	Whether eligible
			Khata No	Plot No	Area in acres		
1.	Sikaka Sani	Sikaka Kuli	12	53/1	1.50	Pahad	
2.	Sikaka Sima	Sikaka Tuhundu	12	53/2	1.50	Pahad	
3.	Sikaka Kudunji	Sikaka Suba	12	53/3	1.50	Pahad	
4.	Sikaka Tima	Sikaka Tuhundu	12	53/4	1.50	Pahad	
5.	Sikaka Buduga	Sikaka Kuli	12	53/5	1.50	Pahad	
6.	Sikaka Budia	Sikaka Madana	12	53/6	1.50	Pahad	
7.	Sikaka Jogi	Sikaka Siba	12	54/1	1.50	Pahad	
8.	Sikaka Lada	Sikaka Siba	12	54/2	2.00	Pahad	
9.	Kadraka Bamunu	Kadraka Indra	12	54/3	2.00	Pahad	
10.	Sikaka Kanu	Sikaka Duhuna	12	54/4	2.00	Pahad	
11.	Sikaka Muguri	Sikaka Adu	12	54/5	2.00	Pahad	
12.	Sikaka Buya	Sikaka Wachu	12	54/6	2.00	Pahad	
13.	Sikaka Darku	Sikaka Asa	12	54/7	2.00	Pahad	
14.	Sikaka Malati	Sikaka Suri	12	54/8	2.00	Pahad	
15.	Sikaka Suri	Sikaka Ludura	12	55/1	2.00	Pahad	
16.	Sikaka Manu	Sikaka Mali	12	55/2	1.50	Pahad	
17.	Kadraka Samba	Kadraka Mada	12	55/3	1.50	Pahad	
18.	Krusika Kudunji	Kurusika Dulu	12	55/4	1.50	Pahad	
19.	Kurusika Sunduri	Kurusika	12	55/5	1.50	Pahad	

Sl. No	Name of the beneficiary	Name of Father/husband	Land schedule			Kissam	Whether eligible
			Khata No	Plot No	Area in acres		
		Purutu					
20.	Jakasika Dadhi	Jakasika Lataka	12	55/6	1.50	Pahad	
21.	Kadraka Kumuli	Kadraka Sana	12	55/7	1.50	Pahad	
22.	Sikaka Sitari	Sikaka Nanda	12	55/8	1.50	Pahad	
23.	Sikaka Sukuru	Sikaka Latara	12	55/9	1.50	Pahad	
24.	Sikaka Kasu	Sikaka Jama	12	55/10	1.50	Pahad	
25.	Sikaka Kalia	Sikaka Kasu	12	7/1	1.50	Pahad	
26.	Sikaka Lakini	Sikaka Bala	12	7/2	1.50	Pahad	
27.	Wadaka Kasu	Wadaka Pusha	12	7/3	1.50	Pahad	
28.	Wadaka Sane	Wadaka Pusha	12	7/4	1.50	Pahad	
29.	Sikaka Kala	Sikaka Andara	12	7/5	1.50	Pahad	
30.	Wandeleka Sanu	Wandeleka Sala	12	7/6	1.50	Pahad	
31.	Wandeleka Rela	Wandelaka Haki	12	7/7	1.50	Pahad	
32.	Wandeleka Bari	Wandeleka Sala	12	7/8	1.50	Pahad	
33.	Sikaka Asi	Sikaka Adu	12	7/9	1.50	Pahad	
34.	Sikaka Dadhi	Sikaka Adu	12	7/10	1.50	Pahad	
35.	Sikaka Jagulu	Sikaka Rama	12	7/11	1.50	Pahad	
36.	Jakesika Sita	Jakesika Kamu	12	7/12	1.50	Pahad	
37.	Sikaka Bamunu	Sikaka Derka	12	7/13	1.50	Pahad	
38.	Sikaka Butudu	Sikaka Landa	12	7/14	1.50	Pahad	
39.	Sikaka Singari	Sikaka Madya	12	7/15	1.50	Pahad	
40.	Huika Dinja	Huika Dedu	12	7/16	1.50	Pahad	
41.	Jakesika Laske	Jakesika Kamru	12	6/1	2.00	Pahad	
42.	Huika Mendra	Huika Dedu	12	6/2	2.00	Pahad	
43.	Sikaka Danda	Sikaka Saladu	12	6/3	2.00	Pahad	
44.	Sikaka Tahalu	Sikaka Danda	12	6/4	2.00	Pahad	
45.	Sikaka Adi	Sikaka Mindru	12	6/5	2.00	Pahad	
46.	Sikaka Dama	Sikaka Sakana	12	2/1	2.00	Pahad	
47.	Sikaka Haki	Sikaka Jama	12	2/2	2.00	Pahad	
48.	Sikaka Kumuradi	Sikaka Laku	12	2/3	2.00	Pahad	
49.	Sikaka Pulame	Sikaka jogi	12	2/4	2.00	Pahad	
50.	Sikaka Majhibani	Sikaka Tibu	12	2/5	2.00	Pahad	
51.	Mandika Padamani	Mandika Wandi	12	2/6	2.00	Pahad	
52.	Sikaka Bangari	Sikaka Saba	12	2/7	2.00	Pahad	
53.	Sikaka Dudu	Sikaka Budri	12	2/8	2.00	Pahad	
54.	Kadraka Sani	Kadraka Jagili	12	2/9	2.00	Pahad	
55.	Kadraka lachhi	Kadraka Matra	12	2/10	2.00	Pahad	
56.	Karchika Eleme	Karchika Adu	12	2/11	2.00	Pahad	
57.	Sikaka Dadi	Sikaka Laku	12	2/12	2.00	Pahad	
58.	Kadraka Patili	Kadraka Janju	12	2/13	2.00	Pahad	
59.	Sikaka Nanada	Sikaka Jama	12	2/14	2.00	Pahad	
60.	Sikaka Kudunja	Sikaka Jama	12	2/15	2.00	Pahad	
61.	Jakesika Ambe	Jakesika Gundu	12	2/16	2.00	Pahad	
62.	Kadraka Drika	Kadraka Lachhi	12	2/17	2.00	Pahad	

Gram Sabha Resolution under Forest Right Act.

