

Kashipur: An Enquiry into Mining and Human Rights Violations in Kashipur, Orissa

Report of the Indian People's Tribunal on
Environment and Human Rights

Tribunal Headed By:
Justice S. N. Bhargava (Retired)
Former Chief Justice, Sikkim High Court

October 2006

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Preface

Last year when IPT requested me to head the panel investigating into the alleged violations and likely impacts of the Utkal Alumina International Limited (UAIL) Bauxite Mine I readily agreed as I feel that it is the duty of the judiciary to reveal the truth and to ensure that the voice of the most marginalized in the country is heard.

To reach Kashipur I had to travel via Vishakapatnam and then by road to Kashipur and the village of Kucheipadar. The 5 hour journey over a potholed and bumpy road transported me back to my childhood, to some of my most cherished and vivid memories - driving with my father, Pandit Nehru and other leaders of the Nationalist Congress through the Aravali Hills. I remember, as the motorcade of three cars passed through a narrow ravine, the cars were stopped by men in gun point; men masked and armed. The strongest and tallest of them asked where is Nehru. We were unarmed and it was impossible not to point out to the car where Nehru was traveling. As soon as the dacoits were told which car Nehru was in they moved to that car and dropped their guns. Their leader then reached out and touched Panditji's feet and took out a bag of sovereigns. Placing the gold coins in Nehru's hands he said "this is my contribution towards the freedom struggle."

It was the time of much hope and anticipation, a time to build a new India. An India which my father who was a member of the Constituent Assembly and others envisioned, would be based on affirmative action, equity, justice and brotherhood. A country whose very Constitution would provide for the most oppressed - the dalits and the adivasis. A country that would remember, even those living on the margins of society had struggled and fought for this freedom.

Today fifty nine years after Independence in Kashipur I witnessed another such struggle. Where inspite of all the Constitutional guarantees the poorest of our country have to fight against the very State that was established to protect them. Their struggle is for very basic and fundamental issues - over the right



Women deposing at the IPT hearing in Kucheipadar.

to land, right to livelihood and right to determine their own path of development.

These rights are not rights that they have created but are rights enshrined in the Constitution as well as rights that the Supreme Court has at various points re-inforced and developed. For instance in *M.C. Mehta vs. Kamal Nath* (1997 SCC 388) the Court has elaborated and developed the 'Doctrine of Public Trust' and the duty of the State to preserve water bodies for the unimpeded use of the general public. Further in *Vellore Citizens Welfare Forum vs. Union of India* (1996 (5) SCC 647) the Court has emphasized the notion of 'Precautionary Principle' and stated ...'(i) the State Government and the statutory authorities must anticipate, prevent and attack the cause of environmental degradation. (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation....'

In Kashipur however, an area rich in water resources and biodiversity neither the State of Orissa nor the Pollution Control Board have done their due diligence. Large scale negligence is obvious and from what we heard procedural illegalities and state repression have been used to make way for the UAIL mine.

Against this backdrop the adivasis have been portrayed as anti development. However, whosoever deposed before the Tribunal showed keen interest in development but development that would benefit the local community and the country at large not private vested interests.

Today we are in a sense also building a new India, an India that will stand tall in the global arena, an India that is economically strong. But can this India be built by alienating and dispossessing millions of dalits, adivasis and rural poor?



Justice S.N. Bhargava (Retd.)

Former Chief Justice Sikkim High Court

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Executive Summary

An eight member multidisciplinary panel of the Indian People's Tribunal headed by Justice S.N.Bhargava (Retd.) enquired into alleged human rights and environment violations created by a bauxite-mining project proposed by Utkal Aluminum International, Ltd. (UAIL) in the Baphlimali Hills, located in Kashipur Block, Rayagada District of Orissa. The Panel members visited Kucheapadar which is the center of the resistance against this bauxite mining company and has inter-alia faced the ire of state repression. The panel conducted spot visits to Lanjigarh where Vedanta is operating to understand the impact that such a project could have. The panel also received testimonies from the local tribals who would be affected by the coming up of the UAIL Project. Taking into account their testimonies, the testimonies of experts and the responses furnished by various ministries to letters sent under the Right to Information Act, **the panel would like to recommend that the Government of Orissa should abandon the UAIL project with immediate effect.**

The Panel investigated specifically in to opposition by the local people, the overwhelming majority of whom are Scheduled tribes and found that their voices are being met by repressive measures in the form of large scale arrests, disruption of public meetings by force, violent beatings to disperse gatherings, official encouragement to the employment of private goons by UAIL, midnight raids by the police, unmitigated violence on women and children etc

The granting of a mining lease to UAIL, a non-tribal entity, by the State Government of Orissa, is in flagrant violation of Constitutional mandates that have been upheld by the Supreme Court in *Samatha v. State of Andhra Pradesh*. Other constitutional provisions like the Panchayats Extension to the Scheduled Areas Act, (PESA)1996, as well as state provisions like the Orissa Scheduled Areas Transfer of Immovable Property Act, 1956, which protect the Adivasi community's right to land and other natural resources have also been overridden unlawfully

From the investigations it is also clear that UAIL's mining lease appears to have expired and the validity of the original lease, which was obtained prior to the granting of environmental clearance, is under scrutiny. UAIL's mining lease expired in 2000 and there is no indication that the company was granted a renewal lease from the Ministry of Mines. The original lease was granted in 1995, and was only valid for five years, whether or not the project operations managed to commence within that period.

The Government of Orissa and UAIL have failed to conduct a local consultation and obtain local consent for the project as stipulated under the provisions of the Panchayat Extension to Scheduled Areas Act, 1996 and the Orissa Scheduled Areas Transfer of Immovable Property Act (1956). Indications from UAIL that they have in fact obtained local consent were discounted by credible testimony before the Tribunal.

The Panel is convinced that the bauxite-mining project proposed by UAIL will have adverse environmental and health effects: water sources and agricultural land will be contaminated by toxic wastes, grasslands and forest land will be destroyed, and pollution including the release of cancerous gases that will create a health hazard for those living in proximity of the alumina refinery. Further the location of the mine in the Eastern ghats will cause an irreversible loss of plant genetic materials and biodiversity of this bio sphere.

As of yet, the Government of Orissa has no binding Relief & Rehabilitation (R & R) policy nor a good record enforcing R & R packages. Also, the R & R package offered by UAIL is grossly inadequate. Compensation offered under the Land Acquisition Act for agricultural and homestead lands and the resettlement and rehabilitation project is inadequate for the deprivation that adivasi communities will face if the project is allowed to proceed. It also appears that compensation is being offered only to those who are able to establish titles to their land. The rehabilitation package excludes those who work for wages and those who depend on common property resources. The testimonies received by the IPT panel clearly show that the relevant authorities are using force and intimidation to coerce people into relocating and accepting the rehabilitation package. The company has at no point assured the people jobs to compensate for the loss of livelihood

Finally, the UAIL project will threaten local adivasi communities by radically altering their livelihood options, agrarian lifestyles, cultures, and identities. There appear to be no benefits arising from the project for local adivasi communities, despite the Government of Orissa and UAIL's claims that the project will lead to development and provide jobs. The evidence to substantiate this has been detailed in the following report

Introduction

In June 1993, at the National Conference on Human Rights, Environment and the Law, 400 lawyers, judges, human rights activists, and non-governmental organizations (NGOs) met to share their experiences. Disillusioned with the apathy of the judiciary in regards to human rights violations and environmental degradation, they decided to campaign for changes in the system. The conference culminated with the creation of the Indian People's Tribunal on the Environment and Human Rights (IPT).

Acting as an alternative 'People's Court', the IPT conducts fair and credible investigations on a wide array of human rights and environmental justice issues around the country. In response to requests by grassroots organizations, the IPT conducts inquiries by bringing together a Tribunal of experts, chaired by a retired Supreme Court or High Court judge, to study situations first hand through site visits, public hearings, and meetings with government and private party officials. The research, findings, and recommendations of the Tribunal are included in a final report that is widely distributed to inform public opinion, prevent further violations, and bring about change in government policy. In some cases, IPT reports become the basis for filing public interest litigation (PIL) to obtain relief for victims.

Kashipur Tribunal

In September 2005, the Prakrutik Sampad Surakhshaya Parishad (PSSP)¹ requested that the IPT conduct



IPT Panel in Kucheipadar.

an inquiry into the human rights and environmental violations created by a bauxite-mining project proposed by Utkal Aluminum International, Ltd. (UAIL) in the Baphlimali Hills, located in Kashipur Block, Rayagada District of Orissa. The local communities have withheld their legally required consent for the bauxite-mining project, arguing that it would usher in a host of negative economic, environmental, health, and social effects for the predominantly adivasi and dalit population inhabiting this Fifth Schedule area. As a result, the Government of Orissa and UAIL have worked in concert since 1996 to unleash a campaign of severe state repression against activists and community leaders that mobilize communities to resist the

project. Three activists were killed in December 2000, there has been an increased police presence in the area, and an upsurge in violence since December 2004.

The IPT accepted PSSP's request to hold a Tribunal on UAIL's bauxite-mining project in Kashipur based on the extent and duration of the violations alleged and the need to highlight the implications of bauxite-mining projects within the region. The Tribunal met from 1 - 3 October 2005 to investigate the human rights and environmental violations taking place in Kashipur, with the following terms of reference:

- To assess the project's potential effect on the lives, livelihoods, and culture of the local people;
- To assess the potential environmental impact of the mine and the alumina plant; and
- To assess claims of state repression.

The Tribunal conducted site visits to Kucheipadar village, one of the most affected villages by the UAIL project, and Lanjigarh village where Tribunal Members met with Niyamgiri Surakshya Samiti (NSS), a local organization, to investigate the human rights and environmental effects of a similar bauxite-mining project already underway in the Niyamgiri Hills by Vedanta Resources of Sterlite Industries (Vedanta/Sterlite).

A Public Hearing was held on 2 October 2005 in Kucheipadar during which 18 affected community members and selected experts presented their oral and written depositions to the Tribunal. The Government of Orissa and UAIL representatives failed to depose before the Tribunal, despite meetings scheduled by the IPT for 3 October 2005.

On 3 October 2005, the Tribunal held a press conference in Rayagada at which it released an interim report of its findings.² Local people who had failed to attend the scheduled Public Hearing disrupted the press conference. Nevertheless, the Tribunal granted them and a UAIL official (R. K. Jena), who came as an observer, an impromptu meeting. The IPT also contacted the Government of Orissa and UAIL in writing following the Tribunal to provide them with an additional opportunity to communicate with the Tribunal and submit information, but no response has been forthcoming.³ This is the final report of the Tribunal's findings and recommendations.

Tribunal Members

- **Justice. S.N. Bhargava (Retd.)** was the Former Judge of Rajasthan High Court from 1982 - 1993. Following this he was appointed as the Chief Justice of the Sikkim High Court from 1993 - 1996. After his retirement he was first appointed as the Chairperson of the Assam Human Rights Commission 1996 - 2000 and later on as the Chairperson of the Manipur Human Rights Commission from 1998 - 2003. Justice S.N. Bhargava has also been part of various other social organizations like the UNESCO Rajasthan, UNICEF and RED CROSS etc.
- **Shri. Dileep Singh Bhuria** has been the former Member of Parliament from Jhabua Constituency in Madhya Pradesh. He was also the Former Chairperson of the National Commission for Scheduled Castes and Scheduled Tribe from 1999 - 2004. Shri. Bhuria had also headed the Bhuria Committee which has looked in to the whole issue of the 73rd Amendment
- **Dr. K. Balagopal** is a Human Rights Lawyer and practices in the High Court of Andhra Pradesh in Hyderabad. He is also the General Secretary of the Human Rights Forum in Andhra Pradesh
- **Prof Ramdayal Munda** was the former Vice Chancellor of University of Ranchi, Jharkhand
- **Iina Sen** is a Feminist and writer from Chhattisgarh. She is also a visiting Professor at Mahatma Gandhi International Hindi University, Wardha.
- **Prof. S. Parasuraman** is the Director of the Tata Institute of Social Sciences (TISS), Mumbai. He is a social anthropologist and demographer by training, with many years of expertise in rural and social development. Dr. Parasuraman has been associated with the Narmada Movement from 1987 and was a member of the Indian Prime Minister's Committee to review the Tehri Hydroelectric Project. He has held key positions in international organisations: as Asia Regional Policy Coordinator, ActionAid Asia; Senior Advisor to the Commission, and Team Leader of the Secretariat; World Commission on Dams; and as Programme Director, Oxfam Great Britain,

India Programme in South Africa.

- **Mr. Sagar Dhara** is an Environmental Engineer and Risk Analyst and is part of Cerana Foundation based in Hyderabad
- **Dr. V.T. Padmanabhan** - Nuclear Physicist

Deponents

Professor Bhagbat Prasad Rath, Gandhian scholar

Manju Menon; Kalpvriksh, Pune

Debaranjan Sarangi; Activist, PSSP, Kucheaipadar Village

Bhagban Majhi; Convenor, PSSP

Mukta Jhodia, Sirigura Village

Bulka Miniaka; BSS, Barigaon Village, Lakshmipur Block

Shankar Prasad Muduli, Baghrihola Village

Manohar Jhodia, Sirigura Village

Akhila Saunta, Ex-MLA

Prafulla Samantara President, Lok Sakti Abhijan (Orissa Unit), Berhampur

Naveen Nayak, Khurigaon Village

Pradip Majhi, Kucheaipadar Village

Makari Majhi, Kucheaipadar Village

Sanjukta Majhi, Zilla Forest

Sidharth Nayak, Sachetan Nagarik Manch, Kalahandi

Nityanand Jayaraman; Corporate Accountability Desk, Chennai

Gupteshwar Kunwar; Joint Convener of Gandhamardan Suraksha Yuba Parishad, Bolangir Dist.

Jyoti Vethale and Sachin Masurkar; Kashipur Solidarity Group, Mumbai

Background

Aluminium's shiny exterior glimmers like an antidote to its heavyweight competitor, steel, and its lightweight counterpart, plastic. However, behind this shiny exterior lie the dark secrets of its production: the displacement of adivasi communities, environmental destruction, health hazards, human rights violations, and even death.

Aluminium has several advantage over other substances in that it is recyclable, lightweight, strong, and thermal and electrically conductive; as a result, it is fast replacing steel, copper, wood, glass, and plastic for use in packaging, electrical wiring, construction, automobiles, the aerospace industry, and the defense industry.⁴ In recent years, the growth of the defense industry in the post-9/11 era and the increasing needs of emerging economies such as China has created an even higher demand for bauxite, the only ore from which commercial aluminium can be produced. The result has been a global shortfall of aluminium, as bauxite-extraction projects have not kept pace with demand. This has resulted in a significant increase in price per tonne: spot prices for alumina rose from US\$160 per tonne in 2002 to US\$500 per tonne in 2004.⁵ This rise in price has subsequently spurred corporate entities to renew their exploration for untapped bauxite reserves around the world with vigor, in order to cash in on this lucrative market. Currently, a handful of companies control the world's aluminium market and transnational corporations are responsible for 60 percent of the world's bauxite production.

It is estimated that India has 1.6 billion tonnes of bauxite deposits, one of the world's largest. Almost 70 percent of these deposits (amounting to 14 percent of total world deposits) are found in the state of Orissa, mostly concentrated in the Eastern Ghats in the districts of Koraput-Bolangir-Kalahandi (KBK) in Southern Orissa, which are predominantly populated by adivasi people. These bauxite deposits also span to Northern Andhra Pradesh. Mining for aluminium in India began over 50 years ago when the Indian Aluminium Company (INDAL) established the country's first alumina project in Kerala. The sector continued to expand during the 1950s and 1960s. As expansion continued in the 1970s, the first public-sector aluminium project was established in Madhya Pradesh through the Bharat Aluminium Company (BALCO). The establishment of the National Aluminium Company (NALCO) project in Damanjodi was another important step in the industry's progression within the country. As the first aluminium complex of international standards, NALCO's project produces 50 percent of domestic aluminium and enabled India to become a net exporter of the substance.⁶

The aluminium industry in India continues to expand as consumption needs increase within India and around the world. While India currently meets its own bauxite needs with existing mines, its numerous bauxite deposits in Orissa, and other areas of the country, are currently being sourced by transnational corporations (TNCs) to meet demand elsewhere. In the US, the average annual aluminium consumption per person is 53kg per annum. In India, the corresponding figure is 300g.⁷ However, India's own aluminium needs are also growing in proportion to its economic growth.

The bauxite deposits in Southern Orissa and Northern Andhra Pradesh are the only ones within the country that contain unexploited virgin bauxite, which provides the opportunity to establish greenfield bauxite mines.⁸ The Government of Orissa has leased one billion tonnes of bauxite to multi-national corporations (MNCs) through Memorandums of Understanding (MOUs)⁹ and twelve separate projects are known to be currently in various stages of implementation as outlined in Table 1. These deposits are particularly attractive to companies because they require a comparatively low financial investment, due

to low cost hydro and coal power sources for alumina smelters and cheap labour, while the end product can be sold for a huge profit; hence, the number and scale of projects underway. The Government of Orissa has made investment in bauxite mining even more attractive for private industry by offering 100 percent export projects income-tax exemptions, subsidies and lowering tariffs for essential equipment for mines and refineries. A new National Mineral Policy released in March 2006 also focuses on removing procedural delays to further attract public and private sector investments in mining.

Bauxite in Orissa^a		
Mining	Quantity	Company
Panchpatmali	3770	NALCO
Ghandhamardhan	2730	
Khanduamali	2530	Vedanta
Baphlimali	1990	UAIL
Niyamgiri	1950	Sterlite
Sijimali	860	Larson & Toubro
Kutramali	2240	Larson & Toubro
Sasubohu Basngmali	810	
Patangi	917	Hindalco
Kodingmali	911	Hindalco
Sijhimali - Kishanmali (purnengama)	2240	U.F. RPG
Anamani (kotgad)	162	Jimpek

While the Government of Orissa has fully supported aluminium industrialization, given the corporate revenue it generates, people living in areas where mining projects are located have not welcomed the intrusion of the aluminium industry into their ancestral lands. The aluminium industry's legacy of social and environmental destruction in India has instigated numerous campaigns aimed at halting its expansion into new areas and providing proper redressal to those negatively affected by the industry. In addition to the people's struggle against the UAIL project in Kashipur, which is the focus of this report, there are strong protests against other bauxite -mining projects such as Niyamagiri Bauxite mines in Lanjigarh. These people's struggles have created a spotlight on mining projects, raising numerous questions about their legality and their real benefits to the local people, the region and the country from a financial, social and environmental standpoint. The Government of Orissa, however, has been deaf to

the people's concerns and continues expounding its standard rhetoric that mining will lead to the development of Scheduled Areas and lift adivasi groups out of poverty, despite the evidence available to resoundingly discount this specious theory. The rhetoric does not stop at merely verbally dismissing protests against mining projects: state repression involving the excessive use of force, with corporate collusion, against unarmed civilians has also been the government's approach to silencing opposition to its vision of expanding the aluminium industry in Orissa.

The people's refusal to consent to mining projects is based on solid arguments and empirical evidence. The majority of these projects are in designated adivasi areas, which are afforded special protection under the Fifth Schedule of the Constitution and other related legislation.¹⁰ For example, according to the Panchayat Extension Scheduled Areas Act, lands in adivasi areas should not be used for commercial purposes without local consent. However, when such consent is not readily granted by adivasi groups, state and company agents go to great lengths to extract it by obscuring facts or using other fraudulent means, including coercion and force, to obtain their consent or obeisance - thereby subverting the democratic process that was created to protect these unique adivasi communities and cultures. The long-term environmental damage caused by open-cast bauxite mining is also well documented. It will render formerly productive lands fallow, contaminate ground water sources, destroy forest lands and grasslands, and negatively affect biodiversity. The aluminium refinery process also involves pollution by harmful waste products such as red mud, ash, lime, and other toxic substances that further increase environmental and health risks. Orissa is currently emitting an astonishing 1 percent the world's greenhouse gases; this figure is estimated to increase to 3 percent by 2008 if mining continues unabated.¹¹ While environmental legislation and regulations are in place to protect natural resources, corporations are able to routinely ignore or sidestep these laws, as government-monitoring bodies look the other way.

Finally, experience with mining projects in the region to date and worldwide studies on development-induced displacement make it highly dubious that the people displaced, or otherwise affected by mining projects, will benefit in any way. Rather, evidence points to a stronger likelihood that displacement will lead to a decline in their standard of living because of the loss of livelihoods and the break down of cultures and traditions that follows in the wake of such projects. Resettlement and Rehabilitation (R & R) packages for project-related deprivation are notoriously inadequate to compensate for the adverse social, economic and environmental conditions that bauxite mining creates; in addition, they are usually under-financed and rarely are they fully, or properly, implemented.

Kashipur and UAIL

Within the context of the expansion of the aluminium industry in Orissa, the IPT conducted an inquiry into the proposed mining of bauxite deposits in the Baphlimali Hills of Kashipur Block, Rayagada District, Orissa. The situation in Kashipur provides an important case study of the impacts of similar bauxite-mining projects in Orissa, as well as mining projects taking place within Fifth Schedule Areas around the country.

Utkal Aluminum Industrial Limited (UAIL), a consortium, was formed in 1993 and was originally composed of ALCAN(Canada), Hindalco of Birla Group (India), TATA (India), and Norsk Hydro (Norway). In 2001, TATA and Norsk Hydro withdrew from the project, largely due to political concerns, following large-scale public protests. Today, UAIL remains a joint partnership of ALCAN and Hindalco holding 45 percent and 55 percent ownership in the project, respectively.

UAIL plans to open-cast mine bauxite deposits located on the top of the Baphlimali Hills, which fall under the Maikanch Panchayat of Kashipur Block. Mined ore will be transferred through a conveyor belt to a refinery/captive power plant located 22 kilometers away, on the outskirts of Kucheaipadar village. At the refinery, alumina will be extracted from the bauxite and 100 percent of the alumina produced will be transported from the refinery to the Vishakhapatnam Port for export, requiring new roads and railway lines.

It is estimated that 195 million tonnes of bauxite will be mined over the duration of the project; eight million tonnes extracted annually to produce between 1 - 3 million tonnes of alumina per annum. At this rate, the existing deposits will be completely exhausted in approximately 24 -25 years. Large-scale land acquisition is a requirement of the UAIL project and an estimated 2,800 acres of agricultural lands, forestlands, grasslands, and homestead land will be acquired: 2,153 acres of privately-owned land and 712 acres of government-owned land. Of the 712 government-owned land, 92 acres is non-forest communal land and 206 acres is Village forest land. According to information provided to the IPT by the Ministry of Environment and Forest (MoEF), UAIL claims that all land acquisition has been completed and transferred, except for 298 acres of non-forest communal land and Village forest land.¹² UAIL's land acquisition will have grave repercussions on the lives and livelihoods of the thousands of people inhabiting the area. Currently, UAIL's land acquisition claims are disputed by local people and they have not taken physical possession of the land to date.

UAIL is investing a total of \$Rs. 45 billion as of 2000 in the project, However it will undoubtedly make a significant profit based on current world market rates: according to some sources as much as Rs. 2.88 trillion which would mean a 6,300 percent return on its investment.¹³ According to UAIL its Internal Rate of Return (IRR) is 11.5 percent, based on 2000 assessment in US currency. In fact, the proposed UAIL bauxite mine is considered to be the most low-cost greenfield for bauxite in the world today - if it proceeds as planned. In contrast, the Government of Orissa, which is selling its bauxite to UAIL at the bargain basement price of Rs. 85 a tonne,¹⁴ will only generate an estimated Rs. 14 billion¹⁵ that too over two decades. in royalties. This figure does not include deductions for expenditures by the Government of Orissa for project-related infrastructure projects such as roads, railways, police stations, dams, and power plants. For example, the government has already taken a loan of over Rs. 3 billion to build a railway line linking the UAIL project to the Vishakapatnam Port.¹⁶ In addition, any cost-benefit analysis is incomplete unless it also factors in the loss of revenue due to tax incentives and subsidies (water, electricity, etc.) granted by the government to UAIL, the long-term costs to be sustained due to the destruction of livelihoods and the environment, the project's social and cultural impacts, and the project's potential to offset investments in development projects already underway in the region. While a complete economic analysis of the project is currently unavailable, all of these expenditures and costs must be considered in any assessment of the projects true economic viability.

PSSP and other local groups are part of a strong people's struggle questioning the execution of the project, which has entered its 12th year. The people's struggle, as well as other procedural delays, has postponed the project. Construction was originally scheduled to commence in June 2000 and to be completed in June 2003. In 2000, preparatory and preliminary construction work on an airstrip in Tikiri, access roads leading to the mine and alumina/captive power plant. All construction activities came to a halt in December 2000 after three local men lost their lives during a protest against the project when the police opened fire on the crowd and the incident was investigated. In the interim, UAIL's environmental clearances for the mine and refinery/captive power plant expired, making further construction or project activities illegal.

According to the last estimate available to the IPT, construction was set to begin at the end of 2004, with a planned completion date in 2008. Not coincidentally, state and company repression in the area increased drastically in 2004 as UAIL and the Government of Orissa worked together to silence the people's protest and demand for project information so the project could commence. This has led to a numerous human rights violations that involve beatings, intimidation, harassment, and arbitrary arrests and detentions. The people's right to peacefully assembly is also consistently breached. On 21st July 2005, PSSP sent a complaint to National Human Rights Commission urging them to investigate the situation in Kashipur. The same day PSSP members like Bhagaban Majhi and Debaranjan Sarangi met ST Commissioner in Delhi and gave memorandum to him. The commissioner visited the area in September. However, there was no further communication from any of these constitutional bodies. Earlier on its members had also gone on a two-days dharna and gave memorandum to the President of India on March 5, 2005 in Delhi.¹⁷

The Tribunal report examines a number of issues surrounding the project. Chapter Two highlights the legal issues pertaining to mining in Scheduled Areas and obtaining environmental clearances for mining projects. Chapter Three examines the serious environmental and health impacts that will be caused by the project. Chapter Four delves into the issue of displacement caused by the project and the R & R package offered by UAIL. Chapter Five describes the unique adivasi livelihoods and cultures that exist in the area, which are governed by sustainable and ecological systems for food security, a respect for nature, and a non-corporate, sustainable, and culturally specific development approach. Chapter Six documents state and company repression against local people and those who oppose the UAIL project; this involves serious human rights violations. Finally, throughout the report the Tribunal refers to two bauxite-mining projects which are important references when examining the UAIL project: Vendanta/Sterlite in Niyamgiri Hills and NALCO in Damanjodi. The Vendanta/Sterlite project is very similar in scope and size to the proposed UAIL project, and to some extent illustrates the conditions people in Kashipur can expect if the UAIL project proceeds as planned. The NALCO project, an older bauxite-mining project, provides useful information on the limited enforcement of pollution controls, the impunity with which companies operate, the incompetence of the Orissa State Pollution Control Board in fulfilling its role as a monitoring body, and the non-implementation of R & R packages. For example, the people living around the NALCO project were also never properly informed of the environmental and health impacts associated with the bauxite-mining project, and they have suffered greatly from it. A brief description of both projects is provided in **Text Box 1**.

