

Ministry of Environment & Forests
Government of India (FC Division)
Recommendations of the Forest Advisory Committee in Its Meeting
Convened on 20.08.2010

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AIGF (HCC)

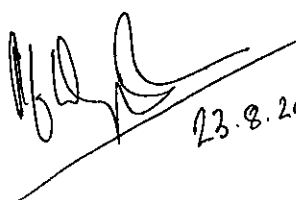
Agenda Item No. 11: Report of the Four Member Committee for Investigation into a Proposal Submitted by the Orissa Mining Corporation Ltd. For Bauxite Mining in Niyamgiri (F. No. 8-23/ 2005-FC)

The Forest Advisory Committee (FAC) considered the report submitted by the four member Committee constituted by the Ministry of Environment & Forests vide its Order dated 29.06.2010 for investigation into a proposal submitted by the Government of Orissa for diversion of 660.749 ha. forest land in favour of Orissa Mining Corporation Ltd. for bauxite mining in the Niyamgiri Hills in Kalahandi and Rayagada districts of Orissa. The FAC's resolution on this matter is guided by the Supreme Court in its ruling dated 23 November 2007 that "the next step would be for the MoEF to grant its approval *in accordance with the law.*" This matter has been explained *in extensio* by the learned Attorney General G. E. Vahanvati in his opinion dated 20 July 2010. The FAC has found compelling and significant evidence of *prima facie* violations of the following laws: Forest Rights Act, Forest Conservation Act and the Environmental Protection Act. Any clearance would thus be in contravention of the above legislation. The FAC has the highest regard for the Hon'ble Supreme Court and is acting strictly in accordance with its ruling dated 23 November 2007.

After detailed discussion, the FAC took note of the following facts highlighted in the report:

A. Violation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 popularly known as the Forest Rights Act, 2006

The Forest Rights Act (FRA) specifically provides in Section 3 (1) (e) for the protection of the rights and livelihood of Primitive Tribal Groups (PTGs). As seen in the report of the Committee, it is apparent that there has been a serious failure to implement these specific provisions of the FRA to protect the culture, livelihood and rights, "including community tenure of habitat and habitation" as specified in the FRA, of people belonging to the Dongaria Kondh and Kutia Kondh tribes which are both PTGs. The Gram Sabhas of Rengopali, Dengsargi, Palberi, Basantpada, Balabhadrapur, Similibhata, Phuldmer and Kunakadu villages claimed rights over the PML area, as seen in the copies of Gram Sabha resolution which they provided to the Government before March 2010. Details of villages around Lanjigarh Bauxite Mine is given in annexure-III to the

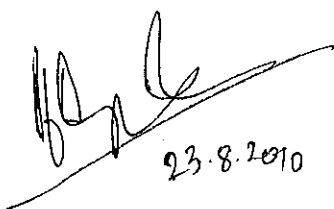

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report. The Saxena Committee report has found the Kutia Kondh to be a PTG whose rights are also affected by the proposed mining lease. These PTGs were not consulted in the process of seeking project clearance. Since their rights to use the proposed mining lease site are protected under the FRA, it is incumbent upon the Government to uphold the rights under the law. The Saxena committee and the earlier investigations have found that there has not been adequate and satisfactory compliance with the process of recognition of forest dwellers' rights.

The norms set out in the circular issued by the Ministry of Environment & Forests (MoEF) in August 2009 regarding the process of securing consent from the *Gram Sabhas* have not been followed by the District administration. The circular letter by Chief Secretary, Govt of Orissa, on 24 October 2009 is understood to have laid out the procedures for obtaining consent of *Gram Sabhas* before diversion of land. This circular was ignored by the district administration. The Committee finds that the Collectors and the district administration have not fulfilled their duty as required by the law to enable PTGs to secure their rights.

If mining is permitted on the proposed mining site, it will destroy the sacred site of the Kondh Primitive Tribal Groups which is essential for preserving the ecological integrity of the area. It will destroy seven square kilometres of sacred, undisturbed forest land on top of the mountain that has been protected by them for centuries as sacred to Niyam Raja. It will endanger the self-sufficient forest-based livelihood of these PTGs, and seriously harm the livelihoods of hundreds of Dalit families who depend for their livelihoods on their relations with these PTGs. Section 5(c) of the FRA is pertinent as it states 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."