Village: Jarapa
G.P-Sibapadar, Block-Muniguda

Dated.17.05.2008.

The 2nd Gram Sabha meeting was convened on 17.5.2008 at 10.00 AM by the President Sri Sikaka Luhuri, Jarapa Forest Right Committee .The following applicants have submitted their application before the F.R.C.The members of the FRC have verified that applications and it is found that all the 10 applicants are eligible to get Certificate of Titles under the above Act..It has been decided to recommend all the cases to the SDLC for consideration.

The meeting was ended with a vote of thanks to Chair and participants.

1.	Signature of Sikaka Luhudi ,President
2.	L.T.I of Wandeleka Bhalu
3.	L.T.I of Sikaka Kile
4.	L.T.I of Sikaka Mugri
5.	L.T.I of Wandeleka Jambu
6.	L.T.I of Pusika Chandu
7.	L.T.I of Wandeleka Ghasade
8.	L.T.I of Wandeleka Adame
9.	L.T.I of Wandeleka Usha
10.	L.T.I of Sikaka Lakame

Sl No	Name of the applicants	Name of the Father/Husband	Village	Area of the occupied land in Acres	
				Home site	Agriculture
	Wandeleka Bhima	Tipa	Jarapa	0.10	5.00
	Wandeleka Champa	Wandeleka Chandu	Jarapa	0.10	5.00
	Wadeleka Usha	Wandeleka Tanu	Jarapa	0.10	5.00
	Sikaka Drinju	Sikaka Buga	Jarapa	0.10	5.00
	Sikaka Luhudi	Sikaka Buga	Jarapa	0.10	5.00
	Wandeleka Jambu	Wandeleka Cahandu	Jarapa	0.10	5.00
	Wandeleka Dadhi	Wandeleka Laku	Jarapa	0.10	5.00
	Pusika Chandu	Pusika Jagulu	Jarapa	0.10	5.00
	Sikaka Kila	Sikaka Buga	Jarapa	0.10	5.00
	Wandeleka Bhalu	Wandeleka Khatulu	Jarapa	0.10	5.00

Gram Sabha Resolution under Forest Right Act.

Village: Khambasi
G.P-Sibapadar, Block-Muniguda
Dated.25.4.2008

The 2nd Gram Sabha meeting was convened on 25.4.2008 at 10.00 AM by the President Smt Wadaka Kudunja, Khambasi Forest Right Committee .The following 29 applicants have submitted their applications before the F.R.C. The members of the FRC have verified that applications and it is found that all the 29 applicants are eligible to get Certificate of Titles under the above Act.It has been decided to recommend all the cases to the SDLC for consideration .

The meeting was ended with a vote of thanks to Chair and participants.

	Signature of Wadaka Kudunji, President
	L.T.I of Singari Wadaka
	L.T.I of Wadaka Kudunji
	L.T.I of Mukuli Wandeleka
	L.T.I of Lachhi Wandaka
	L.T.I of Budu Jakesika
	L.T.I of Kamudu Wadaka
	L.T.I of Wandeleka Dukha
	L.T.I of Wandeleka Sana
	L.T.I of Sikaka Lasake
	L.T.I of Kutruka Kudunji
	L.T.I of Sikaka Dasi

Sl No	Name of the applicants	Name of the Father/Husband	Village	Area of the occupied land in Acres	
				Home site	Agriculture
	Wadaka Kasudu	Wadaka Nanda	Khambasi	0.10	7.00
	Wadaka Badru	Wadaka Nanda	Khambasi	0.10	4.00
	Wandeleka Suna	Wadeleka Pala	Khambasi	0.10	5.00
	Tuika Husuki	Tuika Dambu	Khambasi	0.10	4.00
	Sikaka Kundunja	Sikak Madana	Khambasi	0.10	5.00
	Wadaka Kate	Wadaka Tiniana	Khambasi	0.10	5.00
	Wadaka Telanga	Wadaka Saiba	Khambasi	0.10	4.00
	Wandeleka Kudunja	Wandeleka Dambu	Khambasi	0.10	5.00
	Jakesika Tadanga	Jakesika Jingulu	Khambasi	0.10	5.00
	Wadaka Dadhi	Wadaka Nanda	Khambasi	0.10	5.00
	Wadaka Kana	Wadaka Nanda	Khambasi	0.10	5.00
	Wandeleka Mukuji	Wandeleka Banda	Khambasi	0.10	5.00
	Kungeleka kumbhardi	Kungeleka Mutura	Khambasi	0.10	5.00
	Jakesika Bari	Jakesika Ghasi	Khambasi	0.10	5.00
	Wadaka Majabani	Wadaka Mandi	Khambasi	0.10	5.00
	Kungeleka ladu	Kungeleka Dudura	Khambasi	0.10	5.00
	Sikaka Bali	Sikaka Pusha	Khambasi	0.10	5.00
	Sikaka Suna	Sikaka Dashi	Khambasi	0.10	5.00
	Kuturuka Kudunji	Kuturuka Bare	Khambasi	0.10	8.00