Vedanta/Sterlite Mine the Niyamgiri Hills (Lanjigarh Block, Kalahandi District)

The Niyamgiri Hills hold 7.3 crore tonnes of bauxite which will be exhausted in 23 years, as the projects will mine 30 million tonnes of bauxite to produce 10 tonnes of alumina annually. Of the 1,073.4 hectares of land in the Niyamgiri Hills, 506.638 are reserved forest areas, which Vedanta/Sterlite plans to mine. An additional 1,798.54 hectares of land is required for the alumina refinery, of which 1,1109.41 is private land. Plant effluents, such as red mud and ash will be stored in ponds that can leach pollutants into the soil and water. The plant will displace 60 families from two villages and will affect 302 families from 12 additional villages. In addition, a primitive tribal groups that live on the sides of the hills, the Dongaria Kondhs, will be displaced. Because their villages are not properly registered due to government error, they have not been consulted about the project or included in the account of the number of displaced. Local groups opposing the project include the Niyamgiri Surakshya Samiti (NSS), who submitted a deposition before the Tribunal. This project also requires an investment of Rs. 45 billion and has an alumina production capacity of 10 million tones. It will employ 250 local people directly and 500 people indirectly.

National Aluminium Corporation (NALCO) Mines in Damanjodi

The NALCO bauxite-mining project is located approximately 100 km from Kashipur and is one of the largest bauxite- mining projects in the country. The company made a profit of US\$ 120 million in 2002. Contrary to government and company claims, the local adivasi people whose lands were acquired for the project, or who live in proximity to the project, have not benefited in anyway from this largesse. The R & R package offered to them by NALCO has only been partially implemented, mining wastes have been illegally dumped onto private lands, and wastes from the alumina refinery have been directly released into the river. In addition, there are a number of serious health problems in the area that have been linked to pollution caused by NALCO's alumina. Despite this track record, in 2000 and 2001 NALCO started its capacity from 230, 000 to 345, 000 tons. (Source: Behind the Shining : Aluminium's Darkside, pg - 178)

Kashipur StruggleA Dateline

- 1991** Government of India made relaxation in Industrial act and subsequent mining act and permitted the MNCs to enter into the bauxite-alumina sector. This was done as a economic reform and under Liberalization Privatization and Globalization proposal. Earlier it was only public sector who were doing bauxite mining and were selling to Indian companies like Indal. Indal was only the private sector company who has its alumina and smelter plant in UP and Sambalpur (Orissa) respectively.
- 1992** The Orissa Mining Corporation (OMC) was granted a prospecting license by the Government of Orissa for 2,059 square kilometers in Kashipur for subsequent lease to corporate entities.
- 1993** Utkal Alumina Industries Ltd. (UAIL), is established as a joint venture for the sole purpose of exploiting bauxite reserves in the Kashipur area in the Indian state of Orissa. UAIL consists of, Tata Industries (India), Norsk Hydro (Norway), Hindalco (earlier it was Indal) of Birla Group (India) and Alcan (Canada).
Surveying for bauxite-mining is conducted without consultation with local inhabitants of the area.
- 1994** OMC grants UAIL a mining lease for the lands in Kashipur.
- 16 June 1994** UAIL submits a site clearance application for the mine to the Ministry of Environment and Forests (MoEF).
- 4 July 1994** The MoEF grants UAIL a site clearance for the mine.
- June 1995** The Orissa State Pollution Control Board (OSPCB) granted its consent for the project through a No Objection Certificate (NOC) and Consent for Establishment (COE).
- 25 September 1995** UAIL obtains an environmental clearance from the MoEF for the mine site, despite the fact that the required Environmental Impact Assessment (EIA) and Environmental Management Plan (EMP) are not provided by UAIL.
- 27 September 1995** UAIL obtains an environmental clearance from the MoEF for the refinery/power plant site, despite the fact that the required Environmental Impact Assessment (EIA) and Environmental Management Plan (EMP) are not provided by UAIL.
- 1996** A project survey conducted by UAIL concludes that 147 families are to be displaced by the proposed project. This number is based on the 1991 Census.
Prakrutik Sampad Surakshaya Parishad (PSSP) is formed to fight against

- the UAIL project.
UAIL's 1994 mining lease with the OMC expires since no work has taken place on the project.
Panchayat (Extension to Scheduled Areas) Act, otherwise known as PESA, is adopted, which stipulates a strict requirement of consultation proper to land acquisition.
UAIL offers a R & R package for DPs.
- January 1996** UAIL's EIA and EMP for the mine, drafted by Engineers India Limited, is submitted to the MoEF, although it has already granted UAIL an environmental clearance for the mine.
- 1998** UAIL conducts some minimal ground leveling work at the site of the refinery/power plant. It did not do any earth leveling work because it was difficult for UAIL to reach the area. They formed URDS (Utkal Rural Development Studies) a NGO by UAIL and started eye camps, seeds distribution and did some road work at mining site and some culverts connecting the main road and also a nursery for plantation at mining site. Subsequently, PSSP demolished all its construction because it is the state government who should do developmental work nor a private company.
- 5 January 1998** A check-post is created at Kucheaipadar by local people to prevent UAIL vehicles from entering the area. Police demolish the check-post and the protestors are tear-gassed and lathicharged: 50 people are injured.
- 16 February 1996** The EIA and EMP for the refinery/power plant site is completed, well after environmental clearance has been granted.
- 29 March 1998** Hired goons attack local people congregated for a meeting to commemorate an Oriya freedom fighter in full view of the police. Some people were arrested and their heads were shaved.
- 1999** An All Party Committee is formed to support UAIL's endeavours in Kashipur composed of Biju Janata Dal (BJD), Bharatiya Janata Party (BJP) and the Congress Party.

UAIL begins to file reports with the OSPCB
- 19 April 1999** The MoEF grants UAIL a forest clearance for the refinery/power plant. Information indicates that a forest clearance for the mining site is still pending.
- May 2000** UAIL requests a renewal of its environmental clearances.
- June 2000** UAIL's request for a renewal of its environmental clearances is denied by the MoEF, which cites the fact that the clearances have yet to expire as their reason for refusing the request.

- September 2000** UAIL submits a second request to renew its environmental clearances.
- 24 September 2000** UAIL's environmental clearance for the mine expires, given the fact that no work has taken place on the mine site.
- 16 December 2000** State police open fire on a crowd in Maikanch village following an anti-mining movement held the previous day. Three tribal villagers are shot dead and many others are injured.
- 29 December 2000** A meeting is held of the Gram Sabhas at which elected officials of 22 of the 24 project-affected villages pass a resolution opposing the UAIL bauxite-mining project.
- 30 December 2000** The Rayagada Collector convenes a meeting of the Gram Sabhas of Maikanch, Kucheaipadar, Kodipari, Tikiri, and Gorakhpur, during which they all assert their written opposition to the project. Their decision was submitted to the Chief Minister of Orissa and the Prime Minister and President of India.
- 2001** Norsk Hydro and Tata withdraw from UAIL due to political concerns. UAIL remains a joint partnership of ALCAN (45 percent) and Hindalco (55%) to date.
- 30 January 2001** Approximately 10, 000 local people gather in Kashipur to state that they will not vacate their homes or land for the UAIL project.
- 20 January 2001** The Government of Orissa orders a judicial inquiry headed by P.K. Misra to investigate the Maikanch incident on 16 December 2000. The UAIL project is stayed until completion of the inquiry and is subject to its approval.
- June 2001** UAIL submits its third request to the MoEF to renew its environmental clearances.
- August 2001** UAIL submits its fourth request to the MoEF to renew its environmental clearances.
- 17 December 2001** Norsk Hydra divests its share in UAIL, largely due to the controversy following the Maikanch incident in 2000. Norsk Hydro's shares are purchased by ALCAN in 2003. ALCAN (which owns INDAL) now owns 55 percent share of UAIL.
- November 2002** UAIL submits its fifth request to the MoEF to renew its environmental clearances.
- March 2003** UAIL submits its sixth request to the MoEF to renew its environmental clearances.

- June 2003** UAIL submits its seventh request to the MoEF to renew its environmental clearances.
- 16 October 2003** Press leak reports that Orissa Government approves the findings of the inquiry into killings and gives company go ahead. Extract from the summary: "[The] Commission has expressed its doubt about the stated purpose of the visit of Police force to Maikanch on 16th December, 2000, that it was to maintain law and order... excessive force was used in that as many as 19 rounds were fired."
- 5 November 2003** Hindu Business Line: Indal CEO Dr. S.K Tamotia "hopeful that its ongoing...alumina project in Orissa will be completed without further delay."
- 16 December 2003** First solidarity demonstration in Montreal, commemorating shooting deaths of three villagers. Alcan fails to state any clear position on its investment.
- 2004** Government of Orissa dispatches large numbers of state police and paramilitary groups to Kashipur.
- 14 April 2004** In a Economic Times article, " Officials in the Orissa government confirmed that Utkal Alumina International (UAIL) has started rehabilitation and resettlement work at the plant and mining sites. "
- 22 April 2004** At ALCAN's annual general assembly, Alcan't (an international campaign against ALCAN) in India reminds and confirms to the shareholders that the inhabitants of Kashipur are totally opposed to the UAIL mining project. In a meeting with ALCAN executives, Alcant in India re-states its three initial demands : 1. That the EIA be made public; 2. That a proof be made public of Alcan's claim to have the people's support; 3. That Alcan initiate a joint observation commission in Kashipur to investigate the issues and arrive to a mutual conclusion on the actual position of the region's people..
- 14 June 2004** In a meeting between Alcan't in India activists and Alcan executives, the latter refuse to publicize their documents.
- 1 -3 September 2004** A solidarity conference is organised in Montreal, including participants from India and Norway.
- 19 October 2004** A 5,000 strong demonstration is held at Tikiri in Rayagada district in Orissa, by PSSP and people's movement against UAIL, demanding once more that the project be cancelled altogether.
- 25 November 2004** Chief Minister (head of state) of Orissa, Shri Naveen Patnaik, gives clear instructions to state bureaucrats and police superintendents that all anti-mining movements must be firmly suppressed.

- 28 November, 2004** UAIL holds a rally (which they claim was attended by 15,000 people from the project-affected area), which they claim satisfies the requirement of local consultation. Locals claim that people mainly party workers of BJP, BJD, Congress and BSP from adjacent blocks of nearer districts were bussed in from outside areas to attend the meeting and give the illusion of support. On the same day PSSP did a rally at plant site.
- 1 December 2004** Five hundred armed police enter the village of Karal to inaugurate the construction of an access road and police barracks in preparation for mining activities. The hundreds of tribal people who gather to protest this activity are tear-gassed and 16 of them are critically injured when police attack them with batons. In the following days, hundreds of police are deployed into the area, arresting people indiscriminately and sealing the area off from media and outsiders.
- 5 December 2004** Central Reserve Police Force is deployed in Kashipur. Bagirijhola village is raided by 100 CID
- 10 December 2004** Bagirijhola village is raided again by 85 policemen and a CRPF battalion.
- 13 December 2004** Bagirijhola village is raided for the third time and people are warned against celebrating Shahid Diwas (Martyrs' Day)
- 16 December 2004:** Martyr's day programe was observed at Bagrijhola despite threats from police and paramilitary forces. Nearly two thousand people attended the programe. Several political parties CPI (ML) - Liberation, Chhattisgarh Mukti Morcha and Samajwadi Jana Parishad and mass organization activists came to attend the programe and expressed their solidarity. On the same day two sitting MLAs of Orissa Assembly Mr. Narayan Reddy of CPI and Mr. Sambhunath Nayak of SUCI including activists of CPI, CPM, CITU and also Gananath Patra of CPI (ML) who were coming to attend the programe were detained by police eleven kilometers far from the venue. Some of the activists on that day also were beaten up by UAIL goons in front of police. Police even did not accept a FIR from the sitting MLAs.
- 2005** Independent fact-findings are conducted by five separate and credible civil society organisations (People's Union for civil Liberties, People's Union for Democratic Rights, Association for the Protection of Democratic Rights, Human Rights Forum and Indian Social Action Forum)
Indian Reserve Battalion is deployed in Kashipur.
UAIL holds a second rally in the area during which a Memorandum is presented to the Chief Minister of Orissa to demonstrate that local people fully support the project.
The information available indicates that both of UAIL's environmental clearances have expired and no renewal clearances have been granted by the MoEF.

- 10 May 2005** Bagirijhola village is raided by 100 policemen.
- 13 May 2005** Bagirijhola village is raided by policemen again.
- 15 May 2005** Bagirijhola village is raided again by police who threaten the villagers.
- 25 May 2005** PSSP holds a rally to protest atrocities committed by the police and hired goons.
- 15 June 2005** Five hundred activists meet in Guguput village to discuss the UAIL project. The meeting is interrupted by drunken police who fire their guns in the air and lathicharge and tear gas the crowd.
- 1 - 3 October 2005** The Indian People's Tribunal on the Environment and Human Rights conducts an inquiry into the situation in Kashipur. Tribunal members conduct a site visit, hold a public hearing and a press conference.
- 16 December 2005** Martyr's Day is marked in Kashipur to commemorate the fifth year anniversary of the deaths of three tribal men in Maikanch.
- March 2006** Government of Orissa releases its draft Resettlement and Rehabilitation Policy, which is legally binding.
- 5 April 2006** The Orissa Legislative Assembly releases its interim report of the House Committee on Environment (2005 - 2006) that reviews the activities of major polluting industries in Orissa, including mines. The team also found that UAIL does not have any type of clearances from the central government. The team expressed their concern how even after that the company is intending to start its work.
- 14th July, 2006** There was huge demonstration against Alcan in Berlin and Heidelberg in support of the Kashipur struggle

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Legal Rights of Fifth Schedule Areas

- Mining Lease
- Mining Leases and Scheduled Areas
- Expiration of Mining Lease
- Local Consultation
- Stripping Tribal Rights
- Government Clearance Process
- Site Clearance
- Environmental Clearance
- Forest Clearance
- Pollution Clearance
- Voluntary Regulations



Dongria Tribals depose before the Tribunal

Legal Rights of Fifth Schedule Areas

"If you have a right to our land, then tell us how and when it became yours?"

- Bulka Miniaka

It is an indisputable fact that the proposed UAIL project in Kashipur will take place on land designated as a Fifth Schedule Area. The Schedule provides tribal communities with specific rights and protections under the Indian Constitution that aim to prevent the dispossession of Scheduled Tribes and ensure the preservation of their unique cultures and livelihoods. These Constitutional provisions are further underscored by national and state legislation bolstering the legal rights of Scheduled Tribes over lands and natural resources within Scheduled Areas. However, despite the existence of numerous laws to protect Scheduled Areas from encroachers, the Government of Orissa and private companies like UAIL have been able to routinely violate them with impunity when lucrative natural resources are at stake. In such a scenario, local communities have been unable to invoke their rights under the law.

Likewise, respect for the law has been glaringly absent in both the Government of Orissa and UAIL's attempt to acquire land in Kashipur for the proposed bauxite-mining project, or otherwise implement the project. During its investigation, the Tribunal found that the Government of Orissa and UAIL's actions in respect to the proposed project are illegal and objectionable on a number of grounds: a) the mining lease held by UAIL is illegal and appears to have expired; b) the mandatory requirement for consultation and consent of local communities has not been fulfilled; and c) there are numerous procedural infirmities and illegalities in the government's environmental clearance process for the project and UAIL's environmental clearances have expired. Each of these issues require an in-depth inquiry to expose just how far outside the law the Government of Orissa and UAIL are operating, unchecked and uninhibited in their quest to ensure the realization of the proposed project.

Mining Lease

The Tribunal investigated two main questions to determine the legality of the mining lease for UAIL's bauxite project. First, is it legal to grant a mining lease in a Scheduled Area to a non-tribal entity; and second, is the mining lease still valid under the conditions it was granted to UAIL by the government? The Tribunal found that not only was the mining lease illegal at its inception, but that this illegal lease also appears to have expired according to the conditions upon which it was granted to UAIL.

Mining Leases and Scheduled Areas

The Fifth Schedule of the Constitution¹⁸ and the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes), Regulation 1956,¹⁹ protect tribal lands and property by making it illegal to transfer tribal lands to non-tribal entities. Together, they firmly establish the illegality of granting a mining lease to a non-tribal entity in Scheduled Areas, be it the Government or a corporate body.

This very issue arose when the Birla Group was granted a mining lease in the Scheduled Area of Vishakhapatnam district in the state of Andhra Pradesh (A.P.) In *Samatha vs. State of A. P.* (AIR 1997 SC 3297),²⁰ the Supreme Court held that mining leases by the Government in Scheduled Areas can only be granted to a Scheduled Tribe individual, a society composed entirely of Scheduled Tribe persons, or

to a government mining establishment. While the Samatha judgment is clear on this matter, the Government of Orissa has argued that since it is based on legal provisions peculiar to Andhra Pradesh, the judgment only applies within Andhra Pradesh. The matter must be considered in further detail to demonstrate the fallacy of this argument.

The State of Andhra Pradesh amended the Mines and Minerals (Regulation & Development) Act, 1957 (MMRD) Sec. 11(5) to prohibit the granting of a mining lease in Scheduled Areas to anyone other than a Scheduled Tribe, a Society all of whose members are Scheduled Tribes, or to a Government concern in the Scheduled Areas of Andhra Pradesh. This amendment to Sec.11 of the MMRD Act is peculiar to Andhra Pradesh. Section 3 (1) of the A. P. Scheduled Areas Land Transfer Regulation, 1959 as amended by Regulation 1 of 1970 also states that transfer of immovable property in the Scheduled Areas of that State made by one person to another is null and void unless the latter is a Scheduled Tribe or a registered Society which is composed solely of Scheduled Tribe persons. The validity of Sec.11 (5) of MMRD Act, and the issue of whether the word 'persons' in Sec 3(1) of the Land Transfer Act also includes the Government arose for consideration in Samatha vs. State of Andhra Pradesh. The Supreme Court upheld Sec. 11(5) (A. P. State Amendment) of the MMRD Act as valid and also held that 'person' refers not only to human persons but also to legal persons, in particular the Government. Since both of these legal provisions are peculiar to Andhra Pradesh, the Government of Orissa contends that the bar applies only to that State; however, a perusal of the judgment shows that while the validity of the law peculiar to Andhra Pradesh alone were before the Supreme Court, in the course of expounding the relevant constitutional provisions, the Supreme Court read the prohibition into the Fifth Schedule of the Constitution itself. Article 224(1) of the Constitution states that the Fifth Schedule applies to the administration of the Scheduled Areas other than the North-Eastern States (which are governed by the Sixth Schedule). Paragraph 5(1) of the Fifth Schedule empowers the Governor of a State to modify any law, whether of the State or the Center, to any extent whatsoever, in its application of the Scheduled Areas. Paragraph 5(2) gives the Governor the power to issue regulations for the peace and good governance of the area, including among other things, regulations prohibiting or restricting the transfer of land by or among members of Scheduled Tribes in such areas. Glossing on these provisions, the Supreme Court concluded that the Fifth Schedule itself, that is to say the Constitution, prohibits the transfer of land in Scheduled Areas, in any manner, by anyone to a non-tribal person or corporate body, including the Government. One extract from the profuse judgment suffices:

The predominant object of para 5(2) of the Fifth Schedule and the Regulations (the Land Transfer Regulation of A. P.) is to impose total prohibition of transfer of immovable property to any person other than a tribal...

Thus the prohibition is present in paragraph 5(2) of the Fifth Schedule itself and not merely in the Land Transfer Regulation of A. P. The conclusion is that the Samatha judgment applies to all Fifth Schedule Areas within the country, including those in the State of Orissa. Therefore, the mining lease and the lease of land for the refinery granted by the Government of Orissa to UAIL is illegal and invalid since neither the Government of Orissa nor UAIL fulfill the definition of a tribal person or entity.

Expiration of Mining Lease

There is limited information available concerning the mining lease granted to UAIL. The Orissa Mining Corporation (OMC), a state body, was granted a prospecting license by the government for 2,059 square

kilometers in Kashipur in 1992 on the condition that the OMC would subsequently lease these lands to interested corporate entities.²⁰ In 1994, the OMC granted UAIL a mining lease for these lands, under condition that the lease would expire within two years if UAIL's failed to commence its mining operations during that period. Since the UAIL project did not begin in 1996 - in fact no work has taken place to date on the mine site - it appears that UAIL's original lease has expired. In order to determine if a renewal lease had been granted, the IPT submitted a written request to the Ministry of Mines seeking further information on the original mining concession and renewal leases, if any. No response from the Ministry of Mines prompted the IPT to submit a separate request to the Ministry of Mines under the Right to Information Act specifically seeking information on mining leases granted in Orissa from 1998 - 2005. The information provided by the Ministry of Mines in response to this request indicates that a renewal lease for the UAIL project does not exist; therefore, UAIL's original mining lease has expired making all subsequent land acquisition and project activities by UAIL since 1996 illegal.²¹

On a side note, the Central Empowered Committee (CEC) of the Supreme Court (in its 21 September 2005 report on the case of *Vendanta in Lanjigarh*) questioned the validity of leases granted by the OMC to corporations, prior to the corporation obtaining the mandatory environmental clearances from the Ministry of Environment and Forest (MoEF). UAIL was granted environmental clearance after it was granted a mining lease.

Local Consultation

As a Scheduled Area, the acquisition of an estimated 2,800 acres of land in Kashipur by UAIL for project purposes requires consultation with the local people. The entire project is subject to local consent, while individual consent for the Resettlement & Rehabilitation (R & R) package offered is required in exchange for privately-owned land. The legal preconditions to acquire land for development projects in Scheduled Areas are clear in this regard and given the stiff opposition UAIL has faced from local people, provisions requiring consent have remained an impediment to the UAIL project since its inception..

The Orissa Scheduled Tribes Transfer of Immovable Property Act, 1956 made it illegal to transfer tribal land to non-tribal entities without first obtaining the consent of the local people. More recently, the Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA) stipulates a strict requirement of consultation prior to land acquisition for development projects, as well as in the formulation of R & R packages. The PESA Act is not merely an Act of Parliament, but is in fact a Constitutional provision based on the recommendations of the Bhuria Committee on implementation of the 73rd Amendment. It stipulates a binding framework of law for Panchayats in Scheduled Areas with several relevant provisions providing protection to local communities: Gram Sabhas or Gram Panchayats at the appropriate level shall be consulted before land is acquired for development projects [Sec 4(i)]; Gram Sabhas and Panchayats at the appropriate level are endowed with the powers to prevent land alienation, including to the Government [Sec 4(m)(iii)]; Panchayats are endowed with the powers required for them to function as institutions of self-government [Sec. 4 (n)]; and States are required to follow the pattern of the Sixth Schedule of the Constitution when designing the administration of Panchayats in Fifth Schedule Areas [Sec 4(o)].

As a Constitutional mandate, the process of consultation under PESA stems from the Constitutional meaning, which is available in the well known Judge's Transfer case, or *S.P. Gupta vs. Union of India*. In this case, the Supreme Court held that consultation requires placing all relevant information before the person or body to be consulted, providing an explanation in a language intelligible to them, and

mutual deliberations during which differences of opinion and objections are discussed. As such, consultation is meant to enable local people to express their views on the desirability or propriety of a proposed project so that the administration and/or corporation is able to reassess or modify the project in response to local concerns.

UAIL claims that beginning in 1999, "regular meetings are held with the villagers, village elders and youth club. Communicators/facilitators were appointed to communicate with the villagers about the impacts of the Project on the environment and development of the region"²² and that "efforts continue in the region to clear misconceptions about the Project" including a creation of a third issue of the Utkal Jyoti newsletter.²³ UAIL also claims that as of February 2003, it visited nine villages to discuss the project, during which they encountered some resistance. In 2004, UAIL approached the government to assist it in communicating with villagers and convince them about the merits of the project, a task which the government accepts in order to help the project proceed as smoothly as possible. Not coincidentally, this is when the state repression against protestors and activists in the area opposing the project intensifies, as discussed in detail in Chapter Five. UAIL held two Open House Meetings to assess public opinion about the project on 27 January 2004 and 26 May 2004. UAIL claim both of these meetings were widely attended and that "the response was positive and majority of the leaders expressed their views in favour of the project." They also claim that another meeting was held at a later date with Ward members and Village heads of the 24 project-affected villages, who showed their "overwhelming support for the project."²⁴ UAIL further claims that local consultation and consent has been demonstrated by an All Party Committee rally attended by 20,000 people on 28 November 2004 ;²⁵ a rally held in 2005 that resulted in a Memorandum presented to the Chief Minister of Orissa indicating that the local people fully support the project; and the written consent of five Panchayats and Gram Sabhas and 22 of the 24 affected villages.

However, depositions before the Tribunal provide substantive reasons to doubt these claims. There is evidence that the Government of Orissa and UAIL have attempted to meet the requirements of the PESA Act by staging meetings and manufacturing consent through coercion and repression.²⁶ There have not been any legitimate efforts to conduct an informed consultation with project-affected people; increasing monetary compensation and other concessions by UAIL were not the products of constructive dialogue with the people, but were simply reactions to strong local protests.

Several depositions before the Tribunal indicate that the rallies UAIL refers to in 2004 and 2005 were staged events, held in the presence of police and armed forces and with people from outside the area brought in to increase the numbers. Other depositions claim that during a meeting convened by then Rayagada Collector, Durga Madhab Mishra (IAS), on 30 December 2000, the Gram Sabhas of Maikanch, Kucheaipadar, Kodipari, Tikiri, and Gorakhpur had given their written opposition to the project: this decision was submitted to the Chief Minister, the Prime Minister, and the President.²⁷ The Tribunal notes that this meeting was convened two weeks after the police used excessive force to quell a local protest in Maikanch against the project, killing three men. However, despite these efforts to intimidate and terrify them into submission, the local people stood their ground and refused to consent to the project.

The Rayagada Collector Pramod Meherda (IAS) convened a second meeting on 9 December 2004 in the villages of Ramibeda, Kendukhunti, and Talakorole - the three villages to be acquired in totality by UAIL - to elicit public opinion. Again, this attempt at consultation ultimately proved to be a farce. That day, nine to ten platoons of armed police - around 300 policemen - surrounded each of the three ham-

lets and did not allow residents of other hamlets within the same Ward and Palli Sabha to participate in the meeting.²⁸ Consultation for the project cannot be confined to the three villages that will be displaced, but must also include residents of villages where agricultural lands are to be acquired, although village sites will remain intact. Under heavy police presence, community leaders consented to the project; afterwards, people in the villages were served liquor and meat. It is highly doubtful that these community leaders were truthfully representing their constituencies when giving their consent. The people living in these villages have consistently opposed the project since 1996.