The Saxena Committee drew attention of State Government of Orissa on 10 July, 2010 and response of the District Collector was that there has been full compliance with provisions of the FRA. However, it is evident that even in the interim period till August 2010, there has been no serious intent to initiate the process of recognition of rights. The Saxena Committee has further recorded that in the meeting of 10 July 2010 there appears to have been a consensus including the Chief Secretary that the FRA did not apply to the mining lease as the application was filed prior to the enactment of the FRA. If this stand actually reflects of the Orissa Government is a serious matter and the Ministry may enquire in to the issue. It may be mentioned that this stance is contrary to the circular issued by the Chief Secretary, Orissa in October 2009. As per Rule 8 (clause b) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007, the District Level Committee is required to examine whether all



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claims, especially of Primitive Tribal Groups have been addressed. This has not been done. Further, Rule 8(f) specifically enjoins that, "the District Level Committee shall issue directions for incorporation of the forest rights in the relevant documents including record of rights." On these critical aspects as well, the District administration has failed to take cognizance of the Rules. Further a very detailed description of various administrative lapses have been given in the Saxena Committee report and FAC feels that the State Government should be heard on these lapses.

B. Violation of the Forest (Conservation) Act, 1980

The Saxena Committee has found that M/s Vedanta Alumina Ltd. to whom, as per an agreement signed by the Orissa Mining Corporation Ltd, the bauxite extracted from the Niyamgiri Mines is to be supplied, has illegally enclosed 26.123 hectares of *Gram Jogyra Jungal* (village forest) within premises of an Alumina Refinery set up at Lanjigarh, thereby denying access to the villagers.

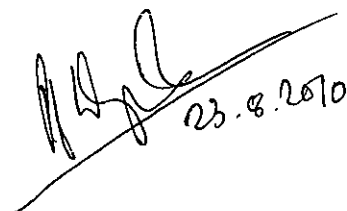
For construction of a road running parallel to the conveyer corridor, M/s. Vedanta Alumina Limited has illegally occupied plot number 157 (P) measuring 1.0 acre and plot number 133 measuring 0.11 acres of village forest lands. This act is also similar to the above although the land involved is much smaller in extent.

C. Violation of the Environment (Protection) Act, 1986

M/s. Vedanta Alumina Limited has already proceeded with construction activity for its enormous expansion of its Aluminium refinery project at Lanjigarh to increase its capacity six fold from 1 million tonne per annum (mtpa) to 6 mtpa without obtaining prior and complete Environment Clearance as per provisions of the Environment Impact Assessment (EIA) Notification 2006 under the Environment (Protection) Act, 1986. However, we are informed that 60 per cent of the additional construction has been completed.

D. Violation of Condition of Clearance Under the Environment (Protection) Act, 1986

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 conveyer belt which included 26.123 ha. of forest land for the refinery and the rest for conveyer belt and a road to the mining site. However, while filing environmental clearance on 19 March, 2003, the company claimed that no forest lands were needed and that there were no

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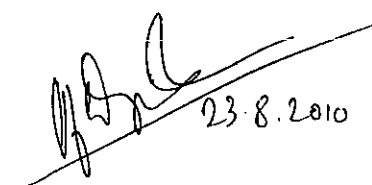
Reserved Forest within ten Km of the proposed refinery. Later on learning from the Central Empowered Committee that a proposal for diversion of forest land for setting up of the said refinery is pending before the Ministry, the Ministry of Environment & Forests vide notice dated 23 May, 2005, directed M/s Vedanta that further construction should be undertaken only after getting the requisite clearance under the Forest (Conservation) Act, 1980. Instead of obeying the Orders of the Ministry of Environment the company informed the MoEF that they did not need the use of 58.943 hectares of forest land. They also continue to claim that the refinery project does not 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. While the enclosure of village forests is in violation of the law, the incomplete and inaccurate information given by the project proponent is an equally grave matter. The FAC recommends that this matter be investigated fully and acted upon as required under law, by the MoEF.

E. Impact on biodiversity

The high ecological and biodiversity values of the Niyamgiri hills upon which the Dongaria Kondh and Kutia Kondh depend will be irretrievably damaged by mining. It will disrupt the perennial springs that flow from the plateau and hills. Further, mining will denude and destroy the shrubs and herbs besides 121, 000 trees that support the livelihood of the PTCs. In addition, the Niyamgiri hills habitat with its interspersed grassland and forests is highly productive for wildlife, affording breeding and fawning grounds for the species listed in Schedule-I of the Wildlife (Protection) Act, 1972, such as the four horned antelope. It is also a habitat for elephants and is part of the proposed South Orissa Elephant Reserve. The FAC recognizes that many of these issues ~~have~~ were traversed in the Supreme Court proceedings and resolved by suggesting mitigation measures in consultation with the wildlife authorities. However, mining on this scale in this ecologically sensitive area will lead to irreversible damage to biodiversity, as well as disruption of the economic and cultural life of the dependent human population.