SI No	Name of the applicants	Name of the Father/Husband	Village	Area of the occupied land in Acres	
				Home site	Agriculture
	Sikaka Laske	Sikaka Sekata	Khambasi	0.10	5.00
	Wandeleka Sunari	Wandeleka Pala	Khambasi	0.10	6.00
	Wandeleka Kile	Wandeleka Adi	Khambasi	0.10	5.00
	Wandeleka Kudunji	Wandeleka Buguni	Khambasi	0.10	5.00
	Wandeleka Dekhi	Wandeleka Sani	Khambasi	0.10	5.00
	Jakesika Budura	Jakesika Budu	Khambasi	0.10	5.00
	Wadaka Singari	Wadaka Laku	Khambasi	0.10	5.00
	Wadaka Kachdi	Wadaka Lachhi	Khambasi	0.10	5.00
	Wadaka Bamunu	Wadaka Buguni	Khambasi	0.10	5.00
	Kungeleka Geda	Kungeleka Kakeli	Khambasi	0.10	5.00

**PROCEDURE TO BE FOLLOWED FOR ACQUISITION OF LAND AND
ARRANGEMENT FOR RR IN VTH SCHEDULE AREAS**

**(vide Section 4, clause (i) of the Provisions of the Panchayat (Extension of Scheduled
Areas) Act, 1996)**

PART - I

**PROCEDURE TO BE FOLLOWED BY THE REQUIRING BODY FOR INITIATING
LA PROPOSAL IN THE VTH SCHEDULE AREA**

- 1.1 All requiring bodies initiating any Land Acquisition proposal for acquiring any land in the Vth schedule area, shall require to enclose with their LA proposals, inter-alia, the following:-
- (i) Gram Panchayat-wise schedule of land proposed to be acquired, (separate sheet for separate Gram-Panchayat).
 - (ii) A separate letter of consent from each of the concerned Gram Panchayat, in favour of the proposed acquisition of land, with or without modifications, as the case may be. Such letter of consent shall be specifically enclosed with the LA proposal, before sending it to appropriate authority or LA Collector. It is further clarified that such letter of consent may be obtained in the form of a written resolution of the Gram Sabha, containing the full text of the resolutions consenting with or without modification and the date on which such Gram Sabha meeting was held shall be duly referred in the consent letter.
 - (iii) In case, any of the Gram Sabha expressed its disagreement to the land acquisition proposal pertaining to any land falling within the jurisdiction of the concerned Gram Panchayat, through a resolution of that Gram Sabha, a statement of the requiring body containing date(s) of consultation(s) by the requiring body with the concerned Gram Panchayat and a copy of the resolution of the Gram Sabha showing the reasons for dis-agreement including alternative suggestions of the Gram Sabha, if any, shall be enclosed with the LA proposal.

PART - II

**PROCEDURE TO BE FOLLOWED BY THE LAND ACQUISITION AUTHORITIES,
(COLLECTOR, LA COLLECTOR, LA OFFICER, AS THE CASE MAY BE)**

- 2.1 The collector shall, on receipt of any land acquisition proposal concerning any land falling within the Vth schedule areas, examine whether requisite letter(s) of consent of the concerned Gram Sabha(s) of the Panchayati Raj Institutions consenting to such acquisition proposal is/ are enclosed or not. In the absence of such letter of consent, Collector shall examine the statement(s) submitted by the requiring body regarding the date(s) of consultation(s) and the nature of objection(s) of the Gram Sabha to the proposed acquisition. The Collector shall, before issuance of any notice u/s 4, make a reference to the objecting Gram Panchayat concerned and arrange a joint meeting of the requiring body, land acquisition authorities and the concerned Gram Panchayat objecting to such acquisition and attempt, through such consultative meetings, to arrive at a consensus for selecting specified land agreed for acquisition.

Provided, however, that in the absence of any eventual non-cooperation or lack of response from the concerned Gram Panchayat/ Gram Sabha to hold such meetings or to arrive at any consensus within a period of two months from the date of making such a reference to such Gram Panchayat, the Collector may issue notice u/s

- 4 of the LA Act giving a copy of such notification to all the Gram Panchayat including those which objected to such acquisition inviting formal objections in writing, within the time-frame specified u/s 5-A of the Land Acquisition Act, 1894.
- 2.2 In addition to disposal of individual objections received against notification u/s 4, the Collector shall also hear the objections submitted by any Gram Panchayat concerned and dispose of such objections keeping a summary proceedings thereof.
- 2.3 In the event of the Collector agreeing to the genuineness of difficulties or validity of the grounds for objecting to the acquisition proposal projected by any Gram Panchayat through written resolution of the Gram Sabha, he shall make a reference to the appropriate Government giving his observations/ suggestions and recommendations relating to acquisition proposal and seek specific order of the appropriate Government to proceed further in this regard or order of the appropriate Govt. shall be treated as final.
- 2.4 In case, the Collector finds the objections raised by any Gram Panchayat to be frivolous or in case he can settle down the objections through negotiations or by partial amendment of the LA proposal acceptable by the RB, he may proceed for acquisition of land without further reference to the appropriate Government.