UAIL's efforts to obtain individual consent for land acquisition and acceptance of its R & R package have been more vigorous, but still fail to provide people with adequate written information concerning compensation for land acquisition and the details of the R & R package. Communicators/facilitators have been hired by the company to personally approach people and convince them to sell their lands in exchange for compensation through the R & R package. These interactions involve verbal explanations; no written material is provided that indicate exactly what UAIL is offering in terms of compensation. It was reported that Communicators/Facilitators often make exaggerated promises (that are unlikely to be fulfilled) in order to persuade people and obtain their consent. Reports also indicate that Communicators/Facilitators work in conjunction with police and hired goons to intimidate people into giving their consent and that signatures have been taken at gunpoint.²⁹

The Government of Orissa and UAIL seem to have forgotten that they are dealing with a Scheduled Area governed by special provisions emanating from the Constitution. This lapse of memory cannot be condoned, and the total violation of PESA's binding provisions cannot be regarded as a curable omission or irregularity. The statutory requirement of consultation is not met by simply claiming that a resolution was passed by a Gram Panchayat or Gram Sabha, as has been argued by the Government of Orissa and UAIL. Even then, although UAIL claims that it has obtained written consent from five Panchayats and almost 100 percent of the affected villages, its refusal to release these documents to the public throws further doubt on the veracity of its claim and supports PSSP's assertion that in fact the opposite is true: Sarpanches and Ward members provided their written opposition to the project in 2004. After all, it would be in UAIL's best interest to provide written proof that establishes local consent to deflect conjecture. Finally, a consultation cannot simply be conducted at this stage, with apologies for not having done so in the first place: this would defeat the entire purpose of the PESA Act.

As Text Box 2 illustrates, the process of consent and consultation is often distorted to serve the interests of project, and not the people.

Text Box 2

Sterlite Proceeds in Lanjigarh Without Local Consent

The Tribunal's visit to the Lanjigarh in Kalahandi district where Vedanta/Sterlite is fast completing construction of its bauxite project offered a similar story of the perversion of consent. Dai Singh Majhi of the Niamgiri Suraksha Samiti (NSS) told the Tribunal that when the District Collector of Kalahandi, Shaswat Misra, held a Gram Sabha meeting to obtain the people's consent, all 12 of the affected habitations boycotted the meeting. Yet, the Gram Sabha was still held and people from outside the area were brought in and prevailed upon the Gram Sarpanch to provide consent. As a result, homesteads were razed with bull-

dozed in the three villages of Kinari, Borbatta and Sindbahli, and the land was handed over to Vedanta/Sterlite after residents refused to vacate their homes. The Dongaria Kondhas (a primitive tribal group) residing in numerous hamlets on the sides of the Niyamgiri Hills, that will become inhabitable after the mining commences, were not even provided with a mock consultation: they are so cut off from the world that they do not even know of the fate that awaits them.

Then District Collector of Kalahandi reportedly told reluctant villagers of the three displaced villages, that only the top six inches of the soil belong to the people, and all the rest underneath belongs to the Government, which it will give to the person of its choice. This is no doubt a very ancient principle of English common law, which has been inherited, but it has also been modified in many ways, that the District Collector seems ignorant of, to incorporate some space for the will of the people, especially in the Scheduled Areas. It is a matter of some significance that on 2 Jan 2006 the same officer, now the District Collector of Jajpur, was implicated in the deaths of twelve tribal protestors at the Kalinganagar Industrial Complex, and has recently been shifted to the State Secretariat, where he will have a bigger role in formulating policies.

Stripping Tribal Rights

The illegality of the proposed project has been established through the legal arguments pertaining to the mining lease and the absence of mandatory local consultation; the Government of Orissa and UAIL inadvertently acknowledge this by adopting a strategy to circumvent these laws, rather than directly challenge them. There is suspicion that a concerted effort is underway to 'denotify' Scheduled Tribes, thereby stripping them of their Constitutional rights, which would remove the existing legal obstacles to land acquisition in Scheduled Areas that protect them, paving the way for large-scale land acquisition.

As per deposition received from Mr. Debaranjan Sarangi of the PSSP the issue of denotification of tribes came into focus in 1992 when some officers listed Jhodia as Jharia and included them in the OBC list. According to him this has happened only in Kashipur block. Jhodia in other areas are treated as tribals. Therefore the tribals of this area have not received ST certificates since 1992. Also as a result, members of the Jhodia tribe cannot enroll their children in tribal residential schools and are barred from contesting elections for seats reserved for members of Scheduled Tribes. Most importantly, lands held by the Jhodia's are no longer under the protection of the Fifth Schedule of the Constitution and therefore can be acquired and/or transferred to non-tribal entities. The political motivation for the denotification of Jhodias is underscored by the fact that members of the Jhodia tribe residing in areas of no import to commercial mining interests continue to receive ST certificates.

"The water, air, forests, etc. would all be wrested by the company at no price at all. Some 40,000 Jhodia tribals will lose their place in the Scheduled Tribes list as part of the government conspiracy. They have been deleted from the ST list, as under the Constitution tribal land cannot be handed over to anyone else. Now since that has been done, the land belonging to the tribals can be handed over to the company. Keeping this in mind, the Central and the state governments have together deleted the Jhodias from the Scheduled Tribes List."

- Shankar Prasad Muduli

The People's Union for Democratic Rights (PUDR) also reports that the government denotified the Paroja tribe to facilitate the acquisition of their lands for mining. They are now also classified as OBCs.

"They are trying to declare us as an Other Backward Classes (OBC) so that they can take our land. We do not have a deed to our lands. If they take our land away, where will we live?... Our happiness is in this area with our land. We feel ourselves as insects of the earth. In 1992, we were declared OBCs and then this process was stopped in 1993 and then started and stopped again. Now we are not given certificates again."

- Manohar Jhodia

Government Clearance Process

The Government of India (GOI) specifies a number of clearances and permissions that must be obtained before a development or industrial project is allowed to proceed as a safeguard to ensure that environmental regulations are observed. The Environmental Impact Assessment Notification Act, 1994, formulated under the aegis of the Environment (Protection) Act, 1986, requires that all industrial projects obtain clearance from the Ministry of Environment and Forest (MoEF) by way of a two-step process: a site clearance, if the project is site-specific, followed by an environmental clearance.³⁰ The Forest (Conservation) Act, 1980, additionally requires projects that encroach on forest lands to also obtain a forest clearance from the MoEF. Finally, the Environment (Protection) Act also requires projects to obtain a No Objection Certification (NOC) and Consent for Establishment (COE) from the relevant State Pollution Control Board, which monitors regulations under the Air and Water Acts, 1981 and 1984 respectively.

While the government clearance process is there to protect the environment and the people from harmful pollution and adverse social impacts, companies often violate environmental regulations with the complicity of the government (see Text Box 3). Another major flaw in the environmental clearance process is the government's decision to allow UAIL and other corporations to treat linked components of a project (i.e. mine, refinery/power plant) as separate entities, for which separate clearance applications can be submitted. This allows corporate entities like UAIL to dodge environmental regulations, which are dependent on project size or investment limits: each component may meet environmental regulations when examined alone, but when examined together often fall well outside the proscribed regulations. In the case of UAIL, separate clearances were granted for the mine and refinery/captive power plant, but there is no information available on whether or not the impacts of other ancillary components have been considered at any stage. Finally, at all stages of the clearance process, the MoEF appears to have presupposed the granting of clearances to UAIL. In addition, UAIL's environmental clearances have expired and it is uncertain if it they had taken the appropriate steps to meet clearance conditions when the clearance was valid.

Site Clearance

The first step in obtaining permission for a site-specific project is to request a site clearance. UAIL submitted a site clearance application for the mine to the MoEF on 16 June 1994. The MoEF granted UAIL the site clearance on 4 July 1994,³¹ a mere 18 days after receiving its application: site clearances are normally granted upwards of one year from the date of the application. Therefore, the speed with which

the MoEF granted UAIL a site clearance raises questions about whether or not a proper review was undertaken and strengthens the argument that the MoEF was pre-disposed to grant the clearance regardless of the contents of the application. Moreover, the location of the project in a Scheduled Area would require that cultural and demographic impacts be considered during the MoEF's assessment; however, there is no information available to determine if this type of information was submitted by UAIL or considered during the MoEF's deliberations. Information obtained by the Tribunal indicates that a Socio-Economic Impact Study was planned in 2000, well after site clearance had been granted for the project. A site clearance for the refinery/power plant is not required as this component of the project is not site-specific.

Environmental Clearance

UAIL obtained an environmental clearance from the MoEF for the mine on 25 September 1995.³² The environmental clearance application process required UAIL to submit both an Environmental Impact Assessment (EIA) and an Environmental Management Plan (EMP). UAIL commissioned Engineers India Limited to conduct an EIA and draft an EMP for the mine: both were completed in January 1996, over three months after UAIL obtained its environmental clearance from the MoEF. The only explanation for this discrepancy is that the MoEF granted UAIL an environmental clearance based on an incomplete draft of the EIA and EMP. It behooves the Tribunal to understand the logic of the MoEF in granting an environmental clearance to UAIL with an incomplete picture of the project's environmental impact. It also further supports the argument that the MoEF presumed to grant an environmental clearance to UAIL, regardless of the information provided in the EIA and EMP, which is a total abdication of its oversight responsibilities.

Likewise, UAIL obtained an environmental clearance from the MoEF for the refinery and power plant compound on 27 September 1995.³³ UAIL again commissioned Engineers India Limited to conduct the EIA and draft an EMP: both were completed on 16 February 1996, four months after the MoEF granted UAIL an environmental clearance. Again, the MoEF seems to have abdicated its oversight responsibilities by granting an environmental clearance before it had complete information regarding the project's environmental impact. The environmental clearance for the alumina refinery/captive power plant also stipulated that UAIL provide the MoEF with additional or modified information. For example, the MoEF requested a modified land estimate based on its assessment that the amount of land UAIL proposed to acquire was in excess of what was necessary; however, it is very distressing that the MoEF would even consider granting an environmental clearance when such vital information is missing from an application. The MoEF's actions, again, strengthen the argument that it was predisposed to grant the environmental clearance to UAIL, regardless of the environmental impact of the project.

UAIL was required to submit both the modified land estimate and rehabilitation plan to the MoEF by October 1995. The Tribunal is unable to ascertain whether or not UAIL submitted this information to the MoEF, let alone by the October 1995 deadline. The IPT made a written request to the Additional Secretary of the MoEF for information on UAIL's compliance with environmental clearance conditions for both the mine and refinery/power plant. In response, the MoEF sent the Tribunal Environmental Clearance Monitoring Reports submitted to it by UAIL from 1998 to 2004.

In addition to the procedural issues outlined above, the environmental clearances granted to UAIL expired in 2000: this would make further land acquisition and project-related operations by UAIL after 2000 illegal. Environmental clearances granted by the MoEF are only valid for five years, unless work on the project in question commences during that time period. As such, UAIL requested a renewal of

its environmental clearances in May 2000, but the request was denied by the MoEF in June 2000 because the five-year period from the date the original environmental clearance was granted had not yet lapsed. UAIL subsequently submitted six more requests to the MoEF to renew its environmental clearances: September 2000, June 2001, August 2001, November 2002, March 2003, and June 2003.

The information available from the MoEF clearly indicates that it did not renew UAIL's environmental clearances. A letter dated 21 September 2005 stipulates that UAIL is required to begin the environmental clearance application process anew for both the mine and refinery/power plant if it wishes to proceed with the project. The Tribunal was unable to obtain any information indicating whether or not UAIL has submitted a new application for environmental clearances, without which no project activities can take place.

Finally, depositions before the Tribunal also raise concerns about the method used by Engineers India Limited to conduct the EIAs: the use of rapid environmental impact assessments, rather than comprehensive EIAs that study the impact of a project over four seasons make the findings inconclusive and incomplete. For example, according to the OSPCB, "because of a improper EIA study, the NALCO smelter in Angul has come to be established in a place where the fluoride level in the ground water was already high," and identifies eleven villages that were affected by the increase in fluoride levels, which can have serious health risks.³⁴ In addition, the practice of the MoEF relying on EIAs supplied by applicants for environmental clearances creates a conflict of interest and raises questions about the EIA's credibility.

Forest Clearance

Plans for the mine and the refinery/power plant compound involve diverting forest lands for non-forest purposes; this requires a forest clearance under the Forest Act. It appears that a forest clearance application is pending for the mine (according to the MoEF's environmental clearance letter), but there is no information available on whether or not the clearance was ultimately granted or under what conditions. What is known is that the refinery/power plant compound obtained a forest clearance on 19 April 1999; however, the clearance letter has not been made available to the public and the amount of forest land UAIL has been authorized to acquire is unknown. According to information obtained by the Tribunal, it appears that 209 acres of forest lands will be used by the project. Furthermore, it is unclear how the MoEF could have granted a forest clearance for the mine or refinery/power plant given the provision in the Forest Act discussed earlier that prohibits use of forest lands for commercial purposes.

Pollution Clearance

The Orissa State Pollution Control Board (OSPCB) granted consent for the refinery and captive power plant in June 1995. The IPT submitted a written request to the OSPCB requesting a copy of the No Objection Certificate (NOC), Consent for Establishment (COE), minutes of the public hearings conducted prior to granting the NOC and COE, and other documentation of the OSPCB's monitoring of the project under the Air and Water Acts. In its response, the OSPCB provided the IPT with a copy of the NOC granted in 1995 and a PCB monitoring report conducted in 2005 and 2006 on water quality in the project area.³⁵ According to the OSPCB, at the time the NOC was granted there was no requirement that a public hearing be conducted under the existing environmental regulations; and therefore no such hearing was organized. The OSPCB also provided that UAIL did not begin filing reports with them until 1999. Although the NOC stipulates many conditions for UAIL to comply with, the laxity of enforce-

ment of NOC conditions is well documented. Corporations such as UAIL can easily ignore NOC conditions with impunity as Vedanta/Sterlite has done with its copper smelter refinery in Tuticorin illustrated in Text Box 3.

Text Box 3

Failure of the Pollution Control Board in Tuticorin, Tamil Nadu

In 1994, Sterlite opened a copper smelter in Tuticorin, Tamil Nadu. Despite widespread opposition to the project by local residents and fisherfolk, Sterlite received a No Objection Certificate (NOC) from the Tamil Nadu Pollution Control Board (TNPCB). From the very beginning, Sterlite openly flouted the conditions of the NOC, which in any case was granted even though Sterlite failed to submit an EIA or hold the required public hearing.

Sterlite violated the majority of conditions that the TNPCB imposed on the project such as the minimum size for a greenbelt surrounding the smelter, the minimum distance required between the smelter and the Gulf of Mannar National Park and production limits. Rather than sanctioning Sterlite for its violations and revoking its NOC, the TNPCB actually relaxed its conditions to better comply with Sterlite's actions! For example, the TNPCB originally mandated that a 250-meter greenbelt be created around the smelter, but then reduced this requirement to 25 metres. Even then, a NEERI study in 1998 found that there was no greenbelt whatsoever surrounding the smelter.

Acting with complete impunity, by 2004 Sterlite had become even more emboldened and brazen in its violation of NOC conditions by 2004. Production increased to four times the stipulated limit and involved a different product than what they had been given consent for by the TNPCB. Sterlite also began an expansion of its production facilities without seeking or obtaining approval. When the Supreme Court Monitoring Committee on Hazardous Wastes (SCMC) visited the area, it found that Sterlite had violated its NOC conditions and had expanded the project without obtaining the necessary environmental clearance. The Ministry of Environment and Forest (MoEF) and the TNPCB promptly granted clearances to Sterlite's for its expansion following the SCMC's visit. Sterlite continues to ignore the directions of the SCMC and remains unaccountable to any government body.

Information taken from the deposition of Nityanand Jayaraman.

Finally, it is important to note that the Planning Commission is reviewing the National Mineral Policy, 1993 and the Mines and Mineral Development and Regulation Act, 1957 in order to release a new National Mineral Policy in 2006. Unfortunately, the revisions will not focus on ensuring stricter adherence to environmental guidelines and safeguards, but to removing procedural delays and speeding up the process of granting environmental clearances, forest, clearances, and site clearances for corporate mining interests.³⁶

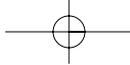
Voluntary Regulations

ALCAN and Hindalco are both participants in the UN Global Compact, a voluntary and non-binding initiative of the United Nations Secretary-General in which companies agree to advance ten universal principles on human rights, environment, labour, and anti-corruption in their activities. As participants, ALCAN and HINDALCO have agreed to "support and respect the protection of internationally proclaimed human rights"; "make sure that they are not complicit in human rights abuses"; "support a pre-

cautionary approach to environmental challenges"; and "undertake initiatives to promote greater environmental responsibility."³⁷ The Tribunal's investigation of the bauxite-mining project in Kashipur show both companies to be in violation of the above principles; and while the Global Compact is not binding, it should also not provide corporations with a veneer of social responsibility when their actions on the ground continue to defy the principles they pledged to uphold.

HINDALCO has a notorious record of violating government environmental norms and causing environmental disasters that affect local populations in its project areas.³⁸ In Orissa itself INDALCO smelter caused widespread fluorosis among local villagers. In 1990, scientists from GM College of Sambhalpur examined villagers and found that an astounding 67% of men and 67% of women suffered from Fluorosis. People aged 12 - were mostly impacted. The researchers also found that the water and vegetation in the areas were highly contaminated by fluorides." (U.N. Samal and B.N. Naik, "Dental fluorosis in human beings around an aluminium factory of Orissa, Journal of Environmental Biology, V. 11, No. 4, Oct. 1990). Similarly ALCAN is facing a lawsuit in its home country of Canada worth billions of dollars from adivasi people in Kemano, British Columbia for destroying their ancestral homeland through mining activities. Ironically, ALCAN promotes itself as a world leader in Corporate Social Responsibility. It was selected for four years in a row as a component of the Dow Jones Sustainability World Index, and was also named one of Fortune's 10 most admired companies in the world for social responsibility. ALCAN also won Canada's Number One Corporate Citizen by Corporate Knights magazine, and Ford's World Environmental Leadership Award. This indicates that the need for better monitoring of corporate actions and media coverage to counteract corporate public relations stunts such as those described above.

Findings: The UAIL project is illegal on several grounds: UAIL's mining lease is in violation of the Constitution and it appears to have expired; UAIL has failed to obtain the requisite consent of the local population in order to implement the project; and UAIL's environmental clearances for the project have expired, which prohibits it from undertaking any and all project-related work and land acquisition in the area. As such, the project should be dismissed. In addition, the Tribunal notes the efforts to denotify Scheduled Tribes (Jhodia) to circumvent the law with alarm.



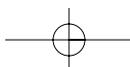
Environmental and Health Impacts

2

- Environmental Effects
- Health Impacts



Initial construction of factory at site.



Environmental and Health Impacts

"The jungles exist because of the mountains. The river has water. If the river has no water how will the jungles survive? Will humans live?"

- Bulka Miniaka

It has long been an accepted truth that bauxite mining and the alumina refining process are environmentally destructive endeavors that can have serious effects not only on natural resources, but also for human health. When bauxite-mining projects occur in ecologically rich and diverse areas populated by vulnerable tribal populations, as is the case in Kshipur, the damage is magnified.

As discussed in Chapter Two, in the absence of an independent and comprehensive Environmental Impact Assessment (EIA) of the UAIL project examining the mine, refinery, captive power plant, and other ancillary components in a holistic manner, it is impossible to determine the true extent of the project's potential environmental and health impacts. As part of its environmental clearance conditions, UAIL is required to conduct environment-related studies. As such UAIL commissioned a Biological Environment Study by the Salim Ali Centre for Ornithology and Natural History (which was completed in August 2002) and a Socio-Economic Impact Study by the Indira Gandhi Institute of Development. There is limited information available from the first study, and no information from the second study. However, a reasonably accurate indication of the project's impact can be gauged by examining existing information on bauxite mining in general and empirical evidence from similar bauxite-mining projects in the region, and around the world. The Central Empowered Committee's (CEC) report on Vedanta/Sterlite's bauxite-mining project in Lanjigarh broadly outlined its potential harmful effects. Similar results are virtually certain in Kshipur if the UAIL project is allowed to proceed. Therefore, the finding of the CEC's report has weight and relevance for the UAIL project.

The alumina plant and the mining project linked with it will have serious adverse effect on the flora and fauna due to mining, overburden dumping, construction of proposed road through the dense forests, liquid and gaseous effluents emissions, bright illumination, blasting with explosives, drilling and resultant vibration and dust, operation of heavy loading and unloading equipment, pollution, etc.³⁹

Environmental Effects

The Baphlimali Hills are the source of perennial springs, which the local population is dependent on for drinking water and irrigation needs, but these hills are also the source of the bauxite deposits. If the Baphlimali Hills are mined for bauxite, its water retention capacity will be altered in unknown ways. While corporations have argued that mining actually increases water retention capacities, the TARU report sheds doubt on this assumption and argues that the opposite is likely to be true: existing springs will actually dry up. However, the true effects will not be understood until a detailed study is undertaken.

Approximately four to five million tonnes of mining overburden would be generated during the first five years of the project.⁴⁰ Mining overburden and dust will cause the siltation of streams and contaminate them with mining leachates. This will affect a wider area than just the immediate locality. According to

the TARU Report, Chief Engineer Dasarathi Das stated that siltation caused by the mining of the Baphlimali Hills would affect the Indravati River that forms the boundary between Chhattisgarh and Maharashtra. Depositions before the Tribunal also indicate that the mining project could cut off water flow or introduce contamination into the reservoir of the regional Indravati Irrigation Project because it falls within its catchment area; this would affect the availability of water downstream from the project.⁴¹

In addition, the mine would require approximately 1,000 to 1,500 cubic metres (cum) of water per day to suppress mining dust and for use in the office complex and housing settlement for employees. The diversion of water for these purposes will also affect water availability in nearby villages that are reliant on the perennial springs. Hindalco's proposed mining of bauxite in the Kodinga hills situated in Laxmipur block of Koraput district and adjacent to Kashipur would destroy Vasundhara river on which people from several Blocks rely on for water, including Kashipur. According to Bulka Miniaka, "the Vasundhara river originates in Kondingamali. Both Kashipur and Laxmipur people depend on it for cultivation, food, etc. Once the river is gone lakhs and lakhs will die." It has already been reported that tube wells in D. Karol and Kendukhunti villages are no longer functioning because ground water levels have fallen and that water available for agriculture has become scarce because UAIL has taken over the Bahgrihola MIP.⁴²

The loss and/or contamination of perennial springs can lead to desertification that negatively impacts agricultural lands, natural forest lands, and grasslands. This desertification, coupled with the UAIL's encroachment on forest lands can lead to deforestation that also negatively impacts ground water levels, adding to the potential for water shortages in the area. The project will also directly encroach on grasslands (situated on top of the hills) that sustain livestock and areas used for dangar cultivation: this will negatively impact food security.

Biodiversity in the Baphlimali Hills will also be affected by bauxite mining. The SACON study identified 195 plants, 13 mammals, 66 birds, 13 reptiles, 9 amphibians, and 14 butterfly species in the impact zone of the project. Text Box 4 discussed the Supreme Court's stay on mining in a similar eco-sensitive area, which provides hope that similar action will be taken to protect the Baphlimali Hills. Finally, mining overburden and dust will create air pollution and affect soil quality, which can lead to lower agricultural output.

Text Box 4

Supreme Court Acts to Stop Mining in Eco-Sensitive Areas in Rajasthan

In 2005, the Supreme Court became concerned about illegal mining projects in eco-sensitive areas such as the Aravali Hills in Rajasthan; although the National Mineral Policy, 1993 stipulates that mining should not be pursued in "ecologically fragile and biologically rich areas," the revenue generated by such projects has led to a complete disregard for this provision.

In its judgment, the Supreme Court stayed all mining licenses granted in Rajasthan after December 2002. It remains to be seen if the judgment will have any impact in halting mining projects in other states, or lead to more stringent national enforcement of relevant laws.

The absence of strong monitoring and enforcement mechanisms for pollution controls has also led to widespread concern that UAIL will not adhere to environmental and safety regulations for the disposal

of mining wastes. NALCO's violation of such regulations in its bauxite-mining project in Damanjodi provides a distressing example of how local populations are provided with little or no protection if there is corporate malfeasance (see Text Box 5). This scenario can easily be reproduced in Kashipur, given the impunity with which corporations are allowed to operate.

Text Box 5

Pollution in Damanjodi

A report by an independent environment consulting group, TARU, in 1996 revealed that NALCO had been dumping mining waste directly onto privately held land, rendering it useless. The inhabitants of Bhitara Jholagumha village in Laxmipur Block of Koraput district received notice in 1995 that they would have to evacuate their premises ten years after the bauxite-mining project commenced.

NALCO had been dumping mining wastes on three to four hectares of land every year since the mining commenced, but refuses to admit that the mining wastes have destroyed these lands; they are now attempting to acquire these lands. No government body has attempted to hold NALCO responsible for its illegal disposal of waste to date.

Information taken from the deposition of Debaranjan Sarangi.

The alumina refinery/power plant poses additional environmental threats. It is estimated that the refinery will require approximately 12,000 cubic meters of water a day. The large water requirements of alumina refineries explain why they are usually located on riverbanks within reach of a large water source. However, in Kashipur, there is no suitable river to meet the refinery's water requirements; instead it will only have access to two streams: the Sana Nala for water requirements and the Bara Nala for effluent discharge. The diversion of water will, again, affect water available for local use and crop irrigation patterns. The Bara Nala will also be contaminated with highly toxic heavy metals. The impact of the mine and the refinery on water sources in the area together create serious risk of water shortages, something that has rarely been a problem to date.⁴³ This concern was substantiated by the House Committee on Environments report, which recommends that "a proper study should be carried out to assess the water carrying capacity of local rivulets, especially where the UAIL has planned to draw water in avoidance of water scarcity in future."

The refinery process and the captive power plant will also produce solid effluents. One to one and a half tonnes of red mud will be created for every tonne of alumina produced. Red mud is a highly toxic substance that contains heavy metals, toxic alkaline chemicals, and radioactive elements.⁴⁴ The CEC has also identified the inherent danger of red mud ponds, noting that red mud is a "mix of highly toxic alkaline chemicals and heavy metals that include radioactive elements which can have disastrous consequences; the dangerous heavy metals and chemicals may leach the ground water and destroy all plant life that comes into contact with it." The red mud is to be disposed of by constructing slurry ponds 2.5 km from the processing plant into which the red mud will be led in liquid form to be stored forever. Although the red mud pond will be lined, it is no guarantee against contamination of local soil and water. According to the TARU report, "accidental leakages from solar ponds, despite their impermeable plastic liners, have been reported from Bhuj in Gujarat and Masur in Karnataka." Since the pond will be built by braising sidewalls above the ground, the possibility of seepage of the toxic red mud onto the ground,

or even a breach of the bund during monsoons cannot be ruled out. The red mud pond has the potential to leach up to 150 tonnes of sodium hydroxide into the soil on a daily basis.⁴⁵ This would drastically alter the pH balance of the soil, and result in a significant decrease in vegetative growth and land productivity. Formerly fertile lands that sustained local communities would become agriculturally unviable. The TARU report identified 11 villages (within a 22 km distance from the refinery) that are likely to be affected by waste disposal. The captive thermal power plant will produce waste in the form of ash to be disposed of in an ash pond located 4.5 km from the refinery. Ash ponds of thermal power plants are notorious for the pollution they generate. The promise to keep the pond wet is rarely kept as firmly as it is made and how many and which villages will be affected depend on wind direction and force. In fact, UAIL had requested that it be allowed to store the red mud and ash in dry form, rather than liquid form, which it argued was a more environmentally sound method; however, its request was rejected by the MoEF. In addition, the storage area for lime is very close to a stream, which increases the risk of contamination.