F. Very Limited Relevance of the Proposed Mining Lease

The mining activity in the proposed mining lease site at Niyamgiri will have limited relevance to the Lanjigarh refinery now under six fold expansion as the 72 million tonne ore deposit here would last only about four years for the increased needs of the expanded refinery.

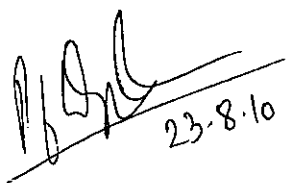
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G. Questionable Sourcing of Bauxite Ore by the Company

Expansion in the capacity of the Lanjigarh refinery of M/s Vedanta Alumina Limited from 1 mtpa to 6 mtpa has raised its annual requirement of raw ore from 3 mtpa to 18 mtpa thus the entire reserve from proposed mining lease in Niyamgiri hills, which is estimated to be 72 million tons, will last for just 4 years. As per a presentation entitled 'Empowering Community for a Better Tomorrow' made by representatives of M/s Vedanta Alumina Ltd., before the Committee, the Company expects to get a total of 1014 million tons 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 Proposed Mining Lease (PML) site is insignificant since it amounts to a mere 7 % of the total 1014 million tonne.

The FAC feels that no company can afford to run out of raw materials only four years after six-fold expansion of its capacity. The obvious indication is that the remaining 1014 million tonnes of bauxite ore from the identified ore deposit in the hill ranges identified above will be demanded to run the refinery. This would mean the large scale devastation of vast forest area from where the company has already identified the remaining ore. However, as per the Saxena Committee report the company in its submission to the Central Empowered Committee (CEC) has claimed that, in case minerals from Lanjigarh mines were not available they will obtain bauxite from other sources. In the absence of specific, sanctioned mines from where the raw materials (1014 minus 72 mt) can be sustainably procured, this claim seems to be unsubstantiated. The potential risk of further damage to additional forest areas by accessing ore from the sources mentioned above have obviously not been brought to the notice of the Expert Appraisal Committee or the Forest Advisory Committee. Hence, the decision cannot be taken only on the consideration of one mine as source.

It is also a cause for concern that, as per the report, the bulk of the bauxite ore presently being used by the refinery is being sourced from fourteen mines, eleven of which do not have the requisite environmental clearance as per the latest available information.


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The FAC has also taken note of a letter dated 17 August 2010 from the Government of Orissa. After careful consideration of the said letter, the FAC suggests that the Ministry may, before taking a final decision, consider State Government of Orissa's request for an opportunity to be heard.

In the opinion of the FAC, Saxena Committee report clearly indicates the lack of diligence in safeguarding the rights of PTGs in the adjoining forest areas and unless the State Government provides evidence of their serious intent for following observance of due process of law, it appears to the FAC that this is a breach of law. Based on the above analysis, the FAC finds that this is a fit case for applying the precautionary principle to obviate irreparable damage to the affected people, and recommends for temporary withdrawal of the in-principle/stage-I approval accorded, in accordance with Section-2 of the Forest (Conservation) Act, 1980, by the Ministry of Environment & Forests for diversion of 660.749 ha. forest land in favour of Orissa Mining Corporation Ltd. for bauxite mining in Niyamgiri Hills in Kalahandi and Rayagada districts of Orissa. Further, the Ministry may consider suitable action under the law in respect of the violations pointed out *vis-a-vis* environmental clearance given or under consideration for the aluminium refinery.

(not present in the meeting)

(Dr. Ullas Karanth)

Member



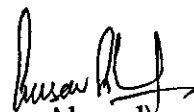
(V.N. Ambade)

Addl. Commissioner (MoA)

Member

(Dr. Amita Baviskar)

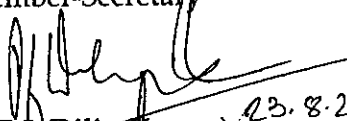
Member



(Ansar Ahmed)

IGF (FC)

Member-Secretary



(Dr. P.J. Dilip Kumar)

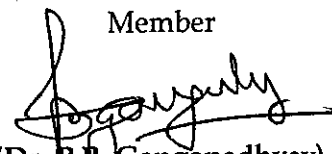
DGF & SS

Chairman

Mahesh Rangarajan

(Dr. Mahesh Rangarajan)

Member



(Dr. P.B. Gangopadhyay)

Addl. DGF (FC)

Member

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