PART - III

PROCEDURE TO BE FOLLOWED BY RR AUTHORITIES/ PROJECT AUTHORITIES FOR ARRANGING RE-SETTLEMENT AND REHABILITATION IN LAND FALLING WITHIN VTH SCHEDULE AREA

- 3.1 It shall be obligatory on the part of any RR authorities organizing re-settlement and rehabilitation of displaced families on any land falling within the Vth Schedule Areas, to follow the procedure mentioned below:-
- (i) In case such RR authorities require "acquisition of land" for such re-settlement and rehabilitation within the fifth schedule area, the procedures to be followed are as prescribed under Part I & II above.
 - (ii) In case such re-settlement and rehabilitation does not require Acquisition of land, but requires purchase of land under "willing seller/ willing buyer scheme" in any Vth schedule area, the consent of the Panchayati Raj institution to the proposed RR Plans should be obtained in the manner prescribed in Part I & II before taking up any RR Schemes. It is hereby clarified that such willing-seller-willing-buyer scheme shall strictly follow the legislations of the concerned States on restrictions to alienation of tribal land to the non-tribals. In the event of such consent not being available, the matter to be referred by the RR authorities/ project authorities or concerned NGOs by the RR to the Collector for initiating necessary steps for reconciliation.
 - (iii) To take up due steps for reconciliation, the Collector shall organize a meeting of the concerned parties i.e. objecting Panchayati Raj Institution, project authorities/ RR authorities, representatives of the people to be re-settled/ rehabilitated, NGOs etc. by giving formal notices in this regard and keeping the proceedings of such meetings for reconciliation.

Provided further that even if the re-settlement in the Vth Schedule Area is taken up by any department of the State Government or the Directorate for RR or Commissioner/ Collector/ Tehsildar or any other revenue officer, the procedure for obtaining consent, if necessary, through consultative meetings with recorded

notices, shall be necessary in the interest of harmonious re-settlement with cordial relations with the host community. In case of any unsettled differences even after initiatives taken up by the Collector for re-conciliation, the Collector shall refer the matter to appropriate Government and the order of the appropriate Government shall be final in this matter.

PART - IV

THE RESPONSIBILITY OF THE STATE GOVERNMENT FOR CO-ORDINATION AND MONITORING OF LA AND RR SCHEMES IN THE VTH SCHEDULE AREA

- 4.1 It will be obligatory on the part of the Department of RR/ Directorate of RR and in the absence of such Directorate/ Department, the Revenue Department of the State Government, to monitor the progress of implementation of the LA proceedings as well as RR schemes in the Vth Schedule Area. Such monitoring should include keeping of a Register showing year-wise quantum of land acquired in the Vth Schedule Area for the purpose of re-settlement as well as for rehabilitation.
- 4.2 State Government may constitute an Inter-Ministerial Co-ordination Committee in this matter under the Chairmanship of the Principal Secretary Revenue, and members thereof being the Secretaries/ Principal Secretaries to the Departments of Panchayat, SC/ ST Welfare, Forest & Environment and RR (Rehabilitation), if there be any. The said State Level Co-ordination Committee may publish an annual report containing district-wise land acquired for public purpose as well as for RR in the Vth Schedule Areas and send the same to this Ministry including the Union Ministries of Forest & Environment, Social Justice and Empowerment.

**DETAILS OF COMMUNITY CLAIM IN NIYAMGIR OF LANJIGARH
BLOCK, KALAHANDI DISTRICT**

SL. NO	NAME OF THE GP	NAME OF THE FRC	NAME OF THE PRESIDENT & SECRETARY	Community claim details
01	Lanjigarh	Kadamguda	Hara Chandi (president) Kailes Chandi (secretary)	<ul style="list-style-type: none"> • For NTFP (Tikrapada, Badmunda Jharan, Raja Jharan, Anlabhatta, Badbhatta, Madurjhola, Ijrupa, Amlichuan, Partilanda, Jamjhula, Sarginima, Dhobaband, Gambhirkupli, Dhanrabhatta in Niyamgiri). • River (Raja Jharan, Gambhirkupli Jharan, Tapdi Jharan, Muderjhola, Bairagiguda Khal) • Grassing land (Ijrupa, Sunajharan, Muder Jhola, Anla Bhatta, Badbhata, Dhobamali, Bhainsmanda, Sarginima) • Odar (Manda) Anla Bhata, Badbhata, Sarginima, Dhobabandh • Dangar cultivation- Tikrapada, loktanima, Bariachabugudri • Traditional Baida- Prasad Chandi, Mahendra Chandi • Traditional Boundary from Raja Bhatta to Bijagachh, Makadjhola tikri, bairagiguda Bahata, Anlabhatta, sarginima, dhobaband, badbhata, Niyamrajamandir, ijrupa, Banjarimandir • Traditional temple- Tikrapada dharni, Ijrupa dharni, Niyamraja gudi, Banjarigudi, Bhaliabhata dharni, • Traditional road- tikrapada, Mudirjhola, Ijrupa, Anlabhata & Badbhata road in Niyamgiri hill. • Graveyard – Near Khalguda in forest land • Red mud – Tandipadar in Niyamgiri
02	Lanjigarh	Balabhadrapur	Suresh Dash (president) Ganapati Mali (secretary)	<ul style="list-style-type: none"> • For NTFP (Tikrapada, Muderjhala, Badmunda, Bairagiguda Khal, Suna Jharan, Anlabhatta, Mandabasa, Ijrupa, Balipadar, Mudrajhola, Jhimri, Gandhani, in Niyamgiri. • River (Bansidhara, Tikrapada Nama, Bairagiguda Khal Jharan, Tandipadar Jharan, in Niyamgiri • Grassing land (Anlabhatta, Badbhatta, Dhandabhata, Mandabasa, Ijrupa in Niyamgiri • Odar (Manda) (Anlabhatta, Badbhata, in Niyamgiri • Dangar cultivation- Tikrapada, Tandipadar, Bairagiguda Khal, Bailpadar, Mudrajhola • Traditional Baida- Lakhan Chandi, Dinabandhu Mali, Trinath Mali. • Traditional Boundary from Tandipadar Jharan to Gaghar Kupli, Dhanda Ghati, Badmunda Jharan, Muder Jhala, Suna Jharan, Korgochuan, Ijrupa, Bailpadar, Kunkuti, Rani Chuan, Baman Dangar, Bansidhara Nala, Putri Bhatta, Das Jhola & Semlibhatta.