Finally, there is understandable concern that the 20 km of land allocated for the disposal of wastes is not even close to sufficient to store the amount that will be generated by the project. Dr. R.C. Das, Chairman of the OSPCB stated in a 1996 report that, "for any alumina refinery or substantial expansion of existing refinery, red mud will be allowed to be disposed in dry\semi solid form and minimum land of 200 hectares per million tons per annum of alumina produced must be made available."⁴⁶ If UAIL is to comply with these guidelines, then 20 km falls far short of this minimum. UAIL has also not put forth a plan for waste disposal⁴⁷ if the allocated waste disposal areas reach capacity, as they surely will. This has led to suspicions that they will resort to the unethical and dangerous waste disposal practices by mining companies in the region, such as NALCO.

"Reports from the NALCO refinery in Damanjodi in Koraput District which is just about 100 kms from Kashipur indicate that villages downstream to the plant have been severely affected by the pollution of their streams by plant effluents. Even though the NALCO factory has an ash pond and red mud ponds, effluents are being discharged into the river regularly, causing cattle deaths and crop loss."⁴⁸

A study must also be conducted to assess the environmental impacts of ancillary components such as conveyor belts carrying the mined bauxite to the refinery, the construction of new roads, and the UAIL settlements for employees. In addition, the UAIL project should be assessed in relation to two other mining projects, in various stages of development, also taking place in close proximity to it in Rayagada District: Larson & Toubro and Arab Aluminium Company will mine (Kensingpur) and Hindalco (Kashipur), respectively. The cumulative effects of three mining projects within this area may place an unsupportable strain on the local environment: the report of the Chairman of the State Pollution Control Board states that the "further addition of alumina plant in this belt will add to environment problems beside resource constraints."

The other major concern of course that was raised by people was the ecological future of the area i.e. what happens when the bauxite deposits are exhausted? It is reported that the capacity of the alumina plant as per the project report of UAIL would be increased to 3 million tones over time.⁴⁹ For a plant to produce 3 million tonnes of alumina it requires 9 million tonnes of bauxite per annum and this would mean that entire bauxite deposit of Baphlimali will be exhausted within 22-23 years.⁵⁰ What then is the future of this ecological niche? Neither the company nor the government seems to have any answers. (INSAF Report)

In order to minimize environmental damage, UAIL is required to create a greenbelt around both the mine and alumina refinery and a land reclamation program, both are discussed in the EIAs. While these would no doubt be positive steps, the mining industry is known for exerting very little effort to ecologically restore mines and there is no indication that the Government of Orissa has entered into a binding agreement with UAIL to ensure the company follows through on their promises. In the absence of such an agreement, the Government of Orissa will most likely bear restoration costs, offsetting the financial gains of the project. Thus far, in order to fulfill its forest clearance conditions, UAIL has undertaken afforestation efforts. However, UAIL's resisted the MoEF's decision to increase the required greenbelt around the mine site from 15 metres to 50 metres: it was unsuccessful in its attempt and the greenbelt requirement stands at 50 metres.

Health

The process of mining and refining alumina also poses serious health risks for people living in and around the mine and refinery/power plant site. Again, we look to the NALCO project to assess the potential effects, as well as examples from around the world. Pollution from NALCO's alumina refinery in Damanjodi has plagued local villagers with brittle bones, tooth and gum diseases, and lumps of dead skin. Fluoride contamination has also affected cattle herds, which suffer from bone deformities and fatalities. A village located one kilometre from the refinery saw its cattle herds drop from 3,000 to 100 in a mere ten-year period. Similar symptoms of fluorosis have been reported in Tursunzade, Tajikistan - home of the world's fourth largest alumina smelter -and the Canadian province of Quebec has the highest rate of birth defects in the country and leads the province in deaths caused by malignant tumors: this region hosts four ALCAN alumina refineries.

The Tribunal noted that people have no information about the potential health impacts of the air, water, and soil pollution generated by the project. Cancerous gases such as sulfur dioxide and sulfur monoxide are released into the air when caustic soda is used during the alumina refining process. While the effects of this air pollution are not completely understood, the Tribunal learned that several young women who moved to Kashipur from Damanjodi have died of cancer. The authorities have not released the medical reports which would illuminate if these deaths are linked to air pollution from the bauxite mining project by NALCO in Damanjodi. Moreover, pollution of water and soil resources will also adversely affect food security in the region, which can cause malnutrition and starvation.

The Interim Report of the Orissa Legislative Assembly's House Committee on Environment (2005 - 2006) was submitted on 5 April 2006. It reviews the actions of major polluting industries within Orissa and addresses the UAIL project. In addition to substantiating many of the health impacts due to NALCO's project discussed above, it notes that separate Environmental Management Plans (EMPs) were created for the UAIL's mine and refinery/power plant, but that both are almost ten years old and "full of infirmities and ambiguities." The Committee's recommends that UAIL be required to "prepare a new EMP which will take care of the various problems" and that the government "appoint an Expert Committee to examine and monitor the Environmental Management Plan."

"If the company comes into this area, at least 20 varieties of crops will be destroyed and the thousands of tonnes of food produced in Bagirijhola's 1500 hectares of land will be destroyed...Ever since the Bagirijhola river has been diverted, at least five nearby villages such as Bagirijhola, Dosaguda, Hathiguda, Tikarapada, Lachuduga, which depended on the

river water for natural irrigation for crops have been suffering. This would have disastrous consequences for food security in the region...We are dependant on these crops for sustenance. If the mountains are destroyed, what will we do? We depend on the forests for our wood and other forest products. The company will not only be taking river bank land which provides fertile sediment to the village but will also be taking at least 100 acres of the village on which three crops are grown a year. We also grow tamarind, jackfruit, papaya, banana, mangoes etc on the land surrounding the mountains."

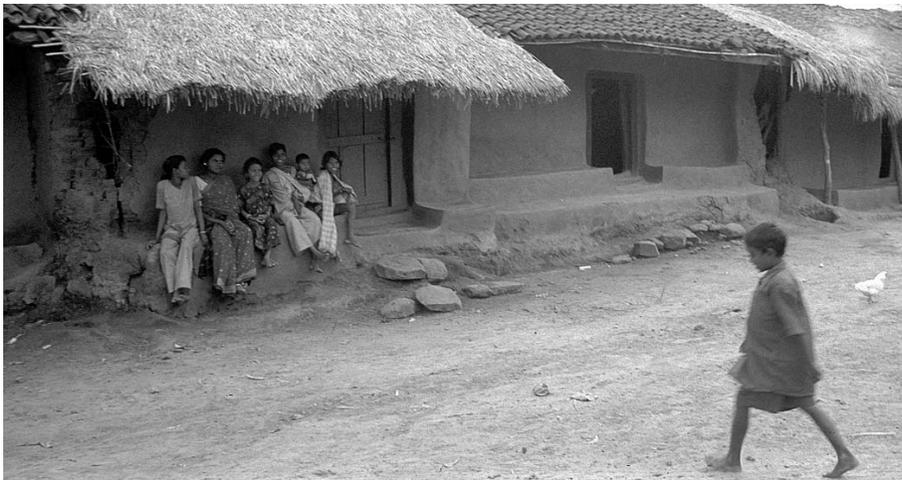
- Shankar Prasad Muduli

Findings: The Tribunal found serious environmental and health risks associated with UAIL's proposed bauxite-mining project in Kashipur. The extent of these risks is unknown, given the lack of comprehensive and in-depth studies concerning the project's impacts in the surrounding areas and within the region. The MoEF's decision to grant an environmental clearance for the project in 1995 is under question. In addition, without all of the relevant information, it is impossible to create an adequate Resettlement and Rehabilitation Plan. Incomplete information will mean that any package runs the serious risk of falling far short of the notion of adequate compensation.

3

Displacement, Resettlement and Rehabilitation

- Record on Resettlement and Rehabilitation
- UAIL's Resettlement and Rehabilitation Package
- Evaluation of UAIL Resettlement and Rehabilitation Package
- Inadequate Definition of PAPs
- Alternative Livelihoods



UAIL's mine likely is to displace several such villages.

Displacement, Resettlement and Rehabilitation

Earlier in this report, the Tribunal concluded that the lease of land to UAIL for a bauxite-mining project in Kashipur is illegal. This would seem to preclude any discussion of the Resettlement and Rehabilitation (R & R) package offered by UAIL to compensate for the displacement and deprivation the project would cause, as the logical conclusion is that the project should simply be dismissed. However, the Tribunal felt it necessary to investigate the details of the R & R package in order to assess claims by the Government of Orissa and UAIL that the project will 'develop' this impoverished area and that its R & R package will improve the local tribal and dalit population's economic and social opportunities; in effect, they seem to contend that the project's benefits to local people outweigh any violation of the laws in place to protect them.

The Tribunal's investigation revealed that the majority of people living in the project area will not benefit in any real way from the implementation of the mining project, and that the R & R package offered by UAIL in no way justifies the violation of legal provisions that protect land in Scheduled Areas. History in India, and around the world, illustrates the unlikelihood that the project and the R & R package offered by UAIL will meet its claim of developing the area and improving people's lives. The Tribunal also found that there is an overall lack of transparency and information about the R & R package. The information that is available indicates that it does not adequately address or compensate for the displacement and deprivation that will occur as a result of the project: loss of livelihoods, destruction of agricultural lands by pollution, destruction of common resources, etc. In light of the information outlined in this Chapter, it is understandable that very few people have accepted the R & R package: many of those who have accepted it only did so following the onset of intense state repression in the area in 2004.

Record on Resettlement and Rehabilitation

There is a wide array of literature documenting the rise in poverty among formerly sustainable communities that are displaced or otherwise negatively affected by mining projects. More often than not, inadequate environmental, economic, and social assessments lead to inadequate R & R packages. Chronic under-financing and a lack of political will to enforce their provisions also play major roles.

In general, it has been found extremely difficult to rehabilitate societies displaced or affected by mining projects that were formerly self-sufficient, even if their lifestyles and standards of living do not fit into, or were lower than, societal norms. The result is that communities fail to find their feet or reconstitute and rebound from the trauma of displacement and other project-related impacts, increasing the risk of impoverishment. In order to survive, many Project-Affected Persons (PAPs) in agricultural areas have no choice but to become contract laborers or migrate to cities, where they join the multitudes in the slums: a far less desirable option than their simple and peaceful life on the land. The risk of impoverishment increases when PAPs are members of vulnerable groups such as women, the elderly and tribal groups like those in Kashipur. In the case of tribal communities, the loss of unique cultures and identities also hang in the balance.

Simply providing financial compensation is also not enough to ensure that PAPs will be able to enhance or even maintain their standard of living once a project commences. For example, PAPs who received monetary compensation when their lands are acquired for project purposes are often unable to procure

new lands of comparable quality and they are not compensated for a decrease in the value or productivity of lands due to project-related pollution.

India has a poor track record on Resettlement and Rehabilitation for development-induced displacement. Government estimates place the number of people displaced since Independence at 30 million: an estimated 2.55 million have been displaced by mining projects alone during the period 1950 to 1990. A staggering three-fourths are still waiting for resettlement and rehabilitation.⁵¹ Within Orissa, the government estimates that 2,437 hectares were acquired for development projects between 1950 and 1993, which caused the displacement of 79 villages and 3,143 families.⁵² However experts dispute these figures. According to Walter Fernandes and Md. Asif 4,10,137 acres of land was acquired for mining purpose between 1951-1995 in Orissa.⁵³ Families displaced by the 1954 joint Mandira Dam and Rourkela Steel Plant project are also still awaiting resettlement and rehabilitation.⁵⁴ An R & R package offered by NALCO for its mining project in Damanjodi has only been partially implemented to date.⁵⁵ These numbers have likely increased dramatically since 1993 given the rise in the number of projects taking place as Central and State governments embrace the expansion of extraction and other so-called development projects.

There is ample empirical evidence that communities in Orissa have been impoverished by development-induced displacement. A pre/post displacement study of six infrastructure projects in Orissa that led to forceful displacements indicates an increase in landlessness in all six communities post-displacement. Among 100 families displaced by the NALCO mining project only 20 percent were landless prior to displacement, but 88 percent became landless post-displacement (Please see Table 2).⁵⁶ Evidence of increased unemployment post-displacement, particularly among women, was also a finding of the study.⁵⁷

Table 2

How Displacement Produces New Poverty: Landlessness in Orissa⁵⁸			
Project	Families Displaced	Landless Among Displaced Families (%)	
		Before Displacement	After Displacement
Sam Barrage	318	24	38
ITPS	44	12	75
Ib Valley	39	56	92
UKP	74	12	31
NALCO (mining)	100	20	88
HAL	44	36	59

It has taken over ten years for the National Policy on Resettlement and Rehabilitation, 2004 to be adopted, and in that time the original draft was watered down leaving it with little bite: it is still early to assess if this policy has had any real effect on resettlement and rehabilitation efforts. The Government of Orissa has also recently made public a draft of the Orissa Resettlement and Rehabilitation Policy (that was formulated in concert with UNDP and DFID), which is likely to be gazetted later this year. The policy would provide more protection than the current non-mandatory guidelines in place because it will be legally binding, includes a special framework for tribal communities and a grievance procedure. While

a complete assessment of the new policy is required, even the most well thought out and comprehensive R & R policy or package will be meaningless without the political will to enforce it; something the Government of Orissa seems to lack when it comes to protecting tribal populations.

UAIL's Resettlement and Rehabilitation Package

UAIL's 1996 project survey found that the alumina refinery will displace 148 families from the villages of Kendukhunti, Ramibeda, and Talakarol; no displacement will occur at the mining site; 24 additional villages will be partially affected by the bauxite-mining project through the acquisition of agricultural lands. UAIL estimates that 2,005 people will be affected as either Displaced Persons/Displaced Families (DPs/DFs), defined as persons/families whose agricultural and homestead lands are acquired; or Project Affected Persons (PAPs), defined as persons whose agricultural lands are acquired, all or in part, while their homesteads remain intact.

The State of Orissa currently lacks a binding and mandatory R & R policy;⁵⁹ therefore, the only compensation required for the 2,005 people identified above is for land acquired under the Land Acquisition Act, 1894, which applies only if there is a title deed or other proof of ownership. Though state government has formulated a R& R policy in April, 2006 but government notification has not yet come. Non-binding guidelines concerning R & R include the Orissa Resettlement and Rehabilitation of Project Affected Persons Policy, 1994; the Government of Orissa's Policy for Rehabilitation of Displaced Persons/Families in Connection with Establishment of Major Industrial Projects, 1998; and the National Rehabilitation and Resettlement Policy for Project Affected Families, 2004. On this basis, UAIL has offered the 2,005 identified people compensation through a government-approved R & R Policy. UAIL submitted its R & R package in 2000, which was revised and improved on the advice of the Government of Orissa in order to obtain acceptance. The R & R package was finalized in 2004. According to UAIL, it was approved by the Zilla Parishad on 7 September 2004.

Specific information about this policy is not available on the Government of Orissa's website or in the public domain, although highlights of the package are available on the ALCAN web site; these have been provided in Text Box 6.

Text Box 6

UAIL Resettlement and Rehabilitation Package^d

The R&R package highlights are as outlined below. [Note: DP: Displaced Person / DF: Displaced Family / PAP: Project-Affected/Non-Displaced Person]

==> Eligibility for benefits - DPs located in three villages on land required for the Project:

Separately for:

- A son over 18 year old, irrespective of marital status
- An unmarried daughter above 30 years
- A divorcee/deserted woman or widow
- The physically and/or mentally handicapped
- Orphaned siblings

==> Employment: Preference to the nominated members of the DFs in providing employment either in the industry or in its ancillary units (with following priority)

- DFs losing all lands
- DFs losing more than 2/3rds of land
- DFs losing more than 1/3rd of land
- Others DFs
- Next preference is given to PAPs according to similar criteria

==> Benefits of housing and other infrastructure: Each DF or DP to get

- 1/10th acre of land
- House
- Infrastructure facilities like road, drainage, drinking water, electricity, community center etc. as needed
- School and health centre as approved by government

==> Benefits to PAPs:

- Preference to PAPs after DFs in giving employment
- Monetary compensation in lieu of employment

* The Utkal Project: Frequently Asked Questions (April, 2005), www.alcan.com

In short, UAIL is offering compensation for lands acquired under the Land Acquisition Act, construction of a rehabilitation colony for DFs, and preference in employment decisions to DFs, PAPs, and DPs. UAIL initially offered compensation for non-homestead land in the range of Rs. 15,000 to Rs. 50,000 per acre, depending on land quality. Following strong local protests that this amount was inadequate, it increased compensation for non-homestead land to between Rs. 1,05,000 and Rs. 1,50,000 per acre. Homestead land will be compensated at a rate of eight lakhs per acre which means Rupees eight thousand per decimal: since the average homestead land for families in the area is between one and two decimals, compensation for these lands would mostly be in the range of Rs. 8,000 to Rs. 16,000.⁶⁰ In addition to monetary compensation for homestead land, UAIL is also offering each DF the option of a new home in a settlement constructed by UAIL (near the plant site) equipped with modern infrastructure like roads, drainage, drinking water, and electricity, or a one-time lump sum payment of Rs. 50,000. UAIL has also indicated that it will construct a water treatment facility, community center, school, and health center.⁶¹ UAIL has not offered land for land as compensation. In addition to individual compensation, UAIL claims it is conducting community improvement projects through the Utkal Rural Development Society (URDS) that involve activities related to "agriculture, horticulture, non-formal education, health care, infrastructure development, and sports and cultural activities." UAIL also sponsors candidates for an Industrial Training Institute course.

According to the environmental clearance granted to UAIL, it is required to provide local people with 30 percent of all jobs. UAIL forecasts that the project will create 1,500 direct and indirect job opportunities, but the company does not provide a written guarantee of how many local people it will employ for the project. According to the information available about the R & R package, it is only offering some preference in employment decisions on a sliding scale: first to DFs, and second to PAPs and DPs. However, verbal statements made by UAIL officials that were reported to the Tribunal indicate that it is guaranteeing a job to one member of each of the 147 displaced families, for which they will provide training, or a one-time lump sum payment of Rs. 50,000 in lieu of employment. UAIL also claims that

it has an action plan to create employment-generation schemes that involve "construction of roads, drains, culverts, and integrated farming"

Evaluation of UAIL Resettlement and Rehabilitation Package

One of the main criticisms of the R & R package is that it lacks transparency. Although the R & R Policy is listed on the Government of Orissa's website, the document is not publicly available. The local people, who are expected to accept the package, have also not been provided with any comprehensive or written information about it, let alone in a language intelligible to them; instead UAIL has relied solely on verbal statements (which are legally non-binding) to release information about the R & R package to the public, with the exception of the information provided in Text Box 6.

While UAIL claims that in 1999 it translated its R & R package into Oriya and the local kivu language and distributed it to villagers, none of the villagers the Tribunal spoke with had seen this information. In addition, the R & R package was revised several times since then and only finalized in 2004, but there is no information on whether or not the new R & R package was translated and/or provided in writing to the public. In addition, PSSP has repeatedly requested UAIL to provide information on the R & R package and the economic and social effects of the project in writing. They have also requested that UAIL enter into legally binding agreements outlining the terms of the R & R package with those people willing to accept compensation, but UAIL has failed to meet all of their requests. As a result, the people concerned still have incomplete and inaccurate information regarding the R & R package that they are being pressured to accept. For example, the UAIL representative who attended the Tribunal's press conference claimed that UAIL was providing land in exchange for acquired land; no details are available in the public domain about who has received what, and the people who spoke before the Tribunal certainly did not have knowledge of any company policy in this regard.⁶² The House Committee's report supports the Tribunal's finding on this subject. Land for land compensation is a requirement of the Fifth Schedule and the Orissa Scheduled Areas Transfer of Immovable Property (OSATIP), 1956, which requires that ST's be given land in compensation for any land acquired. Instead, UAIL has employed Communicators/Facilitators to infiltrate villages and convince people to accept compensation for their lands and homes, often by making exaggerated verbal promises. Reports indicate that people who have accepted compensation have already found some of UAIL's promises to be empty. For example, the House Committee on the Environment's report includes allegations that UAIL acquired land without fulfilling its rehabilitations requirements; as such, people have lost their source of livelihood, but have not been given their promised compensation. In the absence of legally binding agreements for R & R, it will also be difficult to hold UAIL accountable if it neglects to meet the terms of the R & R package

"The package is silent about the villagers those are cultivating around Baphlimali region where mining will take place. There is no money for the trees. There is no provision for landless people. There is no agreement for job to home losers and also for land losers. Only there is oral promises by UAIL that home losers will get job but the type of job is also not specified."

- Debaranjan Sarangi

Based on the information that is available, the Tribunal has found that the R & R package offered by UAIL to be merely a band-aid measure that is grossly inadequate to address the deprivation people will face as a result of the project. It is also a paltry amount considering the profit UAIL will reap. Moreover, in actual practice even this package is unlikely to be implemented since Vedanta / Sterlite at Lanjigarh

has got away with much less: a colony for only the DFs and only one low paid job per family of only the DFs. Land acquisition has been offered at miserable rates of compensation. This was enhanced substantially only in response to the people's struggle against the project: these enhancements were less a measure of justice than a means of silencing opposition to the project. The same is true of the UAIL's decision to relocate the refinery site. At no point has UAIL or the Government of Orissa involved the local community in drafting the R & R package or allowed for their input.⁶³ Two main flaws in the R & R package involve the narrow definition of the term PAP, which effectively excludes thousands of people from receiving compensation, and the lack of viable and desirable alternative livelihood opportunities for the displaced or project-affected.

Inadequate Definition of PAPs

The R & R package's narrow focus on the deprivation of owned land through acquisition is flawed in that it does not reflect contemporary thinking, which has gone well beyond this very traditional way of looking at the matter to also recognize and compensate people for the deprivation and negative effects the establishment of a project can have on their lives and livelihoods, which can lead to the impoverishment of sustainable communities. The loss of land is usually only 20 percent of the total impoverishment risk for displaced communities: joblessness, homelessness, food insecurity, marginalisation, health risks, social disarticulation, loss of educational services, and the loss of civil and political rights also figure prominently. The loss of other non-physical assets such as social structures, cultural identities, and mutual help mechanisms are a few more impoverishment risks that can result from projects. These are also often overlooked when it comes to compensation.⁶⁴ The definition of PAPs has now come to include this wider deprivation.

Following are some of the ways in which people in Kashipur will experience deprivation that entitle them to be classified as PAPs, but there is no provision for them in the R&R package.

- (1) farmers whose agricultural land is acquired and compensation paid at a rate not sufficient to buy land of the same extent and quality near the habitation;
- (2) landless persons whose livelihood opportunities are curtailed by the acquisition of the land on which they worked for a wage;
- (3) those who depend substantially on common property resources, like forests and grazing land, for their sustenance;
- (4) people whose free movement into and out of their habitation is substantially curtailed by the location of the project,
- (5) people whose environment is substantially affected by wastes and fumes emanating from the processing plant; and
- (6) people whose water sources are likely to be seriously contaminated by seepage from the various ponds (the red mud pond and ash pond), and whose agricultural or grazing lands are likely to be rendered useless by overflow from the same pond.

When one takes these various forms of deprivation into account, the number of PAPs rises substantially. For example, a study by PSSP contends that 42 villages will be directly affected by the project and 82 villages will be partially affected. This would raise the number of PAPs to approximately 22,000. Other estimates have placed the number of PAPs as high as 60,000. This is a large discrepancy from the 2,005 PAPs that UAIL has identified for compensation. Even among these 2,005, only those physically displaced from their homesteads are offered something more than just monetary compensation for land

through the R & R package. In addition, UAIL's own Environmental Clearance Monitoring Reports are not consistent concerning the number of PAPs and the reason for the change in numbers is unknown.

The R & R package provides compensation for land under the Land Acquisition Act, but this requires proof of ownership and many people in the area do not hold official deeds to their land; therefore, under existing statutes their lands can be acquired without compensation. UAIL also erroneously asserts, "most of the land associated with the project is on non-agricultural land where farming capabilities are extremely limited due to the poor quality of the soil and the lack of irrigation."⁶⁵ They claim that of the 2,800 acres to be acquired by them, only 22 acres are currently used for agricultural purposes; and that the cultivation of these lands yields limited crops. However, their assessment fails to recognize the acquisition of lands for which there are no official entitlements, but are used in tribal cultivation practices or are important common resources.

Dangar cultivation, the cultivation of hilly slopes under a 30-degree gradient, is an integral part of the local food security system. Tribal communities in the area have recognized entitlements to dangar lands, which are divided between villages and then sub-divided among families within each village. This system of ownership is understood and respected by tribal communities, even in the absence of official deeds for the lands. In 1996, the Government of Orissa launched an initiative in the area to formalize the ownership of dangar lands, but its implementation suspiciously stopped just short of the area surrounding the Baphlimali Hills and the proposed site of the alumina refinery. As a result, these lands are officially considered government lands and compensation is not required under existing statutes to the people who have been cultivating it for years. A substantial portion of the land to be acquired by UAIL is forest land, an important common resource for the tribal communities living in the area; its loss will affect food security and livelihood options in the area, but this deprivation is also not compensated for in the R & R package.⁶⁶ Similarly, mining on the flat hilltops of the Baphlimani Hills will destroy the grasslands and shrubs located there that have been providing fodder for livestock and firewood for local households. The residents of villages and habitations near these hills, such as Paiku Pakhal and Maikanch, have been benefiting from this common resource, but again will not be compensated for its loss. In its report, the House Committee recommends that government lands that have been in possession of tribal people for long periods of time should be calculated and released to them.

There are also procedural infirmities involved in properly registering lands. Many villages in the area are not officially registered due to the error of government authorities; therefore, they have not been identified or included in the R & R package even though they may be directly affected by the project. The issue of village registration extends beyond Kashipur. Prof Bhagwat Prasad Rath, also informed the Tribunal of a large number of hamlets of the Dongaria Kondhs, a very primitive tribal group, on the Niyamgiri Hills. The hamlets are not on the hilltop, but on the sides of the hill; consequently, Sterlite does not 'need' their haies for their mining project; for that reason the people are not receiving any compensation, even though the mining will take place virtually on top of their heads and will certainly radically alter their habitat.