SL. NO	NAME OF THE GP	NAME OF THE FRC	NAME OF THE PRESIDENT & SECRETARY	Community claim details
				<ul style="list-style-type: none"> • Traditional temple- Tikrapadar Dharni, Tikrapada, Bailpadar Dharni, Mundra Jhola, Bhaliabhata, Ijrupa, Korgochuan, Mundi Ghati & Banjari gudi. • Traditional road- tikrapada, Mudirjhola, Ijrupa, Anlabhata & Tandipadar, Bailpadar, Mudrajohla, Rani Chuan in Niyam giri Hill • Graveyard – Near Bansidhara in forest land • Red mud – Dasajohla, Sindursil in Niyamgiri
03	Lanjigarh	Semelbhata	Sanu Maji (president) Narendra Majhi (Secretary)	<ul style="list-style-type: none"> • For NTFP (Gagar Kupli, Tandipadar, Tadingdanga, Pejukudang, Tudabali, Lohara Bali, Dhadangghat, Porgodi, Dhangdabhata, Satrangdanga, Jambajharan, Anlabhata, Badbhata, Mandabasa, Dasbhata. Pajingeao, Sarginima, • River (Raja Jharan, Suna Jharan, Tapdi Jharan, Tandipadar Jharan, Bariakohla Jharan, Purnapani Jharan. • Grassing land (Anlabhata, Badbhata, Dhandabhata, Mandabasa, Dasbhata in Niyamgiri • Odar (Manda) (Anlabhata, Badbhata, Mandabhata in Niyamgiri. • Dangar cultivation- Dharnibhata, Tandipadar, Batgach bhata, Mundrajhola, Tikrapadar, Kalkikana, • Traditional Baida- Bulka Lohara, Pungera Majhi, Piporadi Bewa. • Traditional Boundary from Pajingeao to Madabasa, Anlabhata, Dhangda bhata, Dhandi Bhata, Ijrupa, Madirjhola, Tikrapadar, Bail Padar, Mundrajhola, Patar Dangar, Ranichuan, Tadansaro, Batgaradi, Makad Dangar, Tangridangar. • Traditional temple- Tandipadar, Tikrapadar, Tudabali, Pargadi, Kargasua, Ijrupa, Bailpadar, Banjarighati, Mundrajhola, Bhaliajhani, • Traditional road- Tandipadar, Tadingdanga, Gagarkupli, Loharasil, Kankida, Tikrapada, Madirjhola, Talangsaro, Mundabhata, Dhangdaghat, Anlabhata, Satrangbhata in Niyam giri Hill • Graveyard – Near Bhalubhata in forest land • Red mud – Gaduambhata in Niyamgiri
04	Lanjigarh	Kendubardi (jagamathpur)	Kumti Majhi (president) Sadananda Naik (secretary)	<ul style="list-style-type: none"> • For NTFP (Kumardami, Bariakhola, Kusumpadar, Dadidor, Bhalukote, Jharmunda, Amlichuan, Jhimri Jamjhola, Mundibhata, Amthapadar, Ijrupa, Paharla, Anlabhata, Badbhata, Pajingeao in Niyamgiri. • River (Kodiambajharan, Duimuhan, Champajharan, Kumarjani Jharan, Bainsidhara, Jharmunda Ghat, Kareijhola in Niyamgiri • Grassing land (Mahulbhata, Anlabhata, Badbhata, Pajingeao, Mandabasa,

SL. NO	NAME OF THE GP	NAME OF THE FRC	NAME OF THE PRESIDENT & SECRETARY	Community claim details
				<p>Kamlabagicha, Hatikhmar in Niyamgiri</p> <ul style="list-style-type: none"> • Odar (Manda) (Anlabhatta, Badbhatta, in Niyamgiri • Dangar cultivation- Kumardani, Bariakhola, Jharmunda, Kusumpadar, Chhamasadangar, Bisramdangar, Kaskakuda, Baramba, Dijangamba, Kodakiband, Goisaru, Asamtukuru, Kusumpadar in Niyamgiri. • Traditional Baida- Kanga Majhi, Budu Majhi, Nindu Majhi, Mandara Majhi, Rajina Majhi, Saniswar Majhi, Sandei Mahi. • Traditional Boundary from Dangargarh to Bamanpada, Kareijhola, Dhobaghat, Ratankhandi, Gungikhuti, Lanjigarh badpada, Bagjohla, Malimasan, Putrihata, Bhalubhata, Tandipadar, Bhaludore, Baramba, Kodkiamba Jharan, Duimuna, Champajharan, Dadidoro, Kasampadar, Kumardani, Korodabali, Bariakhola in Niyamgiri • Traditional temple- Dharnigudi (Kebardi), Kumardani, Dangargarh, Near Nayanpur, Bhairab gudi, Ban Bhairab, Putrihatagudi, Dangar Patlimagudi. • Traditional road- Kumardani, Badjharan, Dadihore, Kosampadar, Dangijhola, Bandl & Chanalima Forest road in Niyam giri Hill • Graveyard – Near Podmundi & Dangarpatlima in Niyamgiri Forest. • Red mud – Dadikuda, Raja Jharan in Niyamgiri RF
05	Lanjigarh	Rengopali	Lachha Majhi (president) Duta Majhi (secretary)	<ul style="list-style-type: none"> • For NTFP (Amlabhata, Badbhata, Pajingeao, Bhainsmunda, Dhangdabhata, Madendanga, Jakespadar, Singerjharan, Dhodangrida, Lekkudang, Belpao, Badjharan, Senintukuru, Karadabali, Baddanga & Mandabasa in Niyamgiri. • River (Duimuhan, Singer Jharan, Kanigamjharan, Kananing ambadanga, Bailpaujharan, Daminamba, Badjharan, Brehakala Jharan, • Grassing land (Anlabhatta, Badbhatta, Kiplingtoro, Kaobandh, Watchbandha (Mandabasa), Gabharghati, Jarpakanda, Gundipau, Dhandabhata, Kharibhata, Lakdabali, in Niyamgiri • Odar (Manda) (Anlabhatta, Badbhatta, in Niyamgiri • Dangar cultivation- MadangAmbadanga, Madendanga, Jakes Padar, Siderjharan, Seningtukru, Bailapau, Badjharan, Kandhkari in Niyamgiri • Traditional Baida- Sanu Majhi, Lohara Majhi, Sigharimajhi, Prafulla Majhi. • Traditional Boundary from Madangamba, Madendanga, Serunamba, Suklijharan, Lekakudang, Seningtukru, Bailjharan,

SL. NO	NAME OF THE GP	NAME OF THE FRC	NAME OF THE PRESIDENT & SECRETARY	Community claim details
				<p>Damingjharan, Badjharan, Kumar Dharni, Bandrisuru, Kumardharni, Dangargarh, Narayanpur, Dungijhola, Bundel, Limkhamar, Gunrichuan, Aserkupli, Kodduar,</p> <ul style="list-style-type: none"> • Traditional Temple- Karibhata, Katiadharni, Ban Bhairabgudi, Bhairbgudi, • Traditional road- Rengopali to Basantpada Road (Under construction of Redmud Pond of Vedanta Alumina ltd. • Graveyard – Because of the encroachment by Vadanta Alumina Ltd. For its refinery project our Burial Ground has been sifted to near by red mud pond • Red mud – Bailpau, Panikala, Gundipau in Niyamgiri
06	Lanjigarh	Basantpada	Lingi Majhi (president) Surendra Majhi (secretary)	<ul style="list-style-type: none"> • For NTFP (Khutladangar, Jamjhola, Gungijhola, Gndrichuan, Bijaghati, Suklijharan, Surjalijharan, Badjharan, Anlabhata, Mudaamba, Badakpadar, Madaamba in Niyamgiri. • River (Gandharichuan, Sujhalijharan, Badjharan In Niyamgiri. • Grassing land (Bambalima, Jamjhola, Gangijhola, Bijaghati, Suklijharan, Surjhali, Badjharan, Mundaamba, Badakpadar, Kandhkari, Madaamba, in Niyamgiri • Odar (Manda) (Anlabhata, Badbhatta, in Niyamgiri • Dangar cultivation- Khutladangar, Jamjhola, Gangijhola, Bijaghati, Suklijharan, Badakpadar, Surjhali, Badjharan, Madaamba in Niyamgiri • Traditional Baida- Nabin Majhi, Lingi Majhi Ulla Mali, Durjadhan Naik, Medrani Majhi, Arma Haldar. • Traditional Boundary from Khutla Dangar To Jamjhola, Dungijhola, Bijaghati, Suklijharan, Surujhali, Bad Jharan, Munda Amba, Badakpadar, Madaamba, Kotodwar, aserkupli, Rang Dingra, Mude Ghati, Kotebali, Pata Munda, Hataruli, Piltajhuli, Kum Jholi, Simligach Jhuli, • Traditional Temple- Ban Bhairab Pith, Dharni Pith, Kandh Basant Pada Dharni, Jamjhola Dharni, Rani Bandh Jharni, • Traditional road- East- towards Dengsargi village (Foot March road) West/South- Phuldumer, Kunakadu, Pajiu, South- Jarpa, Khambes, Lakhpadar, • Graveyard – In South west of our village approximately 3acre. • Red mud –Sahaspada in Niyamgiri
07	Lanjigarh	Dengsargi	Kuli Majhi (president) Lachmi Majhi (secretary)	<ul style="list-style-type: none"> • For NTFP (Bamandeo, Dugubali, Gundirani, Patardangar, Badamba, Mundikala, Kilangjholi, Jamujhala, Bhainsmanda bhata, Pajiningeou, Dhangabhata, Khutladangar,

SL. NO	NAME OF THE GP	NAME OF THE FRC	NAME OF THE PRESIDENT & SECRETARY	Community claim details
				<p>Laharantuktu, Kingkola, Singbali kudang, Kadobandh, Karkisua, Dhobamali, Gamerghati & Aenlabhata (Vedant Proposed mines)</p> <ul style="list-style-type: none"> • River (Sahaj Pada Nala, Mundi Jharan, Kingkala Nala, Gungijhola Jharan, Rembapatang Nala, Dasbala Nala In Niyamgiri. • Grassing land (Aenlabhata & Dhangdabhata Pajingeou, Adesbali, Gundirani, Dugubali Dangar in Niyamgiri • Odar (Manda) (Anlabhata, Badbhata, Pajingeou, Dhangabasa in Niyamgiri • Dangar cultivation- Kingkala, Gungukuti, Karighati, Eoumuding, Badamg, Mundikala, Kamlabada, Kilangjhali, Katadkupli, Jamjhola, Dasbalka, in Niyamgiri • Traditional Baida- Kunti Majhi, Dumbe Bewa, Kamli Bewa. • Traditional Boundary from Kingkala to Kari ghati, Bungi Kuti, Eoumundi, Dugubali, Gundirani, Badamba, Dasbalka, Kilangjhali, Mundikala, Jamujhola, Kamlabada, Khutladangar, Loharatukru, Payotukru, Sindhbahali Chowk, Aouamba Bhata to Kingkala • Traditional Temple- Sahajpada Gudi, Kilangag Jhuli Dharni, Jamjhola, Kamlabada Dharni & Niyam Rajagudi • Traditional road- To Niyamgiri, Gungikuti Aoumundi, Sahajpada, Badamba Kilangjhali, Mundikhala, Jamjhola, Kamlabada, Kutladangar, Luhura Tukru, Puyutuktu, Aouamba, (Foot March Road) • Graveyard – Middle point of Loharang Tukru & Poyutukru in Forest land. • Red mud – from Gundirani Forest Near Sahaj Pada Dharni in Niyamgiri hill.
08	Trilochan pur	Phuldumer	Tia Mahi (president) Luta Majhi (secretary)	<ul style="list-style-type: none"> • For NTFP (Anlabhata, Kinarbali, Narengphal, Katabali, Sukupa, Karaksua, Amcharani, Keluaghati, Kadnipau, Sujurujuda, Patardangar in Niyamgiri. • River (Malaalanala, Kargosua, Argubali In Niyamgiri. • Grassing land (Kinarbali, Tangridangar, Patardangar in Niyamgiri • Odar (Manda) (Anlabhata, Badbhata, in Niyamgiri • Dangar cultivation- Kargosua, Malethala, sukupa, Adnabali, Tangridangar, Katabali, Kinerbali, Narengphal, Patardangar, Kanjadaya in Niyamgiri • Traditional Baida- Sukna Majhi • Traditional Boundary from Kinarbali Dangar to Narengphal, Katabali, Sukupa, Karansua, Amcharani, Adnabali, Argubali,