"In all the bauxite areas, where the people are subjected to police terror, lots of Adivasis and dalits will be deprived of compensation because their lands have not been recorded in registers maintained by revenue officials. There are nearly a hundred villages in Niyamgiri Hills,⁶⁷ which have no place in revenue records. These villagers will be deprived of compensation when mining activities are thrust on the people."

- Prof. Rath

There is also the issue of compensation for project-related pollution of lands and other common resources. Unknown affects on the water storage capacity of the Baphlimali Hills, the potential seepage or overflow of red mud into neighboring fields, pollution caused by ash from the power plant, the corruption of ground water sources, and diversion and drying up of streams are just a few of the environmental effects - discussed in-depth in Chapter Three - that can reduce land productivity, fertility, or otherwise make the area unlivable and unworkable. A study conducted by PSSP in 2002 that examined the effects of bauxite mining in Damanjodi by NALCO led them to conclude that more than 40 habitations in Kashipur would be directly affected, and more than 80 villages would be indirectly affected, by pollution emanating from the project.

“If the company comes up, we will lose thousands and thousands of acres of cultivable land and be reduced to beggars. That's the reason why we won't allow our land to be destroyed.”

- Shankar Prasad Muduli

Alternative Livelihoods

Job creation forecasts by UAIL are quite small, given the magnitude of the project: this reflects the introduction of new technologies in the mining industry and as a result, the jobs available will also require specific skills and expertise that are largely absent among the local agrarian population. In his deposition before the Tribunal, Debaranjan Sarangi stated that even "Mr. SP Sawant, MD of UAIL once said there is rare possibility of Kashipur people to get job in UAIL because they are not technically qualified." Then what types of employment opportunities does UAIL envisioning for PAPs who can no longer pursue agrarian livelihoods because their lands have either been acquired or polluted? UAIL has not provided the 2,005 PAPs they have identified with a written guarantee of employment, and depositions before the Tribunal indicate that local people will only be qualified for menial jobs; thereby turning former landowners into maids and servants. Employment offered thus far has been seasonal or ad hoc in nature at a daily wage of Rs. 60. Employees are not paid if they do not work and there appear to be no provisions for illness or injury.

If UAIL does indeed uphold its offer of one job per displaced family, the situation would still be problematic. First, the number of displaced families (147) is based on the 1991 Census, but families have grown and separated since then. Second, land belongs to the whole family who till it and enjoy its produce collectively. In exchange for this land, only one elected member of the family will receive a job, unskilled and at the lowest rung in the company hierarchy. As Bulka Miniaka said: "We can distribute land and everyone in the family can use it. A job cannot be done together." These jobs will invariably go to a male member of the family, dispossessing all but the breadwinner from the productive space and creating a population of dependents. If he refuses to provide for the others - as may well happen - they have nothing to fall back on for sustenance. This has implications for power relations within families and will adversely affect democratic relations among family members. Women are particularly vulnerable to becoming dependents and losing their status within the family.⁶⁸ Moreover, employment opportunities are only available for the finite duration of the project estimated at not more than 25 years, and a return to traditional livelihoods may not be possible given the environmental damage created by the project. This raises serious concerns among young people within these communities and for the plight of future generations. A common complaint before the Tribunal was that land is forever, but jobs will vanish with the company. Finally, if families accept a lump-sum payment in lieu of employment, there is little scope in the area to pursue alternative livelihoods to sustain them once the money has disappeared.

“Now we work for one month and celebrate for two. I work, my five sons work. My father and forefathers also used to work. The company is claiming that it will give us jobs, so is the government. But will it give jobs to everybody? If the company gives a job to the father, will it give jobs to the sons too?”

- **Bulka Miniaka**

In some villages, UAIL has acquired all of the agricultural lands surrounding the village sites, but is not acquiring the village site itself. Leaving these village sites intact means that the residents of these villages are not physically displaced; therefore, they are not defined as DPs/DFs, and UAIL is not offering them one job per family. However, these villages will be surrounded by company land, which will restrict their freedom of movement and ingress/egress to their homes; making it extremely difficult for them to pursue alternative livelihoods. For example, Dimundi village and Bagrijhola village of Hariguda Gram Panchayat faces the acquisition of its agricultural lands, but not its village lands by UAIL; residents would be forced to seek work outside the area and this would require them to take a circuitous route through Lachchuguda in order to bypass company lands. This will take its toll on their time and physical energy. The Tribunal's visit to the Lanjigarh, where the Vedanta bauxite-mining project is in a more advanced state, also provided a clear picture of the impossibility of local people living in peace near a project site. The Vedanta plant's security staff regularly obstructs tribal people living in the area while they are in search of firewood, grazing cattle, or simply returning home late at night. They are sometimes even detained and beaten or transferred to the police and accused of theft. The effect this atmosphere of fear can have on their free movement is self-evident. Where will they then find an alternative to their agrarian livelihood? It is essential that landless people, made landless by the project, have alternative options to earn or gather their livelihoods. Without this, there is no way that they will be able to sustain, let alone improve their circumstances. Even those DFs/DPs who are to be resettled in the proposed settlement in Tikri will face hardships in terms of obtaining alternative livelihoods. Tikri is mainly a non-tribal town and the tribal people resettled there will live as unequal and unwanted refugees. A very important complaint the Tribunal heard was: "the jungle provides so much that it can hardly be enumerated. What will Tikri give us?"

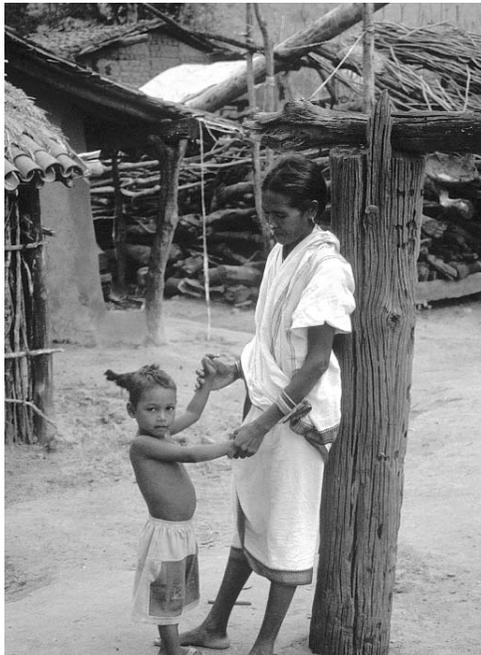
Finally, landless persons seem to fall completely off the radar of the proposed R & R package. The majority of the landless in Kashipur are Dalits: only ten percent of Dalits are landowners, the other 90 percent rely on agricultural labor, trading activities or other ad hoc jobs. As agricultural lands in the area are acquired by the company and/or decimated by pollution, their livelihood opportunities will decrease and may even vanish as people are displaced or begin to migrate out of the area. While there is some scope for their employment with UAIL, the landless will be at the end of the receiving line for jobs because they have not been identified as PAPs. Even then, the jobs available to them will likely consist of short-term construction work. In all likelihood, the jobs 80 jobs that UAIL claims its employment generation scheme has directly or indirectly created fall within this category. It does not provide for sustainable employment alternatives.

Findings: The Tribunal found that there is no transparency regarding the R & R package offered by UAIL and very little information on what is offered. The information that does exist leads to the conclusion that many forms of deprivation will remain uncompensated and UAIL and the Government of Orissa have not provided for alternative and meaningful livelihoods or an action plan to use revenue to develop the area.

4

Tribal Livelihoods, Culture and Development

- Adivasi Livelihoods
- Tribal Culture and Identity
- Gender
- Tribal Communities and Development



What will their future be ?

Tribal Livelihoods, Culture and Development

"With the company coming here, thousands of tribals, Dalits, oppressed, Paika, Mundi tribes, etc. will disappear from here. Along with them their unique lifestyle and culture -- their traditions, language, dance, music and festivals will vanish from the face of the earth."

- Shankar Prasad Muduli

Approximately 80 percent of the population in Kashipur is composed of distinct and unique Adivasi groups and sub-groups that include the Kondhs, Parojas, Jhodias, and Pengas. These Adivasi groups, also referred to as tribals or adivasis, have lived in relative isolation from larger society, which has allowed them to preserve their languages, cultures, identities, and livelihoods for centuries. In addition, PESA now also empowers them to protect their customs, traditions and common resources through gram sabhas and elected local bodies declared institutions of self-governance.

If the UAIL project is allowed to proceed, the environmental damage, scale of displacement and influx of non-Adivasi people to the area will decimate traditional livelihoods and radically alter the social fabrics of these groups. The acquisition of land from 26 villages and the destruction of forest lands and grasslands will also adversely affect Adivasi livelihood systems that provide sustainable food security for the region. It is fundamentally and irremediably unconstitutional that a project that destroys their capacity to protect their traditions and customs and deprives them of control over common resources is taken up without their willing consent. As stated earlier, PESA is not merely an Act of Parliament, but a Constitutional provision. In fact PESA is Part IX of the Constitution insofar as the Scheduled Areas are concerned.

In fact, the large number of extraction, hydroelectric and logging projects underway in Orissa's Scheduled Areas are already threatening the future existence of Adivasi livelihoods, cultures and identities. The Dongaria Kondhs who inhabit the area around Niyamgiri Hills are currently facing the real threat of extinction as a result of so-called development projects. This trend is not only occurring in Orissa, but all over India. Therefore, the implications of the UAIL project on traditional livelihoods and cultures, including gender relations, merit the particular attention of the Tribunal.

Adivasi Livelihoods

Villages in the area are isolated, self-sufficient and have limited interactions with outside communities or market economies: trading, bartering and sharing are widely practiced and the consumption of commercial commodities is low. According to the 2001 Census, 85 percent of the Adivasi population in Kashipur relies on agriculture as either landowners or agricultural workers. The agrarian livelihoods practiced by tribal groups involve traditional cultivation techniques and institutional arrangements that are complex and based on collectivity, equity and ecological integrity. In general, tribal communities do not seek to produce surplus crops and normally cultivate only enough to meet their own needs. Single crop rain-fed cultivation produces an annual harvest that meets food requirements for up to six months, notwithstanding unusual climatic conditions such as drought. This annual harvest is supplemented by dangar cultivation on the slopes of the different hills including Baphlimali Hills. Nearly people of three Gram panchayats like Maikanch, Kodipari and Chandragiri of Kashipur Block depend on dangar cultivation around Baphlimali hills.

Food and nutritional security has depended on access to a large biodiversity of food crops that include pulses, rices, cereals, minor millets (mandiya), oil seeds, and vegetables. In fact, the Jeypur tract is historically recognized as one of the birth places of the rice seed and during the Tribunal's investigations people recounted the names of over 50 varieties of rice paddy that are still cultivated in the area such as botta dhan, ambo, tulsibas, danakuta, jojati, parjati, laisari. These varieties are drought resistant, low water consuming, and are not dependent on shifting cultivation: crop diversity extends to millets, oilseeds, and pulses. The protection and conservation of these seed varieties and food security systems should be a policy priority.

The harvesting of forest produce, occasional wage labour and livestock cultivation augments these agrarian livelihoods making the population not only food secure, but also food sovereign. Access to forests for food and income generating opportunities is an integral part of the tribal food security system. A variety of fruits, greens, roots, tubers, and mushrooms gathered from forests supplement dietary needs and play a crucial role between annual harvests. Kendu leaves (*Diospyros Melanoxylon*) and Mahua trees (*Madhuca longifoli*) are also used to supplement dietary intake, but additionally have become one of the main sources for cash income. For example, the Mahua flower - rich in sugar, minerals, vitamins and calcium - is a part of the local diet and the tree's ability to withstand harsh conditions helps to ward off famine during times of drought. An estimated 70,000 tonnes of Mahua flowers are also harvested annually in Orissa for the production of an alcoholic beverage that generates 500 million rupees a year. Oil extracted from the Mahua fruit (Tola in oriya language) is also sold for use in the manufacturing of soap and other commercial items. (According to Jagdish Pradhan of the farmer organization, Paschim Orissa Krishijibi Sangha (POKS), the collection and processing of Mahua flowers sustains approximately 800,000 families.)⁶⁹ It is therefore not surprising that the destruction of forestlands was linked to starvation deaths in the area in 2000; certainly, further destruction of forestlands will bear the same consequences.

Finally, there is no evidence to support the assumption that food security in the area is reliant on major cereal crops and/or state-based entitlements such as the Public Distribution System (PDS).⁷⁰ The tribal knowledge systems associated with these livelihood patterns are not yet fully understood and decisions that may radically alter or destroy them must be carefully considered given the problems currently associated with widespread chemical-based cultivation.

Tribal Culture and Identity

Tribal agrarian livelihoods are integrally linked to tribal culture and identity. There is a deep respect for zamin, jal, and jungle (land, water, and forest): the link between man and nature is often considered sacred. The former Chief Minister of Orissa Biju Patnaik acknowledged this close cultural relationship with the land to Akhila Saunta, the former MLA for the area, when he stated that tribal people would die if their land was taken away from them. The significance of land in tribal cultures and identities cannot be over emphasized.

"Our life, culture, and employment everything revolves around the soil. We celebrate Diyali festival, Chaita parba (festival), Bali parba, Nua parba, Bhoju parba, Diyali parba, Pushpa parba and Mandia parba. When the priest gives a call, we start our festivities of dance and music. On Chaita parba (autumn festival) we play in colour for eight days. After that we go hunting for four days to the jungle. After that we get busy with agriculture. In

Baisakh we sow seeds. After that Baliyatra starts. In Balikuda, plant seedlings are sown. The priests and the Bejuin (female priests) talk about the next year's crops. Eight days afterwards, it's just song and dance...In the month of Asadha (signifying the rainy season) we have Kulimaru parba, we get the root of the crop home and worship it. In the month of Bhoda (the next month) we worship maize. In Diyali festival, the cows and oxen get to eat the new crop. Because we celebrate our festivals together, we live in peace. We live together and help each other. From making the plough to agriculture work, we do everything together. So there is peace in our village. But once industrialization starts, our festivals will vanish and our region will be destroyed."

- Bulka Miniaka

The acquisition of tribal lands and the environmental damage created by bauxite mining would displace and disrupt tribal communities leaving them with limited means to sustain the traditions and lifestyles of their forebears once the zamin, jal, and jungle are taken away from them, radically altered, or rendered unusable. Many will be forced to work solely as wage laborers, an undesirable and foreign concept to many tribal people.

"We will get jobs, but who will do the cultivation? People will eat money or what? We cultivate; therefore we eat. Those who don't have anything also eat. The dalits eat, the trader eats, the rats eat, and so do the sambar (a deer variety), and the birds. But if we leave cultivation where will they go? Will the government feed all of them? People holding jobs will have to buy salt, water and will also buy suit, boot and shirt. After that will he have any money left? If that were the case, would town-dwellers condition be so pathetic?"

- Bulka Miniaka

Gender

Tribal women will be affected by the introduction of the bauxite-mining project in gender specific ways that must be acknowledged and addressed. The project would transform gender relations and power structures within communities and families, limit women's livelihood options, and decrease their level of safety and freedom of movement.

Tribal women have always enjoyed autonomy and equality within their societies. They work alongside men in the fields. It is women who mainly harvest forest produce for consumption and sale, and conduct other income-generating schemes. Women are respected as contributing members of the household income and have status in their communities. They not only participate in decision-making, but are also recognized as community leaders. In fact, the level of equality in gender relations is greater among these tribal communities than in mainstream Indian society. Tribal communities on average have the best child sex ratios (ratio of girls to boys from 0 - 6 years old) compared to areas in the country considered 'more developed' where the practice of sex selection and sex selective abortions have resulted in abnormally low child sex ratios. The sex ratio of villages in Kashipur like Bagrijhola (1197), Dimundi (1069), Karol (1074), and Ramibeda (1317) are far higher than the national average of 933 at the time of the 2001 Census.⁷¹

The acquisition of agricultural and forest lands for the UAIL project will transform the agrarian culture and threatens tribal women's ability to contribute to household income, which is directly linked to their status in society and the family. The majority of employment opportunities generated by the UAIL project will be allocated to men and employment for women will be restricted to menial domestic work in the households of company, or the domestic sphere of their own homes.

“We work among our men folk. Every child and old woman works in the fields. Because we work, we command respect, both inside and outside our homes. We work in the fields. And also become leaders of the village. People both at home and outside listen to us. We are free. Whatever the men do, we also do the same thing. Will we enjoy the same freedom once the company comes? Today we have independent economic options. Once the company moves in, we will have no options but to wash dishes in the homes of the company employees.”

- Mukta Jhodia

The plight of widows is also of particular concern. In Damanjodi, NALCO had also offered one job to each displaced family, which was effectively taken by the male head of the family. When some of these men died, their widows were left with no independent means of sustenance.

Finally, as a result of the project women will face new safety issues that restrict their freedom of movement. The influx of male UAIL employees from outside communities will make local women more vulnerable to sexual harassment, exploitation, and prostitution. Restrictions on their freedom of movement for safety reasons will prevent them from seeking employment outside the home or gathering forest produce. “Once the company officials move into the area, going to the river or the fields will become virtually impossible for the womenfolk,” explained Mukta Jhodia. These are valid concerns given the experience of women in nearby Lanjigarh with Vendanta/Sterlite employees:

“The employees of the company harass girls and women of Bandhaguda village. They have often threatened them and also physically check their bodies and clothes when they pass through the land acquired by the Company [Vendanta], outraging their modesty. When the women protest, they have been known to say that [the] Supreme Court has ordered them to physically check any person who passes through the company's proposed campus.”

- Sidharth Nayak

The breakdown of cultural norms, community and family structures, and livelihoods that have been outlined in this Chapter can also result in high levels of frustration, anger, and low self-esteem. This often leads to higher incidences of violence against women, including domestic and sexual violence. Women are also active participants in protests against the UAIL project and they have not been spared from company and state-sponsored violence and arbitrary arrests. As the conflict continues, there has been a steady increase in crimes against women.

Tribal Communities and Development

The government is promoting the 100 percent export oriented bauxite-mining project as a development

project that will benefit the local people and develop Kashipur Block. By doing so, the government is hiding under the mantle of 'development' to justify its illegal land acquisition and destruction of local livelihoods. When the 'beneficiaries' of this 'development project' try to expose the fallacies of the government's argument by highlighting the project's negative economic, environmental, legal, and social impacts they have been consistently branded as backward and anti-development.

However, the Tribunal's investigations revealed that tribal people in the area were overwhelmingly in support of development projects, albeit ones that actually improve their lives. Kashipur Block is one of the poorest areas of Rayagada district, which already lags behind most other districts in Orissa: its human development rank is 25 out of 30 district.⁷² The health and education indicators in Table 3 show that Rayagada district is far below the state average.⁷³

Statistics from Orissa Human Development Report (2004)		
	Rayagada	Orissa
Infant Mortality Rate (1999)	131	97
Health Index	0.250	0.468
Overall Literacy Rate (2001)	35.61	63.61
Education Index	0.531	0.723

Table 3

These numbers explain the tremendous local support for improved access to education, health care, and other essential services. "What the area really needs is schools but the government hasn't provided these...the area will develop by building schools, and hospitals, not through this project," stated Manohar Jhodia to the Tribunal. Others emphasized that the need for development projects to respect and preserve their cultures, identities, traditions, and livelihoods. For example, while improvements to the inadequate education system (plagued with chronic teacher shortages) is welcome, the continued curricular emphasis on assimilation with mainstream society and the discarding of tribal lifestyles is not.

"What is development? Whose development? Does development imply cars and vehicles for everyone? The Chief Minister and others may need cars but why does everybody need it? Is it possible to give cars and vehicles to everyone? We don't need cars and motors. We are people of the soil and our lives revolve around the soil."

- Bulka Miniaka

However, it is this definition of development that is at odds with the development supported by the state government and UAIL. The majority of politicians and the mainstream public are of the patronizing opinion that tribal communities are backward and 'undeveloped', therefore they must be made to conform to mainstream society. This attitude persists even in local levels of government. According to retired Professor Bhagat Rath, "the towns situated in these bauxite districts are generally dominated by non-Adivasi leaders who consider the Adivasis undeveloped people. Their notion of development is making Adivasis adopt their lifestyle." Jayaram Pangri of the ruling BJD party best illustrated the attitude of politicians during a statement he made in 2004 in which he tried to justify the need for the UAIL project by claiming that the NALCO project in Damanjodi helped tribal people in the Koraput District enter mainstream society. Pangri stated: the "economic condition of the tribal dominated Koraput district

has improved significantly following industrialisation of Damanjodi. The tribal people of the area who do not know how to wear clothes are now in the mainstream because of the industries there.⁷⁴ However, the true effect of the NALCO project on communities in Damanjodi is well documented.⁷⁵

Findings: Given the historical neglect of the area in terms of economic and social development projects and people's knowledge of the destruction that 'development' projects have created in Damanjodi and in other Scheduled Areas in Orissa, there is a deep and understandable skepticism that government revenue from the UAIL project will be used in a responsible way to benefit local communities. Despite verbal claims, there is no evidence that the government has prepared a plan for allocating project-related revenue for 'development' projects in the area that will improve social and economic conditions, let alone programmes that will respect tribal communities traditions, cultures, and identities. UAIL's own development efforts in the area have been minimal and disproportionate to the deprivation that tribal groups face if the project is implemented.

5

Repression of Local Dissent

- Influx of Police and Paramilitary Forces
- Village Raids
- Violating Freedom of Assembly
- Widespread and Arbitrary Arrests



Testimonies of repeated violations being narrated before the Tribunal .

Repression of Local Dissent

**"Instead of answering our concerns, they are replying with bullets and lathis."
- Bhagban Majhi**

The information gathered by the Tribunal and the testimonies of the affected people outlined in the various Chapters of this report reiterate and reinforce the cogent logic and reason behind local objections to the UAIL project. The issues surrounding the legality of the land acquisition process, the long-term environmental and health impacts, displacement, inadequate rehabilitation and resettlement packages, and the threat to Adivasi livelihoods and cultures provide a straightforward explanation for the size and strength of the resistance to the project. Local people have clearly and repeatedly expressed their dissent by participating in non-violent demonstrations such as rallies, meetings, sit-ins and road blockades. They have also consistently sought dialogue with the government in an effort to compel them to respect their rights and address their concerns.

In a democratic society, local protests on the scale that have been occurring in Kashipur would seem to require a re-evaluation of the project or, at the very least, government engagement on some level. Instead the government has refused to acknowledge local concerns or work with the affected population to generate solutions. It has also resisted demands for transparency in project-related matters and continues to withhold pertinent information about project-related decision-making and planning. Usually in disagreement with each other, political parties within the state are uncommonly unified in their support for the UAIL project. In fact, an All Party Committee composed of Biju Janata Dal (BJD), Bharatiya Janata Party (BJP) and the Congress Party was formed in 1999 for the sole purpose of supporting UAIL's endeavors in Kashipur. There currently appears to be no elected representatives willing to raise the concerns and objections of the people's struggle against the project within the appropriate government forums.

Instead, the Government of Orissa has chosen to rely on police power, rather than democratic dialogue: they have launched a concerted campaign since 1996 to silence and suppress opposition to the project through the excessive use of force. There is evidence that the government has colluded with UAIL in this violent crackdown and is operating to protect its interests. Their efforts to extort local people's consent for land acquisitions and their acceptance of the R & R package is nothing more than an attempt to provide a legitimate facade to their illegal actions.

The violence associated with this conflict, which pits the people against the government and UAIL, escalated in 2004, when the government began deploying a large number of police forces and paramilitary groups to the area, no doubt in preparation for the scheduled commencement of the project in 2005. These deployments also came on the heels of incendiary public statements by high-level state officials in November and December 2004: Chief Minister of Orissa, Naveen Patnaik, claimed in November 2004 that no one would be allowed to get in the way of Orissa's industrialisation and the people's progress; Sri. B.B. Harichandan, a BJP Cabinet Minister, was quoted in December 2004 as saying that anyone opposed to mining projects was anti-social and would be sent to jail; and District Collector Pramod Meherda told the media that people who opposed the project were anti-social, anti-national, anti-development, and extremists.

State and company agents mainly target individuals and organizations that vocalize the opposition's

arguments and organize protests against the UAIL project, but anyone participating in resistance meetings or protests can become a victim of the brutality including women and children.

"Since 1 December 2004, when the foundation of the project was laid, police atrocities have begun. Attempts are being made to silence through bullets those protesting against the violation of the Constitution or demanding their right to live from the government. The State administration and company officials through the police are subjecting them to harassment."

- Shankar Prasad Muduli

The police and paramilitary forces, along with goondas hired by UAIL, have consistently disrupted peaceful democratic meetings, conducted village raids and carried out widespread and arbitrary arrests in the area. Intimidation and harassment by these forces have included shootings, beatings, lathi charges, threats, humiliation, and the use of tear gas. Three people have died and many more have been injured. Almost every deposition before of the Tribunal included accounts of individual or group instances of harassment and violence by State or company agents. The demeanor, tone and tenor of the witnesses and their responses to questions from the Tribunal inspire confidence in the credibility of their statements. These accounts are substantiated and supplemented by information from five separate and independent fact-finding investigations conducted by credible civil society organizations in 2005, namely the People's Union for Civil Liberties (PUCL), People's Union for Democratic Rights (PUDR), Association for Protection of Democratic Rights (APDR), Human Rights Forum (HRF), and Indian Social Action Forum (INSAF).

Influx of Police and Paramilitary Forces

The number of police and paramilitary forces in the area rose dramatically in 2004. The government not only increased the number of local police platoons, but also deployed two paramilitary groups: the Central Reserve Police Force (CRPF) on 5 December 2004 and the India Reserve Battalion (IRB) in 2005. The government also constructed a new police outpost and barracks in 2005.

The government's public rationale for increasing troop levels rests on the need to neutralize the situation between factions supporting and opposing the UAIL project. However, this assertion of neutrality is challenged by the fact that police and paramilitaries only target those opposing the project, while allowing company goondas to openly attack protesters with impunity: the challenge to the government's claim is strengthened by reports that UAIL provides the local police with food and allows them to operate within its premises. The true purpose of the police and paramilitary forces has been to suppress dissent and extort acceptance of the UAIL project from people whose lands need to be acquired for project purposes. For example, the decision to construct a police outpost on the outskirts of Kuchaepadar village, the so-called center of the opposition struggle, when both a police station and police outpost already exist within a 10 kilometer radius, is a transparent attempt to intimidate and cow the people.

The presence of armed forces in the area was evident to the Tribunal during its site visit in October 2005: this observation was supported by the PUDR report, which noted that the area was "teeming with armed policemen" and that their team was "struck by the number of guns they saw." The PUCL observed that the area seemed to be under siege and that people were living in a perpetual climate of fear. According to the APDR report, police forces and reserve battalions regularly conduct flag marches in the area. The PUCL also reported that armed police march past villages and conduct regular patrols

as a way of instilling fear in villagers and extorting their consent. The large number of armed forces patrolling the area has forced many residents to restrict their movements and limit excursions outside their homes, even at the expense of neglecting their fields, simply to avoid intimidating encounters with these armed forces. People are routinely harassed and questioned about their activities and movements at market places, while traveling on roads and even at their places of work. There are also several reports of people being beaten by the police.

Village Raids

Police and paramilitary forces routinely carry out village raids in an effort to threaten, intimidate and control the local population. Shankar Prasad Muduli of Bagirijhola village, in his deposition before the panel, described how police threatened, looted and beat villagers during a series of raids in 2004 and 2005.

"On December 5, 2004, at 3 o'clock some 100 CID personnel under the leadership of Tikiri Police Station Officer in Charge Sri Kishore Chandra Munda entered Bagirijhola village with guns and threatened the villagers. They told the villager if you oppose the company, you will be shot dead. Those who had died in police firing had at least got compensation, you will die for nothing, even if 100 of you are killed you won't get anything, villagers were told before being driven out of the village. The villagers were so terrified that they fled and did not return for 3 to 4 days."

The police returned five days later:

"The second time on December 10, 2004, at 2 o'clock 85 policemen and a CRPF battalion came to Bagirijhola again and told the villagers: "Why are you tribals opposing the project, you salas (an Oriya abuse referring to brothers-in-law) how dare you oppose the project." They even threatened the women saying that they would be arrested if they continued to oppose the project."

And then again three days later:

"For the third time on December 13, 2004, at 3 o'clock they came to the village and warned everybody against celebrating Shahid Diwas (Martyrs' Day) in memory of those tribals who had died in the earlier police shootout. You will be shot dead or sent to jail if you do so, the villagers were told."

The village raids once again five months later:

"On May 10, 2005, Tuesday night at 1 o'clock 100 policemen under the leadership of Tikiri Thana OIC Kishore Chandra Munda entered the village and in trying to arrest Shankar Prasad Muduli broke open the door of his house and stood on his knees. His mother was also given two beatings with a lathi and driven out of the house. After that they went to the house of Natha Jani and tried to take his goats away. The family members woke up

when they heard their goats bleating. The police then asked them about the whereabouts of Natha Jani and told them: You guys have been opposing the project. Come out or we will break open the doors of your house, they were threatened.”

The police returned three days later:

“On May 13, 2005, policemen under the leadership of Tikri Thana OIC Kishore Chandra Munda came back to the village under the pretext of buying chicken and threatened the villagers. If they opposed the company, they would be thrown into jails, the villagers were told.”

And then again twelve days later:

“On May 25, 2005, they came back under Munda's leadership during a yatra (traditional procession) being held in Bagirijhola village and threatened the villagers.”

His account is a chilling example of the relentless attacks that occurred in one village, however, similar raids are occurring on a regular basis in villages throughout the area. For example, Naveen Nayak, the Convener of Susubahumati Suraksha Samiti (SSS), testified that he was arrested when police raided his village at 12:20 AM on 2 December 2004. The APDR reported that a seventy-year old woman was so scared that she hid in the hills for many nights to try and avoid raids in her village. Unfortunately, these raids have sometimes succeeded in their objective. For example, the Sarpanch of Maikanch surrendered after his village was inundated by 100 CRPF troops for over a month; under duress, he signed a statement vowing not to oppose the mining project.⁷⁶

Violating Freedom of Assembly

Under Article 19 of the Indian Constitution, all people have the right to freedom of peaceful assembly, freedom of speech and freedom of expression. Since the UAIL project was introduced, these rights no longer seem to apply in Kashipur. Police and company goondas are using violent and unjustified force to disrupt villagers who assemble in peaceful protest against the project or participate in acts of civil disobedience, stifling freedom of assembly and expression. Force is used even when police permission has been requested and granted in advance for the meeting or event.⁷⁷ Following are several incidents recounted before or researched by the Tribunal that illustrate the situation.

On 5 January 1998, protesters created a check-post at Kuchepadar village to prevent UAIL's vehicles from entering the area. Police demolished the check-post and the protestors were tear-gassed and lathicharged; 50 people were injured.

On 29 March 1998, a meeting was convened in memory of Laxman Singh, an Oriya freedom fighter hung by the British. Although the authorities granted prior permission for the event, the meeting was disrupted when hired goons attacked those congregated in full view of the police. Delegates of other struggles were present and some of them were arrested and detained for two days. Their heads were shaved while in custody. There is no legal authority for the police to shave the heads of those arrested or humiliate them in any way while in custody. Furthermore, the Constitution also does not allow for

detention beyond 24 hours without authorization in the form of an Order by a competent Court. Following is an account of this incident given to the Tribunal:

"On 29th March 1998, I was also a victim of Company Raj in Rayagada District. On that day, in the presence of police, the goons of the company attacked tribal people who were coming to a rally at Kashipur. Two activists namely Sanatan Pradhan and Rabi Mishra were kidnapped and beaten by the goons of the company in the office of Utkal Alumina at Tikiri. Myself and Sri Langraj, a prominent activist were physically attacked by the goons when we were in search of the said two kidnapped friends. It was reported to the police station but no action was taken because of the company's influence on the administration."

- Prafulla Samantara

On 16 December 2000, two armed police platoons attacked a peaceful anti-mining meeting in Maikanch village, located at the bottom of the Baphlimali Hills where the proposed mine is to be located. The police opened fire and began shooting at the crowd. Eight people were severely injured and three unarmed adivasi men were killed: Abhilasha Jhodia (25), Raghunath Jhodia (18), and Damodar Jhodia (43).⁷⁸ The Government of Orissa ordered a judicial enquiry into the matter by Justice P.K. Misra, a sitting judge of the High Court, given the seriousness of the incident. Although the subsequent Misra Report found the police guilty of excesses, no action has been taken against any of the officers involved in the incident, in effect adding to the atmosphere of impunity. While there was a lull in police violence following the Maikanch incident, the lack of accountability has given armed forces and company goons a green light to attack villagers with impunity. It is no surprise then that on the fourth anniversary of the Maikanch incident, now referred to as Martyr's Day, private goons attacked a commemoration meeting in Tikiri in full view of the police, who did nothing to stop them.

On 1 December 2004, the administration decided to set up a police post at D Karol road near the Kucheapadar limits to facilitate the construction of the UAIL alumina processing plant at a nearby location. The construction of the police outpost triggered strong protests and a number of women gathered on the road to obstruct the project in an act of civil disobedience. They were fired upon, beaten, threatened with rape, thrown into a police van, and arrested.

"On December 1, 2004, the government tried to set up a police thana and barracks on D. Karol road. This when Tikiri thana lies within a 10 km radius and Dongasil police post lies within 5 km. What's the need for all this? We told them that we need hospitals and schools, not police posts. Instead our presence was declared illegal and we were warned that our women would be raped. Police again fired in the air. We were also lathicharged. Two women were severely injured and four men were arrested and taken away."

-Bhagban Majhi

On 25 May 2005, the PSSP held a rally to protest the atrocities perpetrated by the police and hired goondas. The police chief made a number of threats to try and prevent people from attending the rally, however, hundreds still showed up to express their discontent.⁷⁹

On 15 June 2005, five hundred activists from the area met in Guguputu village to discuss the UAIL project. The meeting was interrupted when drunken police fired guns in the air, lathicharged the crowd, and used tear gas to disperse them.

“On 15 June 2005, we were holding a meeting of the committees. The womenfolk of the area had assembled at a place and were discussing the issue of our land and homes. Towards the end of our meeting, police arrived. At their head was Kishore Munda, Officer-In-Charge of Tikiri police station. There were 15 policemen. All the men were drunk and had red bloodshot eyes. They did not tell us anything, nor did they ask us anything. Without permission how did you hold the meeting they asked and started beating us up with their lathis. First they fired in the air. We got terrified. Then they started beating us up. Several women lost their consciousness. They have started torturing us from now. What will they do later?”

- Mukta Jhodia

Fourteen-year old **Pradip Majhi** provides another account of that day's violence.

"I am stating here that there was a meeting of the Sangrami (struggle) committee at Guguputu in our region. Some 500 people from different villages had gathered there. So was I. Just at the end of the meeting some 100 policemen came under the leadership of Kishore Munda and first fired in the air. They then lathicharged us. We tried to force them back. Several of us were injured in the process."

Widespread and Arbitrary Arrests

Police are arresting community leaders, activists, and others identified as opposing the UAIL project including women and minors. The majority of the arrests appear to be based on trumped up charges involving dacoity or arson and stringent interpretations of the law. Bulka Miniaka, a respected member of the community, was arrested on charges of dacoity on 2 December 2004.

"The police came to my house and picked me up. They did not tell me why they were doing so. I was taken first to Kashipur and then to Rayagada. I have just come out on bail. Kishore Chandra Munda has threatened me saying that if I ever dared to set foot in Kuchaipadar I will be sent to jail."

- Bulka Miniaka

Professor Rath stated in his deposition that, "the legal system has been subjected to the worst type of fraud because of the innumerable false charges of grievous natures clamped on respectable adivasi leaders and social activists." He is also facing criminal charges for his outspoken views on the UAIL project and support for anti-mining groups. He is not alone.

"After the police firing at Maikanch on 16 December 2000, the police framed false charges on attempt to murder case against myself and many others to which the judicial commission described it was manipulated to

discredit me because I am a supporter of tribal movement. Now I am facing trial without any crime. From 16 December 2000, it has become a daily affair of Tikri Police Station to book any person belonging to the village of people's struggle on false charges to suppress the movement."

- Prafulla Samantara

While arrests take place during clashes at protests and meetings, they are also occurring arbitrarily in market places, during village raids and even when people are simply walking on the roads. The APDR reported that no one could reach the weekly village markets for fear of being arrested and the PUCL report claims that the Officer in Charge at Tikiri police station openly admitted that the police set traps for people by confiscating valuable items from their homes, and then arresting them when they come to the station to claim them.

In the Courts, the prosecution vigorously opposes bail for those arrested to lengthen their period of detention. The strategy is to prevent anti-mining activists and community leaders from organizing and participating in protests by keeping them behind bars, thereby weakening the opposition struggle. According to the PSSP, 48 people have been arrested from the village of Kucheipadar between December 2004 and June 2005, after spending 4 - 8 months in jail.⁸⁰

The ability to challenge these arrests and demand due process under the law is severely hampered by the lack of access to legal aid: most lawyers in the area are less than eager to defend protestors because it is not financially lucrative for them and they do not want to antagonize the administration. In addition, there is a general feeling among protestors that lawyers in the area may have been co-opted by UAIL. As a result, the majority of the people arrested have failed to even obtain a copy of the FIRs. As part of its follow-up investigation, the IPT submitted a written request to the Superintendent of Police of Rayagada District, Mr. Sanjay Kumar, seeking information on the exact number of criminal cases filed against local people since 1995 for their opposition to the UAIL project, the grounds under which these cases had been filed, and the current status of the charges.⁸¹ There has been no response to date.

The Tribunal also listened to several testimonies recounting physical and mental abuse while in police custody. Pradip Majhi, a 14-year old boy from Kucheipadar, was arrested on 21 June 2005 and spent 45 days in jail during which he was physically and mentally abused.

"I, and some 15 friends of mine from our village had gone to nearby Bilamal village for my brother's wedding. On that day, June 21, 2005, at night around 11 o'clock we were returning from Bilamal. At a camp near Karola, a battalion of police and Tikiri Thana OIC Kishore Chandra Munda suddenly stopped us. They asked us to step down from the vehicle in which we were traveling. Why did you all go to the Guguput meeting? I have seen you there, we were asked. They gave two kicks to Santosh Majhi and took us all to Tikiri thana. In Tikiri thana the second officer also abused me in filthy language and kicked me. I moved away. After that our village's Jeera Majhi was also beaten up. After that, ten of us were sent to Kashipur and then Rayagada. Because I was too young, I was taken to Berhampur. After staying in Berhampur for one month, I got bail and came back. However, nine of my friends are still stuck in jail. Many charges have been slapped against them. Jeera Majhi has some seven cases against him."

- Pradip Majhi

Pradip was unable to continue his deposition before the Tribunal when his emotions overcame him. Another member of the community read the remainder of his deposition to the Tribunal on his behalf, recounting his humiliation at being stripped and photographed while in police custody. Makari Majhi also related her experience of arrest, detention, and abuse at the hands of the police following her participating in the 1 December 2004 protest against the construction of the police outpost at D Karol road. "I was lathicharged and beaten and then taken to Tikri Police Station where I was again beaten with boots and chapels on 1 December 2004. I remained in jail for four months and I cried for fifteen nights straight."

Makari Majhi was charged with obstructing the duties of the police and the issue of individual cases registered against agitators like her is not whether or not the charges have some justification in law. While resisting the attempt to establish a police outpost could be considered an obstruction of the performance of an official duty, the fact that the outpost had not been properly sanctioned and is not otherwise in accordance with the law must be considered. Chapter Two of this report established that the very lease of land to UAIL is illegal, thereby making it an encroacher in the area. One must weigh the actions of local people participating in civil disobedience actions to evict an encroacher, against this greater illegality.

Repression of Civil Society Groups

In addition to repression of individuals and local struggle groups, the government has also retaliated against NGOs working in the area. Agragamme, an NGO based in Kashipur, had been implementing literacy and agricultural programs in the area for over 20 years. Their troubles began when they attempted to create awareness among the people about their rights and provided them with information on generally accepted guidelines for resettlement and rehabilitation. Politicians accused Agragamee of instigating people to oppose the UAIL project. They launched a campaign to ensure that Agragamee would not receive funding from the central government or foreign aid agencies.⁸² The Government of Orissa also deregistered Agragamme and cut off its own funding to the organization. As a result, it has currently limited operations and its leaders are in hiding from the police. Apart from Agragamee several other people were targeted. Prof. Bhagbat Rath who stays in Rayagada and supports the struggle once faced the threat of arrest because he was "obstructing" police from working. Similarly Hara Barania of Bargada District is an activist of Samajwadi Jana Parishad. He was arrested in Tikri and sent to Jail for two months because he was allegedly "supporting the movement and instigating the tribals." These tactics of the state machinery spread panic and fear amongst people who were otherwise supporting the movement.

Not Only in Kashipur

Unfortunately, the violence that is a hallmark of the struggle in Kashipur is not unique. State repression has been the hallmark of bauxite-mining projects in Orissa and this underscores a coordinated effort to ensure that bauxite-mining projects proceed as planned, with or without the consent of the local people. BALCO's bauxite-mining project is one of many examples that has been brought to the attention of the Tribunal.

"If the tribals demand their basic right to live in a democratic way, they are

being harassed and false charges are being slapped against them jointly by the police and forest authorities and they are being sent to jail. As a result they have to undergo severe physical, mental and financial harassment. On 26 August 2005, Friday, 11 tribal women from Nandupalli village were illegally detained while they were protesting against the transfer of tribal land to the Banaspati Bana Prakalpa."

- Gupteshwar Kunwar

Another deposition submitted to the Tribunal revealed that state repression continues in Lanjigarh, even after villagers were forcefully evicted from their lands for the Vendanta project.

"The resettlement colony where the residents of Kinari and Bandhaguda villages were forcibly moved in February 2004, was kept under watch and ward by armed guards employed by the Vendanta Company, and no outsiders were allowed to meet the displaced persons... The forcibly displaced persons were effectively being kept as if in a prison and were not allowed free movement in total violation of their fundamental and human rights. The armed guards were removed only after the visit of the CEC."

- Sidharth Nayak

What more proof is needed to convince anyone that bauxite mining in Orissa is synonymous with arrests, intimidation, and death for people living in project areas; rather than development?

Findings: The influx of police and paramilitary forces to the area, village raids by armed forces, the violation of the right to peaceful assembly, and the widespread and arbitrary arrests indicate that there is large-scale repression of dissent in the area, involving disproportionate force, intimidation and harassment. The collusion of the Government of Orissa and UAIL in repressing the voices and desires of the local people explains the culture of impunity surrounding incidences of violence.

Tribunal Recommendations

"We demand that police atrocities be immediately stopped and the company removed."

- Mukta Jhodia

Given the findings of this report, the Tribunal would like to issue the following recommendations.

The Government of Orissa and the Central Government should immediately take all necessary steps to halt the UAIL project in Kashipur, based on the illegalities and social and environmental consequences outlined in detail in this report.

Environment

- The Orissa State Pollution Control Board and the Ministry of Environment and Forests revoke "consent for establishment" and environmental clearances issued so far to UAIL;
- Put all environmental applications and orders passed for this project into the public domain;
- Order UAIL to cease all work on plant construction and mine opening;
- Conduct an inquiry into the capacity of the Orissa State Pollution Control Board to assess and prevent violations of state and national pollution standards, and if the OSPCB is found to be deficient, it should be reconstituted into an effective monitoring and enforcement body.

State Repression

- Order the immediate withdrawal of paramilitary units and reduce police units to pre-1992 levels;
- Take punitive action against police responsible for the death of three unarmed civilians in the Maikanch incident;
- Conduct an inquiry and take action against officials who have violated national and state laws;
- Immediately release those charged with false crimes and drop all outstanding warrants;
- Provide protection for peaceful assemblies, rallies, and demonstrations organized by local groups;
- Provide redressal for those who suffered at the hands of police and paramilitary forces.

Illegal Seizure of Land

- The Government of India should desist all efforts to 'denotify' tribes in Kashipur and other resource rich areas around the country;
- The Government of Orissa should declare all land acquisition by UAIL to date null and void;
- The Government of India and the State Government of Orissa should enforce legislation and constitutional provisions preventing the transfer of tribal lands to non-tribal entities;
- The Government of Orissa should ensure that private companies provide information about proposed projects in writing, and in a language intelligible to the local people, well in advance of conducting public consultations;
- The Government of India and Orissa should demand that UAIL produce written proof of con-

sent for the project from the relevant Gram Sabhas. For this, it is essential to hold free and fair Gram Sabhas without the presence of police and only after providing all information about the project, like proposals and possible consequences etc.

- During this process representatives of civil society and NHRC should be invited as observers.

R & R Package

- Restrain the Company officials and representatives from intimidating and implicating people into submission.
- The Government of India must ensure that R & R packages compensate for both physical and non-physical assets, as well as damage to assets due to pollution or other environmental factors;
- The Government of India must provide legal representatives to safeguard the interest of DPs and PAPs during negotiations involving the terms of R & R packages;
- The Government of India must ensure that all R & R packages are in writing and legally binding on the parties involved;
- DPs and PAPs must be identified and compensated according to the most recent demographic data and a survey must be conducted to ensure that all villages and habitations in the affected area are properly identified and registered by the relevant government authorities.

Mining and Displacement

- The Government of Orissa must commission an independent economic study of the viability of the UAIL project;
- The Government of Orissa must conduct a thorough study of the economic, social and environmental effects of mining projects and large-scale displacement within the region.

Postscript: The Struggle Continues

Since October 2005, the struggles of those opposing the UAIL project have not waned, but the government's resolve to crush their resistance also remains strong. Reports indicate that arrests are continuing and there has been no progress in gaining the release of those in detention under false charges. In fact, two more people were arrested in the middle of the night soon after the Tribunal's visit to the area. Ironically, these people remain behind bars not for committing a crime, but for trying to expose one.

Recent events in Orissa demonstrate the government's willingness to continue using deadly force to quell opposition to industrial projects. It is a familiar story. On 2 January 2006, approximately 300 - 400 adivasis gathered to protest the construction of a steel plant by Tata Industries in Kalinganagar in the Jajpur district of Orissa. Land acquisition for an industrial complex that is to include a number of projects in addition to the Tata plant began in 1992. At that time, the people readily accepted compensation for land and generally supported the project because they believed the government rhetoric: that the industrial complex would lead to the development of the area, job opportunities, and improved standard of living. However, when the government officially took possession of the acquired lands in 1997, shifting the displaced to resettlement colonies as agreed, the displaced found that conditions in resettlement colonies were less than what was promised. Others found that the promised jobs did not exist. When people refused to vacate their homes until they were given jobs they were forcefully removed and their homes were razed the ground by bulldozers. As the years dragged on, the local people began to question the government's arguments for the project and came to learn the hard way that the government and corporations do not honor their verbal promises. It became clear to them that they would not benefit from the industrial complex and that the projects would create profound environmental damage to the area. In 2004, tensions in the area grew as the people began to demand better compensation. These protests became more and more frequent in 2005 and local people became organized in their resistance to the industrial complex and were successful in disrupting its operations.

It is clear now that the government wanted to put an end to these protests on 2 January 2006. That morning ten police platoons, approximately 300 policemen, were dispatched for the ground leveling of the Tata Plant. A large number of local people gathered to protest the plant: tensions escalated and pushing and shoving ensued. The police charged the protesters causing them to scatter, but then the crowd returned and some began to attack a police officer that had fallen. At that moment, the police began indiscriminately firing into the crowd even as people were running away. In the end, twelve adivasis were killed and 37 injured. According to reports, five of the bodies that were in police custody were mutilated. One policeman died and four were injured during the confrontation.

While the Government of Orissa has offered families five lakhs as compensation for each death and one lakh for each person injured, the people concerned have refused it and are demanding more compensation for the deaths and injuries, provision of lands to those people already displaced by the industrial complex, eliminating displacement in the area, the release of their leaders and activists from police custody, and the filing of murder charges and/or the dismissal of state and district officials. The local people have created a road blockade on National Highway 200 and claim they will remain there until their demands are met.

At the time of this writing, not one of the policemen involved in the incident has been charged or censured; and the blockade of National Highway 200 continues in protest. No doubt, just as Maikanch before it, the Kalinganagar incident was meant to create fear among tribal groups throughout Orissa

who are protesting mining and industrial projects. Reverberations from the incident and the lack of accountability and impunity with which officials operate may silence some, but it will also provide new energy to fight the gross injustice that is taking place in Orissa.

We support the people of Kashipur in their continued struggle for justice and others throughout the country struggling against industrial projects that threaten their communities and livelihoods. We hope that the government will finally respond to the outcry against these injustices and take steps to protect its people, land, and resources. If that happens, incidents such as Kalinganagar and Maikanch will become a thing of the past. It is hoped that this report will further publicize their struggles and lead to a return to the rule of law in Kashipur and an end to the plundering of its resources for commercial profit. After all, the people's will cannot be silenced forever.

End Notes

- ⁰¹ Prakrutik Sampad Surakshaya Parishad (Organisation for the Protection of Natural Resources) was originally formed in 1996 to fight campaign against the violations surrounding UAIL's bauxite-mining project in Kashipur. Since then, the organization has widened its scope and is involved with tribal groups and movements in protest against the onslaught of indiscriminate corporate development.
- ⁰² Please see **Appendix A** for the IPT Interim Report.
- ⁰³ Please see **Appendix B** for correspondence by IPT to UAIL and the Government of Orissa.
- ⁰⁴ Das, Dr. R.C., Chairman, Orissa State Pollution Control Board, "Recommendation for Environmentally Sound Growth of Aluminium Industry in Orissa," 5, March 1996.
- ⁰⁵ Global Alumina
- ⁰⁶ Orissa State Pollution Control Board Report, 1996
- ⁰⁷ Deposition of Kashipur Solidarity Group - Mumbai to Indian People's Tribunal
- ⁰⁸ Orissa Pollution Control Board Report, 1996
- ⁰⁹ Marianus Kujar, J. 2005/7, 'Development Not For Tribes', Mines and Communities Website, [Online] Available at: <http://www.minesandcommunities.org/Country/india17.htm> [Herein after cited as Development Not For Tribes]
- ^a BP Rath deposition, courtesy of Sri F.Pedal & Sri S. Das
- ¹⁰ Please see **Appendix C** for full text of Schedule V of the Constitution.
- ¹¹ Downing, T. E. 2002/4, 'Avoiding New Poverty: Mining-Induced Displacement and Resettlement', A report commissioned by the Mines, Minerals and Sustainable Development Project of the International Institute of Environment. [Online] Available at: http://www.iied.org/mmsd/mmsd_pdfs/058_downing.pdf [Herein after cited as Avoiding New Poverty]
- ¹² Environmental Clearance Monitoring Reports
- ¹³ Theirs to Mine (Cover Story), Down To Earth, Vol 13, No 22 April 15 2005. Also available online at http://www.downtoearth.org.in/cover.asp?foldername=20050415&filename=anal&sid=1&sec_id=7
- ¹⁴ India Social Action Forum (INSAF) 2005/10, 'Fact Finding on the People's Resistance to Utkal Alumina International Limited (UAIL), Kashipur, Rayagada, Southern Orissa', INSAF website [Online] Available at: <http://www.insafindia.org/>
- ¹⁵ <http://www.insafindia.org/>, October 2005.
- ¹⁶ Das, Vidhya 2001/7/14, 'Orissa: Mining Bauxite, Maiming People', Economic and Political Weekly Commentary [Online] Available at: <http://www.saanet.org/kashipur/articles/vidhyadas.htm>
- ¹⁷ Please see **Appendix D** for PSSP's complaint to NHRC & IPTs letter to NHRC & SHRC. Apart from PSSP two separate complaints were also preferred to the National Human Rights Commission one by Ms. Madhumita Dutta (**Case No: 696/18/2004-2005**) and other by Medha Patkar, National Alliance of People's Movements (NAPM) & others (**Case No: 669/18/2004-2005**) regarding an incident of lathi charge on 1st February 2004 in which 3 tribals were injured and 100 others were injured. However, based on the report of the District Collector of Rayagada, Superintendent of Police, Rayagada the Hon'ble Commission closed both the cases.
- ¹⁸ Please refer to Para 5 (2) in Appendix C
- ¹⁹ Section 3(1) (iii) of the Act states "a member of a Scheduled Tribe shall not transfer any land if the total extend of his land remaining after the transfer will be reduced to less than one acre."
- ²⁰ Documents relating to Mining Lease available with IPT.
- ²¹ Please see **Appendix E** for information provided by Ministry of Mines on leases granted in Orissa .