SL. NO	NAME OF THE GP	NAME OF THE FRC	NAME OF THE PRESIDENT & SECRETARY	Community claim details
				<p>Tangri, Gandsua, Satrangikhali, Menbaling, Keluaghati, Kadanipang, Sujurjuda, Patardangar to Kinarbali.</p> <ul style="list-style-type: none"> • Traditional Temple- Kaneripenu, Bangripenu, Kudrubali, (Kidkigudi), • Traditional road- Karanchuan Road Melthala, Tangri Jangal, Palberi, Narengpadar, Kinarbali Dangar (Foot March road) • Graveyard – About 5 acre land of Purnapadar in Niyamgiri. • Red mud – Sunajharan in Niyamgiri
09	Trilochan pur	Palberi	Salpu Majhi (president) Jilu Majhi (secretary)	<ul style="list-style-type: none"> • For NTFP (Argubali, Sindhibahali, Gudsuang, Amlabhata, Damkapla, Brekarbali, Nisanbali, Tuter Dangar, Purnabhata, Tangri Dangar, Kanjabbanda, Murtira, Niyamgiri Dangar, Padudphampu, Tidbali, Atjalang, Bailpadar, Medbaling, Kachadkhuti in Niyamgiri. • River (Gadgada, Kanpadang, Ladli, In Niyamgiri. • Grassing land (Toterdangar, Bailpadar, in Niyamgiri • Odar (Manda) (Anlabhatta, Badbhatta, in Niyamgiri • Dangar cultivation- Purnabhata, Sindhbahali, Argubali, Budsuang, Satrakhala, Rangibasa, Rakerbali, Damkupla, Nisanbali, Tateli in Niyamgiri • Traditional Baida- Sukna Majhi, Mohan Majhi, Jilu Majhi. • Traditional Boundary from Jimram Forest to Nisanbali, Satrakhala, Niyamgiri, Budsuang, Murtirai, Agrubali, Sindhbahali, Nuapada, Tateri, to Jimram Dangar • Traditional Temple- Melthala Dharnigudi, Bailpadar Dharni, Khrgusuang Dharni, Jatragudi, • Traditional road- To Toter Dangar, Kadijhola, Kunakadu, Niyamgiri Hill, Phuldumer, Trilochanpur,(Foot March Road) • Graveyard – A place where Gajagjang & Jimrang Nala merged. • Red mud –Kadanag bibka forest of Tatijhola in Niyamgiri
10	Trilochan pur	Kunakadu	Sana Majhi (president) Range Majhi (secretary)	<ul style="list-style-type: none"> • For NTFP (Bamandangar, Medabali Dangar, Gunjarbali, Kasamghati, Benekesarabali, Gunusuang, Dangupala, Beldaghati, Bimankhoda, Pajdupampu, Tidbali, Dulemundi, Aianbhata, Niyamgiri. In Niyamgiri • River (Menabali Jharan, Kusumghati Jharan, Mudemundi Jharan, Satrang Khali Jharan, In Niyamgiri. • Grassing land (Aainlabhatta in Niyamgiri • Odar (Manda) (Anlabhatta in Niyamgiri

SL. NO	NAME OF THE GP	NAME OF THE FRC	NAME OF THE PRESIDENT & SECRETARY	Community claim details
				<ul style="list-style-type: none"> • Dangar cultivation- Menabali, Kusumghati, Menkerbali, Gunusuang, Dangarkupla, Satrang Khali Dangar, Keheda Ghati Dangar, Tidibali, Bimeldangar, Khajur dangar, Mudemundi Dangar, Dangikupla Dangar in Niyamgiri • Traditional Baida- Dikcha Majhi, Kane Majhi • Traditional Boundary from Bimen Khadu Dangar to Mammeswar Dangar, Tidbali, Paddupampu Dangar, Gunjdibali Dangar, Beheda Dangar, Menabali Dangar, Kusum Ghati, Bedenkar Bali Dangar, Satrang Khali Dangar, Gunsuang, Damkupla, Mede Mundi, Hadibali, Anelebhata to Bimenbala in Niyamgiri • Traditional Temple- Goan Gudi, Niyam Devta, • Traditional road- To Lakhpadar, Tadijhol, Palberi, Niyamgiri, Aenlebhata, (Foot March Road) • Graveyard – Bamenkhodu • Red mud –

The above mentioned 10 nos of FRC (seven nos of FRC in Lanjigarh GP & 3 nos in Trilochnpur GP) in Lanjigarh Block of District Kalhandi sustaining their livelihood in Vedant proposed mining area in Niyamgiri hill. They submitted their community claim form to SDLC Bhwanipatna Kalahanid as per FRA 06 and rule 07 on dated 12.07.10.

The following documents are attached with their claim form

1. Community claim form
2. Final pallisa resolution
3. Forwarding application
4. reserve forest map (toposhet)
5. Draft final report on the survey and settlement operation in Lanjigarh ex Zamindari area of Kalhandi district in 1976
6. Revised working plan for the reserve forest and PRF of Kalahandi forest division from 1997-98 to 2006-07
7. Report of forest enquiry committee 1951
8. Ramdhani report.

Mountain mining damages streams

Study shows that stripping mountains for coal has a much greater impact than urban growth.

PITTSBURGH, PENNSYLVANIA

The controversial practice of stripping off the tops of mountains to mine coal, long suspected of polluting streams, is guilty as charged, scientists say.

On 3 August, researchers at the Ecological Society of America conference in Pittsburgh, Pennsylvania, presented what they say is the first conclusive evidence of a direct link between this type of mining and environmental damage. Their research has teased apart the effects of mountain-top mining and urbanization on local water quality in West Virginia, and found that even relatively small mining operations can cause serious harm to ecosystems.

"Even at very low levels of mining we found a dramatic impact on water quality and stream composition," Emily Bernhardt, a biologist at Duke University in Durham, North Carolina, and one of the study's lead researchers, told *Nature*. The scientists have called on the US Environmental Protection Agency (EPA) to tighten the water pollution limits faced by mining companies.

Mountain-top mining is widespread in eastern Kentucky, West Virginia and southwestern Virginia. To expose seams of coal, mining companies strip away forests and break up rock with explosives. The rubble is dumped in the valleys, often burying streams. The loss of vegetation and topsoil can cause flooding, and the water emerging from the debris contains toxic solutes including selenium, metals and sulphates, says Bernhardt.

The EPA recommends that mining activity should not increase the electrical conductivity of stream water (a measure of its ionic concentration) beyond 500 microsiemens per centimetre ($\mu\text{S cm}^{-1}$). Yet a previous study¹ demonstrated significant changes in the size and composition of macro-invertebrate communities — such as mayflies and caddis flies — at lower conductivity levels. A second study² found that increases in the concentration of metals in stream water, and decreases in stream invertebrate biodiversity, were correlated with increased sulphate concentrations, an indicator of mining. But neither study established a direct link between mining and the environmental changes.



West Virginia's mountains contain valuable low-sulphur coal.

"Even at very low levels of mining we found a dramatic impact on water quality and stream composition."

Bernhardt and her colleagues overlaid images taken by satellites and aircraft of mining activity in West Virginia's Appalachian Mountains onto topographic maps of the area, allowing them to estimate the amount of mining taking place in mountain watersheds between 1996 and 2009. The research team also had access to data on water quality and invertebrate biodiversity for 478 sites in the area, collected over the same period by the West Virginia Department of Environmental Protection.

Mining had occurred at 208 of those sites, where the average water conductivity was $650 \mu\text{S cm}^{-1}$. In the most intensively mined areas, where 92% of the watershed had been mined at some point, conductivity levels rose to $1,100 \mu\text{S cm}^{-1}$. Bernhardt says that even in areas where just 2.5% of the watershed had been mined, some 30% of streams still had conductivity levels greater than the EPA's recommendation. The team also noted "sharp declines" in some stream invertebrates in areas where as little as 1% of the watershed had been mined.

William Schlesinger, a biogeochemist at the Cary Institute of Ecosystem Studies in Millbrook, New York, says the results are "significant" as "they directly link changes in the

stream water chemistry to the area of the watersheds that has been disturbed by mining activities".

The study also addresses the mining industry's contention that water-quality standards should not be tightened because stream conductivity changes often reflect urbanization and other changes in land use. Earlier this year, the National Mining Association (NMA), based in Washington DC, said in a statement: "No evidence has been presented that uniquely correlates higher conductivity levels with coal mining or valley fills."

In 202 of the sites Bernhardt and her colleagues studied, however, there was no mining activity, but some urban development. Water at these sites had an average conductivity of $228 \mu\text{S cm}^{-1}$ — much lower than the average at mined sites. In 30 other sites, no mining or urban development had taken place, and these control sites had an average conductivity of $105 \mu\text{S cm}^{-1}$.

Bernhardt says she was "shocked" by the differences. But she declined to say at what level she thinks the EPA should set the threshold, saying only that "it appears you get effects at much lower levels of conductivity than previously thought". Luke Popovich, the NMA's vice-president for external communications, declined to comment on the study without seeing its data, but notes that the conductivity limit set by the EPA is "difficult or impossible for mining operations to meet. In our view, this begs the larger question of whether conductivity as employed here can tell us much at all about the impacts of mining on biodiversity."

"Conductivity should not be used as an exclusive tool for isolating impacts from mining activity from the many other sources or factors that may impact water quality," he adds.

In a statement to *Nature*, the EPA says it believes that the study's results are "generally consistent" with its own research, which is "currently being reviewed" by its science advisory board. "EPA will continue to rely on the best available science as it reviews proposals for new surface coal mining projects under the Clean Water Act," it adds.

Natasha Gilbert

1. Pond, G. J. et al. *J. N. Am. Benthol. Soc.* **21**, 717-737 (2008).
2. Palmer, M. A. et al. *Science* **372**, 148-149 (2010).