- 22 Monitoring Report August 1999
- 23 Monitoring Report February 2002
- 24 Monitoring Report 14 December 2004
- 25 Monitoring Report 14 December 2004
- 26 Please see Chapter 6 for specifics of state and company repression.
- 27 Please see **Appendix F** for letter of opposition to Chief Minister, Prime Minister, and President.
- 28 More than one hamlet belongs to one Ward or Palli Sabha in tribal areas.
- 29 More information on the individual consent is provided in Chapter 3
- 30 According to the Environmental Impact Assessment Notification (1994), a public hearing is also mandatory for the environmental clearance process. While the UAIL project predates this requirement, it is interesting to note that this provision was amended at a later date to exclude projects under 25 hectares; it is not a coincidence that at least 50 percent of mining projects hold leases under 25 hectares.
- 31 Information Relating to UAIL site clearance for mining component available with IPT
- 32 Information Relating to UAIL's environmental clearance for mining component available with IPT.
- 33 Information Relating to UAIL's environmental clearance for alumina refinery/captive power plant component available with IPT.
- 34 Orissa State Pollution Control Board Report 1996
- 35 Documents relating to NOC and COE granted by the Orissa State Pollution Control Board to the UAIL available with IPT
- 36 Baskar, Utpal, 2006, 'New Mining Policy by March 15', Business Standard [Online] Available at: <http://www.business-standard.com/bsonline/storypage.php?&autono=215993>
- 37 See **Appendix G** for full text of UN Global Compact.
- 38 Asian Center for the Progress of People <http://www.acpp.org/uappeals/2004/04031605.html>. March 16, 2004.
- 39 Central Empowered Committee Report In IA NO. 1324 Regarding The Alumina Refinery Plant Being Set Up By M/S Vedanta Alumina Limited At Lanjigarh In Kalahandi District, Orissa.
- 40 TARU Report
- 41 Deposition of Debaranjan Sarangi (PSSP) and Manju Menon (Kalpvriksh) to IPT
- 42 Report of the Orissa State Legislative Assembly House Committee on Environment .
- 43 Das, Vidhya 2001/7/14, 'Orissa: Mining Bauxite, Maiming People', Economic and Political Weekly Commentary [Online] Available at: <http://www.saanet.org/kashipur/articles/vidhyadas.htm>
- 44 Deposition of Mr. Debaranjan Sarangi to the Indian People's Tribunal
- 45 ACP, INSAF
- 46 Information obtained from Orissa State Pollution Control Board report.
- 47 The local people appear to have no information as to how the waste generated by the operations of UAIL would be dealt with and disposed off and its potential impact on the lives, livelihoods, social interaction and mobility of the people.
- 48 Das, Vidhya 2001/7/14, 'Orissa: Mining Bauxite, Maiming People', Economic and Political Weekly Commentary [Online] Available at: <http://www.saanet.org/kashipur/articles/vidhyadas.htm>
- 49 See EPW above
- 50 See Down To Earth (Supra note:13) and EPW (See supra note:16).
- 51 Avoiding New Poverty.
- 52 Avoiding New Poverty
- 53 W. Fernandes and M. Asif, Development-Induced Displacement in Orissa 1951 to 1995: A Database

- on Its Extent and Nature (New Delhi: Indian Social Institute, 1997).
- 54 Development Not For Tribes
- 55 <http://www.saanet.org/kashipur/articles/vidhyadas.htm>
- 56 Avoiding New Poverty
- 57 Avoiding New Poverty
- 58 From avoiding new poverty, but adopted from Pandey's 1998a data by Downing 1999)
- 59 The Draft Orissa Resettlement and Rehabilitation Policy has not yet been adopted.
- 60 Deposition of Mr. Debaranjan Sarangi to IPT
- 61 ALCAN Website, www.alcan.com
- 62 From the events at the Press Conference, in which the UAIL representatives walked in with a large posse of aggressive local people in support of the project, the Tribunal is inclined to conclude that land-based rehabilitation may have been selectively offered as a toll for the manufacture of consent.
- 63 A discussion of the R&R package would be part of the process of consultation outlined in Chapter 2. However, UAIL did not fulfill this mandatory requirement.
- 64 The New Poverty
- 65 ALCAN Frequently Asked Questions available at www.alcan.com
- 66 See Chapter Four for more information on forests and Adivasi communities.
- 67 A partial list of these villages is provided in the deposition of BP Rath.
- 68 Please see Chapter Four.
- 69 <http://www.climateark.org/articles/2000/4th/ccleadse.htm>,
http://banglapedia.search.com.bd/HT/M_0076.htm
- 70 India's PDS system.... . Note: starvation deaths reported in the area were directly related to the destruction of forest in the area that disrupted adivasi food security system. .
- 71 Orissa Human Development Indices.
- 72 Orissa Human Development Report, 2004. Planning and Coordination Department of the Government of Orissa, 2005
- 73 Please see **Appendix H** for indicators from the Orissa Human Development Report (2004).
- 74 BJD members demand statement from CM on 'foreigners' 2004, Orissa Net [Online] Available at: <http://www.orissa.net/news/default.asp?NewsID=17262>
- 75 Please see Chapter 1
- 76 People's Union for Democratic Rights (PUDR), 2005, 'Halting the Mining Juggernaut: People's Struggles Against Alumina Project in Orissa', People's Union for Democratic Rights Website [Online] Available at: http://www.pudr.org/index.php?option=com_docman&task=doc_view&gid=60&Itemid=63
- 77 People's Union for Civil Liberties (PUCL), 2005, 'Atrocity on the People of Kashipur. A Fact Finding Report by Cuttack, Bhubaneswar and Rayagada Units of the People's Union for Civil Liberties', People's Union for Civil Liberties Website [Online] Available at: <http://www.pucl.org/Topics/Dalit-tribal/2005/kashipur.htm>
- 78 <http://www.flonnet.com/fl1801/18010330.htm> - frontline
- 79 Sarangi, Debaranjan 2005/07/05, 'Shallow Grave: Orissa's New Labs of Horror', Tehalka
- 80 Please see **Appendix I** for a full list of people arrested.
- 81 Please see **Appendix J** for IPT request to Superintendent of Police.
- 82 Bandhopadhyay, D 2004/1/31, 'Rayagada Story Retold Destitutes of Development' Economic and Political Weekly Commentary [Online] Available at: <http://www.epw.org.in/showArticles.php?root=2004&leaf=01&filename=6769&filetype=html>

Appendix A

Press Release: Rayagada, October 3, 2005

An eight member panel of the Indian People's Tribunal on Environment and Human Rights (IPT) held a public hearing at Kuchepadar in Kashipur Block of Rayagada District, Orissa on October 2, 2005 to assess the environmental and human rights impact of the ongoing bauxite project of Utkal Alumina International Ltd. (UAIL) in Kashipur block. The panel was headed by Justice S.N. Bhargava (Retd. Chief Justice Sikkim High Court and Chairperson of the Assam and Manipur State Human Rights Commission), and the other members are Mr. Dilip Singh Bhuria (Former Chairperson of the National Commissions for Scheduled Castes and Scheduled Tribes), Prof. Ram Dayal Munda (Former Vice Chancellor, Ranchi University), Dr. Illina Sen (Women's Studies Department in Mahatma Gandhi International Hindi University, Wardha), V.T. Padmanabhan (Environmental Scientist at BIRSA Ranchi), Mr. K. Balagopal (Secretary, Human Rights Forum, A.P.), Professor S. Parasuraman (Director, Tata Institute of Social Sciences, Mumbai) and Mr. Sagar Dhara (Environmental Scientist and Analyst).

On October 1, 2005 some of the panel members also visited Lanjigarh in Kalahandi district, Orissa and discussed the displacement and rehabilitation situation with the people affected by the bauxite project of the Vendanta Aluminum Ltd. At Lanjigarh.

The purpose of this press conference is to acquaint the public with the material gathered by the IPT in the course of the public hearing at Kuchepadar and the site visit at Lanjigarh. A detailed report giving the conclusions and recommendations of the panel will be published in due course.

The UAIL bauxite project proposes to mine the Baplimani hills for bauxite and transport the mined ore a distance of 22 km to a refinery at D. Karol in Kuchepadar village limits. The proposed alumina production is 1 million tonnes of Alumina per annum to begin with, to be expanded to 3 million tonnes during the course of the project. The company acknowledges that a total of 3 villages will be displaced by the refinery site but also estimated that 26 villages will be affected by the project. No smelter is planned since the alumina is to be exported straight from Vishakhapatnam port.

The first person to depose before the public hearing was Prof. Bhagwath Prasad Rath, a noted Gandhian of Rayagada. He informed the panel that the villages likely to be affected by the UAIL project have been resisting the project for the last 12 years on the grounds that they would be deprived of their livelihood and will in no way benefit from the development brought about by the project. Prof. Rath added that it was not only the ruling party but all the political parties and the bureaucracy that are hostile to the people's opposition to the project and therefore tremendous force has been used to obtain their consent. He pointed out that the royalty of Rs. 62 per tonne to be obtained by the government of Orissa was miniscule compared to the subsidized facilities and expenditures on policing that is being provided by the government to UAIL. Prof. Rath further stated that because Aluminum is an essential metal in the war industry, Western developed countries are exerting pressure on countries like India to permit the mining of bauxite. He added that not only himself but eminent social personalities like the late Manmohan Chowdhary and Kishan Patnaik have written to the government of Orissa protesting against their repressive attitude but the government has not even bothered to reply to date.

Debranjana Sarangi of Prakrutik Sampada Suraksha Parishad (PSSP) told the panel that although the

company had admitted that 26 villages would be affected, in fact at least 42 villages will actually be affected by the refinery and the waste disposal ponds (red mud and ash ponds). He further said that the company has stated that they will give employment to one person per family in the three totally displaced villages. However, it is not known if there is any binding written agreement to that effect. He pointed out that the entire project falls under the Vth Schedule area and hence a lease given by the government of Orissa to a private company is illegal and in fact unconstitutional as held by the Supreme Court in the famous case of Samata vs. State of Andhra Pradesh (popularly known as Samata Judgement). The contention of the government of Orissa that the judgement applies only to Andhra Pradesh is belied by a plain reading of the text of the judgement. The judgement makes clear that it applies to the entire country since it is based on the fifth Schedule of the Constitution. He further categorically stated that all the gram sabhas of the affected villages had passed a resolution in terms of the PESA act as far back as 1994 refusing to give consent for the project. He added that till the year 2004 the people have stood steadfast against the company to protect their livelihoods and refused to be tempted even by an increase in compensation. It was only by deploying police to crush the people's dissent that a few of them were pressurized to accept the compensation in the first few months of this year. He also stated that in 1996 the State Pollution Control Board, while considering the two bauxite projects proposed at that time, had stated that no further bauxite projects should be taken up in addition to these two in the area. In spite of this order the State government has given leases to four bauxite projects.

Manju Menon of Kalpavriksh Pune said that site clearance for the UAIL project was given in the year 1994 for a period of only 5 years with the stipulation that it would lapse if the project was not taken up during that period. The project has not been taken up within the five year period nor has the site clearance been extended. This means that the activity being undertaken by UAIL is in violation of the law. In addition, the site clearance granted in 1994 was only an environmental clearance and no forest clearance was granted. To date, there has been no forest clearance for the mines on Baplimali hills. In addition, the environmental clearance given to the power plant and refinery of UAIL is conditional on the stipulation that the company sets up monitoring stations. No such stations have been set up by the company. At the time site clearance was given in 1994, the company was also directed to submit its rehabilitation proposal and land use pattern within one year but this was not submitted until 7 years after site clearance was given. Ms. Menon further stated that the clearance given in 1994 was not based on a comprehensive Environmental Impact Study (EIS) but a rapid EIS which was unusual considering that there should be no urgency to grant clearance. She said that in spite of being an expert environmental study group, Kalpavriksh was unable to obtain the basic data concerning the UAIL. Such information which is of paramount importance to the people likely affected is being kept secret and allowed to be kept secret by the government.

Bhagwan Majhi Convenor of PSSP, Mukta Jhodia, Bulka Midiaka, Manohar Jhodia, Naveen Kumar Nayak, Makkari Majhi, and 14-year old Pradip Majhi deposed before the panel concerning the brutal repression unleashed against the villagers by the police, the CRPF and private goondas engaged by the company. On January 5, 1998 when the affected villagers held a rally at Kashipur with police permission, goondas engaged by UAIL attacked and beat them up including women and children. This occurred in full view of the police.

On December 16, 2000 unprovoked firing at Maikanch in Kashipur block resulted in the death of three adivasis. Although the P.K. Mishra Commission headed by the sitting judge of the High Court squarely found fault with the police in its report submitted in March 2004, no action has been taken against the police implicated in the attack.

On December 1, 2004, the then district collector Mr. Promod Mehta came with a large posse of armed police to set up a police outpost at D. Karol. The villagers realized that this was meant to overcome their resistance by force. A number of women from Kucheapadar and other villages stood on the road to prevent the inauguration of the police outpost. The Collector spoke rudely to them when asking them to clear the road, and then taking the cue from him the OIC Tikiri OS threatened the women with rape if they did not clear the road. Eleven of the women confronted him by removing their clothes and challenged him to rape them. The police fired into the air, burst tear gas shells and lathi charges the women driving them back. Makkari Majhi, who was one of the women present during this incident, fell semi-conscious by the roadside and was picked up and thrown into the police van. At the police station she was again beaten and her hair was pulled. This was the treatment meted out to all the women. Makkari Majhi told the panel that she was jailed on the charge of obstructing the police and remained in jail for four months until she was let out on bail.

After this incident, the CRPF and other paramilitary forces were deployed in large numbers. When 'shaheed divas' was organized in honour of the victims of the Maikanch firing on December 16, 2004 at Tikiri, the police attacked the gathering which included two MLAs and arrested 47 people.

On June 15, 2005 at the village of Guguputu, 500 activists had gathered to discuss their agitation program. A large number of policemen raided the village without any provocation, fired into the air and lathi charged the gathering. Fourteen-year old Pradip Majhi told the panel that he along with 14 others were coming back to Kucheapadar on the night of June 21, 2005 after attending a marriage. Their vehicle was stopped at the police outpost at D. Karol and all of them were badly beaten and taken to the Tikiri PS. Pradip Majhi was stripped, photographed and sent to a juvenile home at Berhampore. He was released after one month. The nine others who were arrested with him are still in remand. In the course of this assault the police repeatedly asked them why they had attended the Guguput meeting which had been disturbed by the police on June 15, 2004.

Shankar Prasad Muduli of Baghrijhola narrated how the CRPF repeatedly raided his village and insisted that the people should agree to hand over their land to the company. On May 10, 2005, they raided his house at 1:00 am, beat his mother, broke the door and stole the grain in the house. In no case were women police officials deployed when arresting or dispersing women agitators.

Both at Kucheapadar and Lanjigarh, the adivasis threatened by displacement made their stand clear to the panel. They have been living in the forest for thousands of ages and obtaining a decent livelihood by cultivating crops watered by the streams which flowed down the hills. Many of the testimonies spoke of the threat of losing their livelihoods based on agriculture and forest that would ensue if the project was to come through. According to Mukta Jharia, all the work that the women, now functioning independently in the fields and forests could expect would be work in washing dishes in the homes of UAIL officials. The government which had done very little for their development in terms of education, health or other basic infrastructure was now asking them to sacrifice their livelihood for the sake of development.

The bauxite mining would drive them out of the forest and deprive them of their livelihood opportunities. It would also leave a gaping hole in the forest after the ore is exhausted. The mining would also damage streams and ground water sources, permanently rendering the forest unfit for habitation. They were very resentful that in spite of the area being governed by the Fifth Schedule and in spite of the area being governed by the Fifth Schedule and in spite of the victims being adivasis, the government is so callously insisting on going ahead with the project in violation of the law and in the teeth of their objec-

tions. The panel met some Dongaria tribesmen at Belamba who are residents of the large number of hamlets located on the slopes of the Niyamgiri hills. They informed the panel that they had been living on the fruits of nature without any assistance from the government. The government did not even recognize their existence and there was no proposal to rehabilitate them.

The panel will gather further material from the Government and UAIL. We will submit our full report the investigation is complete.

(Justice S N Bhargava, for the IPT)

Appendix B

INDIAN PEOPLE'S TRIBUNAL ON ENVIRONMENT AND HUMAN RIGHTS (IPT)

17.03.06

Mr. Arudhendu Mohapatra
Deputy General Manager
Utkal Alumina International Limited
Raniguda Farms, Rayagada District
Orissa

Dear Sir,

Greetings from Indian People's Tribunal !

The Indian People's Tribunal on Environment and Human Rights (IPT) was constituted by a people's mandate in 1993 to investigate into gross human rights violations and cases of environmental degradation. The IPT is particularly concerned about cases that affect the lives and livelihood a vast majority of urban and rural poor. The IPT process endeavors to inquire into the exact nature of a problem, and provide a true picture. In the process it provides a space for all the concerned parties to present their views.

As had been informed to you earlier, the IPT had conducted a Public Hearing on the 1st and 2nd of October 2005 on the issue of the setting up of the Utkal Alumina International Limited in the state of Orissa. The said hearing was headed by Justice S.N. Bhargava, Retd. Judge Sikkim High Court along with a panel of experts. On behalf of the IPT we had sent you an invitation by fax on 26.09.05 requesting you to meet the panel members.

Following the Public Hearing the panel had addressed a Press Conference on 3rd October 2005. Once again IPT had sent you a copy of the Press Release requesting you and your company to submit your comments on the same so that the panel could look into the issue in an unbiased manner and with a holistic perspective.

However, I wish to state that IPT has so far not received any communication from your side. I am therefore, once again enclosing the Press Release, since we are in the final stages of preparing the report, for your perusal and in the hope that you would put forth before the panel your views. I request you to kindly send us your comments by 5th April 2006 to the address mentioned below.

Looking forward to your reply.

Yours sincerely

Maya Nair
Indian People's Tribunal
Mumbai

Appendix C

FIFTH SCHEDULE

[Article 244(1)]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

PART A

GENERAL

1. Interpretation.-In this Schedule, unless the context otherwise requires, the expression "State" does not include the States of Assam, Meghalaya, Tripura and Mizoram.

2. Executive power of a State in Scheduled Areas.-Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.

3. Report by the Governor to the President regarding the administration of Scheduled Areas.-The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

PART B

ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

4. Tribes Advisory Council.-(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State:

- (1) Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.
- (2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.
- (3) The Governor may make rules prescribing or regulating, as the case may be,-
 - (a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof;
 - (b) the conduct of its meetings and its procedure in general; and
 - (c) all other incidental matters.

5. Law applicable to Scheduled Areas.-

- (1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

- (2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.
In particular and without prejudice to the generality of the foregoing power, such regulations may-
- (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
 - (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
 - (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.
- (3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.
- (4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.
- (5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C SCHEDULED AREAS

6. Scheduled Areas.-(1) In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order¹ declare to be Scheduled Areas.

(2) The President may at any time by order²-

- (a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;
- (aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;
- (b) alter, but only by way of rectification of boundaries, any Scheduled Area;
- (c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;
- (d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas;

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D AMENDMENT OF THE SCHEDULE

7. Amendment of the Schedule.-(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Appendix D

Prakrutik Sampad Surakshya Parishad

(P. S. S. P.)

At: Kucheipadar, P.O.: Kashipur. Dt.: Rayagada- 765015, Orissa
Phone : 06856-235092 , Email : pssp_kashipur@yahoo.co.in

To
The Chairman
National Human Rights Commission
New Delhi

Date : 21st July, 05

Sub : Repression in Kashipur in Rayagada district in Orissa and request for immediate intervention of the honourable chairman

Sir ,

We the people of Kashipur are bringing following points for your knowledge. Before that we want to say that several letters and memorandum have reached to you and several quarters regarding the repression in Kashipur.

In the mean time again we have faced lathicharge on 15th June, 2005 which is second time during six months and nearly fifty people during this period have been sent to jail. Five national level human rights organizations namely PUCL (Orissa), PUDR (Delhi), APDR (West Bengal), HRF (Andhra Pradesh), INSAF- India have visited the area and have condemned the police repression in the area. But this has not had any impact of the district administration of Rayagada in Orissa.

The facts are like this,

Beginning of second phase of repression in Kashipur

1. More recently on 15th June, 2005 armed police reached the UAIL (Utkal Alumina International Limited) plant site of Guguput village. There was a PSSP meeting going on of nearly 500 people and mostly tribal women. Without any announcement the police started lathicharging, gas shells, blank firing and also picked up nine people. Later when a group of youths were returning in the night to Kucheipadar village on 25th June were picked up by armed police and were sent them to jail after torturing them in the police station. It has become a usual practice since 1st December, 2004 that people are picked up, kept first in police lock up more than a day and then sent to jail.
2. On 1st December, 2004 the Superintendent of Police and District Collector of Rayagada district including ten platoons of police went to D Karal - Nuapada (Kashipur Block) lay-

- ing foundation stone of a police barrack and police outpost at the plant site of UAIL to help in construction work of the latter.
3. People of PSSP (Prakrutik Sampad Surakshya Parishad) in Kashipur are demanding medical facilities and educational institutions which are essential for a descent life. The government of Orissa instead of providing these facilities when intended to start construction of police outpost and police barrack generally meant for armed police, people started opposing the idea.
 4. On 1st December, 2004 police platoons reached the spot for opening up of the police out post and police barrack and people got the information in advance and sat of the road. When police reached the spot the tribal women sat on the road and did not leave the road. Then the Officer In charge of Tikiri Mr. Kishore Mund announced "leave the road otherwise we would rape you" and further he derogatorily said "when you are in habit of sleeping with your father and brother, what is wrong if you are raped by us". This nasty threat crossed such a limit that eleven elderly tribal women put off their clothes, became totally naked and went in front of the police barricade boldly and challenged the police to rape them.
 5. The Tikiri OIC then on 1st December, 2004 who was controlling the mega phone announced "you bastards tribal, davits how could you fight against the government" "we have orders of the government. Leave the road otherwise would be killed". Then police started pelting stones and it did not have any effect on the gatherings. Then the police used tear-gas and it is true that people threw the same shells towards the police. Then police resorted to blank firing due to such firing people started leaving the road and while returning the police chased them and beat them severely. Two tribal aged women including four men were arrested on the same day. PUCL of Orissa Unit Report says that "the police have threatened the women to rape them in the open congregation during their agitation on 1.12.2004".
 6. Subsequent repression by armed police: From 2nd December, 2004 Kashipur was verbally seized by the armed police. CRPF which has been deployed in Southern part of Orissa for anti-naxal operation were deployed around Tikiri- Kucheipadar village in Kashipur and flag marched every village. The Indian Reserve Battalion was also mobilized. The armed police battalions did march pasts and patrolling inside the villages to create a fear psychosis among the people. The police is also harassing people in market places and in other places of their work by indiscriminately questioning them, picking them up, detaining them in the police station and beating them up in the custody also. This has seriously affected the peace, life and livelihood of the poor tribal people of Kashipur area as they can not go to the market or near by townships and even into their own fields.
 7. By today fifty activists have been arrested and out of them still twenty four activists of PSSP are still in jail for more than three months. Already there is a rape incident happened by the armed police in newly constructed police out post at D. Karol where a dalit lady of D Karol was raped and molested by the armed police on 17th January,2005. The local police Officer in Charge Kishor Mund refused to accept the FIR.

Where our fault lies

8. Utkal Alumina International Limited (UAIL) is a joint venture of Hindalco and Alcan of Canada. The Memorandum of Understanding (MOU) was signed between the govern-

ment of Orissa and the company in 1993. Due to the popular struggle UAIL could not start its work until 1/12/2004.

9. UAIL is a 100% export oriented joint venture alumina consortium. In 1993 Indal, Tata, Norsk Hydro and Alcan were originally part of the consortium. Subsequently some of them withdrew and now Hindalco has 55% share and Alcan has 45% share of UAIL. The total cost of the project is estimated at Rs. 4000 crores. Bauxite would be sourced through open cast mining from Baphlimali of Maikanch panchayat, which has an estimate of 195 million tons of bauxite and will be transported to the plant site at Doraguda near Kucheipadar village (25km from the mining area) via conveyor belt. The capacity of the plant will be one million ton of alumina and will be increased upto three million tons according to the UAIL report. As per expert's view, for these three million tons of alumina nine million tons of bauxite would be extracted annually. This means the UAIL would finish up the entire bauxite of Baphlimali within 22-23 years. The alumina generated at this refinery proposed to be sold at US \$85 a tonne is estimated to be the cheapest globally.
10. The UAIL project would acquire 2865 acres of land of Kashipur block and much of this is cultivable land. The project has announced the compensation package but all people have not accepted the compensation package yet. Some of them have accepted during the period of repression because police pressurised them. Money is not of any use for us and the company and government is refusing to give us land against land.
11. On 16th December, 2000 police brutally gunned down three unarmed tribals at Maikanch Abhilash Jhodia, Raghu Jhodia and Damodar Jhodia and injured many more. After this shocking incident the former commissioner Sri Dillip Singh Bhuria visited the area. Also the former President of India K.R. Narayanan after this incident in his Republic Day speech on 26th January, 2001 said "the future generation should not blame us we have destroyed the tribals for our development."

Company speaks lie

12. False information by the company: UAIL claims that the project will displace only 147 families from three villages of Talakarol, Ramibeda and Kendukhunti as per 1991 census. The Norsk Hydro's estimate puts the number of Project Affected Persons (PAPs) as 750 families and the human rights group Norwatch of Norway estimated nearly 60,000 families would be affected. As per PSSP's estimation nearly 2500 families will be affected by the alumina plant only and another 2000 families would be affected by mining in three panchayats namely Maikancha, Kodipari and Chandragiri GP of Kashipur block. UAIL is not disclosing its project proposal and is not giving any information. Above all we are going to lose our land and livelihood and the company and the state government are keeping us in dark.
13. No Gramsabha resolution: People of Kashipur are not interested in the project and due to the resistance UAIL could not start its work until 1.12.2004. Neither UAIL nor Government of Orissa has ever discussed these matter before any of the six grampanchayats which is going to be affected by the project. They are Kucheipadar Grampanchayat (GP), Hadiguda GP, Tikiri GP, Maikancha GP, Kodipari GP and Gorakhpur GP. As per the Grampanchayat Act of Orissa all voters of the Grampanchayat are the members of a gramsabha, as per the Provisions of the Scheduled area Act, 1996 (PESA) gramsabha resolution is essential. None of the above gramsabha has ever passed any resolution in favour of the UAIL.

14. Consent of Gram sabha is a lie : Superintendent of Police , Rayagada says in media " in the Gramsabha the villagers gave their consent to vacate their lands for construction of Alumina Industry". This is a lie. Out of 24 villages 3 villages will be completely bulldozed by UAIL in the first phase of its project namely Ramibeda, Kendukhunti and Tala Karol hamlets. But on 9th September, 2004 the district collector Sri Pramod Kumar Meherda , IAS with heavy platoons of police in nearly 27 vehicles reached in the area in early hours and cordoned off the villages. On that day he took the consent of those three hamlets only. Those three hamlets are part of three wards of two grampanchayats Kucheipadar and Hadiguda GP. As per the grampanchayat act of Orissa all voters of a ward are members of a pallisabha and 12-14 wards constitute a grampanchayat. Even on that day the consent of complete pallisabha was not taken. That the consent of the Gramsabha was taken is a blatant lie by the SP of police. The presence of police at the time of consent of hamlet was well reported in the local media also.
15. Omission of Kucheipadar village : The letter of SP speaks that the Kucheipadar village has been omitted by the UAIL. It can not be true. The reality is that just below the Ramibeda village , one of the displaced villages, the land of Kucheipadar starts. Secondly the UAIL does not share the neither new nor old physical plan of the project. Also the UAIL is not sharing whether the company has renewed environment clearance, forest clearance and mining clearance from the central government. But besides these , the important point is Kucheipadar is supposed to be the office of PSSP which is resisting the UAIL project. It is not fighting for saving only its own village.
16. Allegation against outsiders: The District Administration often accused the non-tribal activists as outsiders. This has also come in the PUCL report while taking interview of police officers. They have been already implicated in several false cases and have been forced to go underground.
17. No environment clearance: From the confidential source it is clear that the UAIL does not have renewed mining clearance, forest clearance and environment clearance. It does not have any Gramsabha resolutions favouring the company. Also environment assessment report done by Engineers India Limited commissioned by the UAIL goes against the company. But the company is sharing neither its proposal, nor the environment assessment report nor its plan etc. The INSAF team while visited the place found all these lacunae from the company's side and have mentioned in their report.

Kashipur falls under the Fifth Schedule of the Constitution of India, which guarantees land to the adivasis and forbids the transfer of tribal land to any non-tribal entity or activity. As per the Samata judgment, the government and the aluminium company are non-tribals. Also, we are informed that for their private gains neither the government of Orissa nor UAIL is paying any respect to the Gramsabha resolutions of any of the Gram Panchayats. This is in flagrant violation of the Provisions of the Scheduled Area Act, 1956. In the interim period, the people of Kashipur , Orissa, with support from the people of Chhatisgarh and Madhya Pradesh came together in a protest dharna on the 4th and 5th of March in Delhi and also submitted a memorandum to the honourable President of India on March 5th seeking his Excellency's intervention.

In this context we urge that

1. Immediate withdrawal of all armed police forces from the area and police outpost. The police barracks should be closed down;

2. Release of all activists of PSSP and false cases should be withdrawn;
3. UAIL project should be cancelled and gramsabha resolution should be mandatory before installation of any project;

Finally we urge the Chairman to visit the area for first hand information of the repression and pressurize the government to stop any type of anti-tribal action.

Yours,

Bhagaban Majhi
Convenor, PSSP

- Encl:
1. Reports of all five democratic organizations.
 2. Kashipur struggle, State Repression and Responses

Appendix D

18th October 5005

Dr. Justice. Patil
Hon'ble Member
National Human Rights Commission
Faridkot House, New Delhi

Dear Brother
Greetings!

I am taking the liberty of writing this letter to you. I hope you will not mind. I was appointed Judge of Rajasthan High Court in 1982 and then the Chief Justice of Sikkim High Court in 1993. Upon my retirement I was appointed as the Chairperson for the State Human Rights Commission of Manipur and Assam.

Recently, I had been requested by the Indian People's Tribunal (IPT) to head a panel to conduct a Public Hearing on the issue of the setting up of Utkal Alumina International Limited - a joint venture between a Canadian based MNC named ALCAN and HINDALCO (Birla Group of Industries) in Kashipur block of Orissa.

The panel members included - Shri. Dillip Singh Bhuria (former Chairman, National Commission for Scheduled Castes and Scheduled Tribes, New Delhi) Prof. Ram Dayal Munda (Former Vice - Chancellor of Ranchi University, Jharkhand) Dr. Parasuraman (Director, Tata Institute of Social Science, Mumbai), Ms. Ilina Sen (Feminist and writer) Raipur, Chhatisgarh, Mr. Balgopal, Lawyer and human rights activists (Secretary, Human Rights Forum, Andhra Pradesh) Dr. V.T. Padmanabhan (Environmentalist) and Shri. Sagar Dhara, (Senior Environmental Scientist and researcher)

The Public Hearing investigated broadly three critical issues -

- The repression launched by the state government of Orissa on the tribals of Kashipur
- The impact that the UAIL project would have on the environment and tribal life and livelihood.
- The economic viability of the joint venture for both the state government of Orissa and the Tribals of Orissa.

In the course of my discussion with the tribals of the area, I was informed that a complaint had been preferred to the National Human Rights Commission by the affected parties and also solidarity groups regarding the repression unleashed by the state government of Orissa against the tribals who have been demanding that the proposed joint venture be scrapped.

One such complaint has infact been taken up by the Hon'ble Commission. The case number for the same is 696/18/2004-2005/UC. The complaint had been preferred by one Ms. Madumita Dutta on 18.02.2004. I tried checking out on the status of the complaint through the website however, the same is not available with the database of the website. I, therefore, request you to kindly look in to the matter and ensure procedural justice. With best wishes and regards

Yours sincerely
Sd/-
(S.N.Bhargava)

Appendix D

18th October 5005

Justice Shri. D.P. Mohapatra
Hon'ble Chairperson
State Human Rights Commission
Mohantypara, Kafla Bazaar
Cuttack - 2, Orissa

Dear Brother
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The panel members included - Shri. Dillip Singh Bhuria (former Chairman, National Commission for Scheduled Castes and Scheduled Tribes, New Delhi) Prof. Ram Dayal Munda (Former Vice - Chancellor of Ranchi University, Jharkhand) Dr. Parasuraman (Director, Tata Institute of Social Science, Mumbai), Ms. Ilina Sen (Feminist and writer) Raipur, Chhatisgarh, Mr. Balgopal, Lawyer and human rights activists (Secretary, Human Rights Forum, Andhra Pradesh) Dr. V.T. Padmanabhan (Environmentalism) and Shri. Sagar Dhara, (Senior Environmental Scientist and researcher)

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- The impact that the UAIL project would have on the environment and tribal life and livelihood.
- The economic viability of the joint venture for both the state government of Orissa and the Tribals of Orissa.

In the course of our discussions with the tribals of the area, we were given to understand that the tribals of Kashipur block had approached the State Human Rights Commission seeking justice for the repressive treatment meted out at them by the State Government of Orissa. However, we were surprised that the State Human Rights Commission of Orissa has not taken any action on the issue and the tribals also do not have any information whether the SHRC has given the case a number.

I, therefore, request you to kindly look in to the matter and ensure procedural justice.

I am enclosing, herewith, the Press Release given by the Panel members who conducted the Public Hearing. The comments in the Press Release are however, not final and therefore in case you wish to give your suggestions then please do feel free to give the same.

Sd/- (S.N.Bhargava)

Appendix E

BY SPEED POST

**Government of India
Ministry of Mines
Shastri Bhavan : New Delhi**

No. 3/11/05-PI

Dated: 22.2.2006

Ms. Maya Nair
Indian People's Tribunal on Environment and Human Rights (IPT),
4th floor, CVOD, Jain High School,
84, Samuel Street, Dongri,
Mumbai - 400 009.

Subject:- Information under Right to Information Act, 2005 reg.

Madam,

With reference to your letter dated 5.12.05, in which you had requested for information relating to mining clearances in Orissa under Right to Information Act, 2005.

In this connection it is to inform you that States are the owner of minerals and all mineral concessions are granted by the State Government concerned. Prior approval of the Ministry of Mines is mandatory for grant of mineral concessions only in case of the minerals specified in Parts B and C of the First Schedule to the MMDR Act, 1957. Information on mining leases is maintained in Indian Bureau of Mines (IBM) only for major minerals, while the concerned State Governments are empowered to make rules and regulate all matters pertaining to grant of mineral concessions of minor minerals. The details of mining leases executed by the Govt, of Orissa during 1998-2004 and 2004-2005 are enclosed.

If you are not satisfied and aggrieved by this decision you may file an appeal before Appellate Authority i.e. Shri V.K. Thakral, Joint Secretary, Ministry of Mines, A-325, Shastri Bhavan, New Delhi within 30 days from receipt of this letter.

Yours faithfully,

(T.S. Bhatia)
Under Secretary/ACPIO

Encls.: As above (4 pages).

Appendix E

ANNEXURE

MINING LEASES GRANTED FOR MAJOR MINERALS IN ORISSA DURING 1998-99 TO 2003-04					
YEAR	S.No.	MINERAL	DISTRICT	VILLAGE	AREA (Hects.)
1998-99	1.	Iron and Manganese ore	Sundargarh	Oraghat	25.85
	2.	Chromite and Pyroxenite	Jajpur	Kalarangiatta, Kaliapani, Mahulkhal etc.	406.00
	3.	Graphite	Nuapara	Gandabahalli	20.23
	4.	Iron ore	Keonjhar	Deojhar	11.53
	5.	Iron ore	Keonjhar	Katesahi	13.67
	6.	Manganese ore	Keonjhar	Jaribahal	14.74
	7.	Manganese ore	Sundargarh	Gonua and Mandaiore	129.18
	8.	Pyrophyllite	Keonjhar	Jamudina	35.00
	9.	Pyrophyllite	Keonjhar	Ambadahara	26.01
	10.	Tin ore	Malkangiri	Gahaguda and Sargiguda	36.26
1999- 2000	1.	Chromite, Serpentine and Magnetite	Keonjhar	Boula R.F.	187.03
	2.	Graphite	Bolangir	Gandimal No. 7	63.77
	3.	Graphite	Bolangir	Solbandh No. 151	25.96
	4.	Graphite	Rayagada	Kumbhibhata	36.83
	5.	Iron ore	Keonjhar	Palsa & Jaribahal	106.53
	6.	Iron ore	Keonjhar	Joda, Kamarjoda and Banspanick	671.09
	7.	Iron ore Manganese ore	Sundargarh	Naugam	29.26
	8.	Iron ore Manganese ore	Sundargarh	Gonua and Potabeda	86.89
	9.	Limestone and Dolomite	Sundargarh	Jharbeda and Tummura	372.80

	10.	Pyrophyllite, quartz and Quartzite	Keonjhar	Tikarpada and Ambadhana	112.49
	11.	Quartz	Sundargarh	Kokerama Barsuan etc.	87.77
2000-2001	1.	China Clay	Mayurbhanj	Godpalsa (Block A, B & C)	69.23
	2.	Graphite	Bolangir	Rengali	26.90
	3.	Iron ore Manganese ore	Keonjhar	Jalahari, Banspani etc.	182.11
	4.	Manganese ore	Keonjhar	Siligore, Badakalimali etc-	715.64
	5.	Sand	Angul	Nizgarh, Town, Talcher, Nizgah, Zami etc.	17.81
2001-2002	1.	Chromite	Jajpur	Kaliapani	64.46
	2.	Chromite	Keonjhar	Bangur	36.61
	3.	Graphite	Kalahandi	Badibahal	24.91
	4.	Iolite (Semi Precious Stone)	Kalahandi	Bondoguda	10.39
	5.	Iolite (Semi Precious Stone)	Kalahandi	Bondoguda	1.70
	6.	Iron and Manganese ore	Kalahandi	Unchabali	106.11
	7.	Iron and Manganese ore	Kalahandi	Dalapahar	89.96 (Block A)
	8.	Iron and Manganese ore	Kalahandi	Dalapahar	7.68 (Block B)
	9.	Manganese ore	Keonjhar	Guruda	40.06
	10.	Quartz	Sambalpur	Kechhupani	6.82
	11.	Quartz and Quartzite	Mayurbhanj	Dalki	3.84
	12.	Quartzite	Bhubaneswar	Chuurinpalli	102.12
	13.	Chromite	Jajpur	Kalapani	116.76

	14.	Dolomite	Sundargarh	Dahijira and	74.31
	15.	Iron ore	Keonjhar	Soyabali	947.04
	16.	Manganese	Keonjhar	Dhanurjaypur	40.46
	17.	Quartzite	Jharsaguda	Bhikampalli	4.89
	18.	Sandstone	Sundargarh	Jagatgarh	4.98
	19.	Sandstone	Sundargarh	Rasrajpur	4.92
	20.	Iolite (Semi Precious Stone)	Kalahandi	De dar	9.50
2002-2003	1.	Chinaclay	Cuttack	Kumbharbandugandi	15.23
	2.	Chinaclay	Koraput	Udiagura, Chindiri & Duruguda	38.50
	3.	Chinaclay	Mayurbhanj	Khandabandh & others	367.60
	4.	Iolite (Semi Precious Stone)	Kalahandi	Bandoguda	2.02
	5.	Iolite (Semi Precious Stone)	Kalahandi	Labanyasar	2.50
	6.	Iron ore	Keonjhar	Chamakpur	31.69
	7.	Limestone and dolomite	Sundargarh	Jalangbira & others	68.71
	8.	Manganese ore	Sundargarh	Bandhal	28.02
	9.	Quartz and quartzite	Jajpur	Gopapur	7.22
	10.	Quartz and quartzite	Jajpur	Sukarna	2.30
2003-04	1.	Dolomite and Limestone	Sundargarh	Lanjiberna	93.80
	2.	Gemstone (Ruby)	Kalahandi	Malipada	27.65
	3.	Kyanite, Quartz and Quartzite	Mayurbhanj	Purunapani	48.94
	4.	Limestone and dolomite	Sundargarh	Khatkarbahal, Kulenbahai and	113.58
	5.	Limestone and	Sundargarh	Raibaga	32.80

	6.	Limestone and dolomite	Sundargarh	Kusumtoli, Mangeratoli etc.	64.00
	7.	Quartz	Kalahandi	Bhejiguda	22.05
	8.	Quartz	Kalahandi	Karlaguda	7.29
	9.	Quartz and Quartzite	Mayurbhanj	Dighi	4.13
	10.	Silica Sand	Sundargarh	Sipukachhar, Lutherkene etc.	17.46
2004-05	1.	Gemstone	Kalahandi	Kutingapadar	14.39
	2.	Gemstone	Kalahandi	Dedar	1.00
	3.	Gemstone	Kalahandi	Labanyasar	15.50
	4.	Gemstone	Kalahandi	Labanyasar	21.70
	5.	Graphite	Naupada	Gandabahalli	35.41
	6.	Graphite	Naupada	Kirikita	31.81
	7.	Graphite	Naupada	Gandabahalli	28.62

Appendix F

To
The President of India,
New Delhi

Re. Police Repression on People's Movements

Your Excellency Sir,

We urge you to urgently intervene to stop the ongoing police repression of activists of PSSP, Orissa, CMM Chhatisgarh, and Jan Sangharasha Morcha, Madhya Pradesh and the eviction of tribals from their lands. Since December 2004, the police in Kashipur, Orissa, have been imposing a reign of terror in the area to squash the growing people's opposition to bauxite mining by UAIL, a joint venture of Alcan and Hindalco. The police have lathi charged peaceful protests, the police and paramilitary have been roaming illages at nights, and a number of people have been arbitrarily taken into custody, false cases have been lapped on them. Eighteen people are still in custody, for over 2 months now. Those in the forefront of the ovement are being targeted, clearly an attempt to undermine popular opposition in the area.

This opposition is because local adivasi people face displacement and loss of livelihood as millions of adivasis have since independence. In July 2004 Korku adivasis of Bhandarpani Village in Betul, MP , were forcibly evicted from their houses, where they have lived for generations . they are living in makeshift plastic sheets and two children have died since this eviction. These are areas that are protected by the Fifth Schedule of the Constitution of India, which guarantees land to the adivasis and forbids the transfer of these lands to any non-tribal entity or activity.

For the last two days a large number of people from these movements from Orissa, MP and Chhatisgarh have been on dharna near Parliament but so far our voices have not been heard by our state representatives, governments and even the honourable judiciary. Which is why we have approached as the highest constitutional functionary in this land to intervene and ensure we are not evicted from our lands whether by the forest administration or by mining companies.

We urge you to:

1. Cancel all bauxite mining projects, including UAIL in Kashipur that affect people's livelihood and resources.
2. Stop the police repression in Kashipur ,Chhatisgarh and Betul (MP) by police and paramilitary forces.
3. Ensure the immediate release of all activists of PSSP , Kashipur and that all cases are dropped against them.
4. that the seventeen Korku adivasis families forcibly evicted Bhandarpani be resettled from their original place of residence
5. Send a team to Kashipur, Betul and Chhatisgarh to inquire into the events and pressure the state government to halt any anti-tribal policy or action immediately.
6. Prevent any violation of the 5th Schedule of the Constitution of India and cancel all laws that run contrary to the provisions of the 5th Schedule.

We appeal to you to act with urgency.

Signed by:

Debaranjan Sarangi (PSSP), Anurag Modi (JSM), Sukhram Sahu (CMM)

For,
Prakrutik Sampad Surakshya Parishad (PSSP), Orissa
Jan Sangharsha Morcha (JSM), Madhya Pradesh
Chhatisgarh Mukti Morcha (CMM), Chhatisgarh
Contact Address:
72, Deshbandhu Apts,
15, Patparganj,
Delhi 110092
Email: kashipursolidarityindeli@yahoo.com
(Recd and signed by the Secretariat of Rashtrapati
Bhavan, New Delhi)

Appendix G

The UN Global Compact*

The Global Compact's ten principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus and are derived from:

- The Universal Declaration of Human Rights
- The International Labour Organization's Declaration on Fundamental Principles and Rights at Work
- The Rio Declaration on Environment and Development
- The United Nations Convention Against Corruption

The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption:

Human Rights

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2: make sure that they are not complicit in human rights abuses.

Labour Standards

- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4: the elimination of all forms of forced and compulsory labour;
- Principle 5: the effective abolition of child labour; and
- Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: undertake initiatives to promote greater environmental responsibility; and
- Principle 9: encourage the development and diffusion of environmentally friendly technologies

Anti-Corruption

- Principle 10: Businesses should work against all forms of corruption, including extortion and bribery.

* Information taken from the UN Global Compact Website (www.unglobalcompact.org).

Appendix H



HUMAN DEVELOPMENT INDICES			DISTRICT INFORMATION		
	1991	2001		1991	2001
Human Development Index (HDI)		0.443	Area (in square km)	7073	
HDI Rank		25	No. of CD Blocks	11	
Gender Development Index (GDI)		0.428	No. of G.Ps	171	
GDI Rank		24	Total no. of inhabited villages	2445	
Reproductive Health Index (RHI) (98-99)		0.584	Forest area as % of geographical area	37.07	
RHI Rank		8	EDUCATION		
Per Capita DDP/Income in 1998-99 (at 1993-94 prices)	5300		Education Index Rank		28
POPULATION			Literacy Rate (All)	26.01	35.61
Total population (in lakh)	1991	2001	Literacy Rate (Male)	36.53	47.35
	7.14	8.23	Literacy Rate (Female)	15.63	24.31
Share of state's population	2.26	2.24	Literacy Rate (SC)	21.46	
Density of population (persons per square km)	101	116	Literacy Rate (SC Male)	33.63	
Decadal growth of population (1981-91 and 1991-2001)	17.29	15.27	Literacy Rate (SC Female)	9.49	
Urban population (in per cent)	12.51	14.02	Literacy Rate (ST)	10.39	
SC population (in per cent)	14.28		Literacy Rate (ST Male)	17.73	
ST population (in per cent)	56.04		Literacy Rate (ST Female)	3.40	
HEALTH			GENDER		
Health Index Rank		26	Sex Ratio (Rural)		1039
Crude Birth Rate	34.30		Sex Ratio (Urban)		969
Doctors per one lakh population		13	Sex Ratio (All)	1012	1029
No. of beds per one lakh population		27	Sex Ratio (SC)	1010	
EMPLOYMENT			Sex Ratio (ST)	1043	
	1991	2001	AGRICULTURE		
WPR (Rural)	51.4	50.73	Average size of operational holdings (in hectares) as per 1995 Census	1.50	
WPR (Urban)	31.39	31.81	Cropping intensity (2002-03)	136	
WPR (All)	48.89	48.08	Net sown area as percentage of total geographical area	21.64	
WPR (Female)	37.9	41.3	Per capita output of foodgrain (in kg per annum)	124	
WPR (Male)	60.01	55.06	Agricultural labour as percentage of total rural main workers	45.98	
Share of primary sector in total main workers	82.90		Cultivator as percentage of total rural main workers	29.40	
Share of secondary sector in total main workers	5.00				
Share of tertiary sector in total main workers	12.10				

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District Fact sheets

Appendix I

List of arrestees and sections imposed against them by police in Kashipur struggle as on 21 st September, 2005					
Sl. No.	Name of the arrestees	Date of arrest	Sections imposed under IPC	GR cases number	Status
					Whether released
1	Adai Majhi (F-50) Kucheipadar	1/12/04	147/149/294/427/436/506 // 147/148/341/332/338/506/27 armed	145/04 150/04	Yes from HC
2	Bangari Majhi Kucheipadar	1/12/04	147/148/341/332/338/506 // 294/427/436/149	150/04 145/04	Yes from DC
3	Mariya Majhi kucheipadar	1/12/04	147/149/294/336/506/436/427	145/04	Yes from HC
4.	Pagu Majhi Kucheipadar	1/12/04	147/149/294/427/436/506	145/04	Yes from HC
5	Latra Majhi Kucheipadar	22/02/05	147/149/294/427/436/506 // 450/395/397// 450/395/397	145/04 105/04 104/04	Yes from HC
6	Mukundi Saunta Kucheipadar	22/02/05	450/395/397	104/04	Yes from DC
7	Vasudev Majhi Kucheipadar	17/12/04	147/294/427/436/506/149	145/04	Yes from HC

8	Laxmana Majhi Kucheipadar		307/147/148/341/323	119/98	Yes from HC
9	Jagannath Sahu Bagrijhola	8/12/ 04	147/148/341/332/338/506 // 147/294/27/ 427/436	150/04 145/04	Yes from HC
10	Chitrasen Bag Bagrijhola		450/395/397/147/144	104/04	Yes from HC
11	Saroj Naik	1/12/ 04	450/395/397/147/149		Yes from HC
12	Loknath Nayak Khurigaon	4/12/ 04	450/395/397	104/04	Yes from HC
13	Navin Nayak Khurigaon	4/12/ 04	450/395/397	104/04	Yes from HC
14	Duryo Dora Tikirapada		450/395/397/147/148/341 // 332/338/506/27 arms act	104/04	Yes from HC
15	Pabitra Nayak Dimundi	1/12/ 04	450/395/397	105/04	Yes from DC
16	Bhaboni Gouda Lachhuguda	8/12/ 04	147/149/341/332/338	150/04	Yes from HC
17	Hara Bania Baragada District	29/12/0 4	294/323/427/506/149	116/04	Yes from DC
18	Buluka Miniaka Barigaon	3/12/04	450/395/397	104/04	Yes from HC
19	Santosh Majhi Kucheipadar		450/395/397	104/04	Yes from DC
20	Trinath Majhi		450/395/397	104/04	Yes from DC
21	Uma Majhi Kucheipadar		450/395/397	104/04	Yes from DC
22	Mukuna Disari Kucheipadar		450/395/397	104/04	Yes from DC
23	Ananta Majhi	15/06/0 5	147/148/294/334/337/506/307/14 9	93/05	released
24	Mania Majhi	15/06/0 5	147/148/294/334/337/506/307/14 9	93/05	Released

25	Narsingh Majhi	15/06/05	147/148/294/334/337/506/307/149	93/05	Released
26	Ghanu Majhi	15/06/05	147/148/294/334/337/506/307/149	93/05	Released
27	Sada Majhi	15/06/05	147/148/294/334/337/506/307/149	93/05	Released
28	Bali Majhi	15/06/05	147/148/294/334/337/506/307/149	93/05	Released
29	Biswanath Jhodia	15/06/05	147/148/294/334/337/506/307/149	93/05	Released
30	Uchhala Jhodia	15/06/05	294/506/34	91/05	Released
31	Ripa Majhi	15/06/05	294/506/34	91/05	Released
34	Lambodara Majhi	15/06/05	395	90/05	Released
35	Prahallad Majhi	15/06/05	395	90/05	Released
36	Kia Majhi	15/06/05	395	90/05	Released
37	Ripa Jhodia	15/06/05	379/506/34	25/01	Released
38	Harishananda Majhi Kucheipadar	25/06/05	147/148/341/294/379/307/427/506/283 // 147/148/332/336/337/506/186/294/149/27arms act/7 Cri. L. Ame. Act// 147/148/341/294/323/324/379/336/337/427/506/307/149	83/05 150/04 76/05	Released
39	Susanta Majhi Kucheipadar	25/06/05	148/147/120(L)/341/307/427/294/379/506/323/283/379/149// 147/148/294/332/336/337/506/186/149/27arms act/7Cri.L.A.act// 147/148/341/294/323/324/379/336/337/427/506/307/149	83/05 150/04 76/05	Released
40	Duroyadhan Majhi Kucheipadar	25/06/05	147/148/341/294/379/323/307/427/506/283/120(L)/149 // 147/148/186/294/332/336/337/506/149/7Cr.L.A.Act/ 27arms act// 147/148/120(L)/323/294/354/379/506/ 149// 147/148/34/294/323/324/379/336/337/427/506/307/149	83/05 150/04 85/05 76/05	Released

41	Narayana Disari Kucheipadar	25/06/0 5	147/148/186/294/332/336/337/50 6/149/7Cr.L.A.Act/ 27arms act// 147/148/341/294/323/324/379/33 6/337/427/506/307/149	150/04 76/05	Released
42	Bhagirathi Majhi Kucheipadar	25/06/0 5	147/148/120(L)/341 /307/283/323/ 294/427/379/506/149 // 147/148/294/186/332/336/337/50 6/149/7Cr.L.A.Act/ 27arms act// 147/148/341/294/323/324/379/33 6/337/427/506/307/149	83/05 150/04 76/05	Released
43	Hemanta Majhi Kucheipadar	25/06/0 5	147/148/341/294/379/323/307/4 2 7/506/283/120(L)/149 // 147/149/323/336/337/506/186/29 4/149/7Cr.L.A.Act/ 27arms act// 147/148/34/294/323/324/379/336/ 337/427/506/307/149	83/05 150/04 76/05	Released
44	Santosh Majhi Kucheipadar	25/06/0 5	147/148/341/294/379/323/307/42 7/506/283/120(L)/ 149// 147/149/323/336/337/506/186/29 4/149/7Cr.L.A.Act/ 27arms act// 147/148/34/294/323/324/379/336/ 337/427/506/307/149	83/05 150/04 76/05	Released
45	Ash Majhi	25/06/0 5	147/148/341/294/379/323/307/42 7/506/283/120(L)/149 // 147/149/323/336/337/506/186/29 4/149/7Cr.L.A.Act/ 27arms act// 147/148/34/294/323/324/379/336/ 337/427/506/307/149 // 147/148/120(L)/323/294/354/379/ 506/ 149	83/05 150/04 76/05 85/05	Released

46	Jira Majhi Kucheipadar	25/06/0 5		83/05 150/04 76/05 105/05 104/04 145/04 85/05	Released
47	Manu Jhodia Maikancha		147/148/294/506/323/379/336/42 7/149// 379/506/34// 148/323/427/506/149// 147/294/34/323/427/379/506/149/ / 341/294/323/325/506// 147/148/341/323/324/427/506/30 7/337/149/7 of Cr.Law Amendment Act/4 of DP act/25&27 Arms act// 147/148/427/435/506/149/25arms act// 147/148/341/506/323/379/149// 147/148/186/341/353/294/506/14 9/7 of Cr.Law Amendment Act// 379/201/34// 294/323/506//	76/2000 25/2000 99/01 77/2000 82/03 114/ 2000 115/]2000 57/2000 71/2000 4/01 20/01 52/05	Released
48	Sivaram Nayak Maikancha				Released Bail from High court
49	Pradeep Majhi Kucheipadar (minor)	15/06/0 5	450/397/197		Released on bail

Appendix J

Shri. Sanjay Kumar
Superintendent of Police
Rayagada District
Rayagada Orissa

18th October 2005

Dear Mr. Kumar
Greetings!

I was appointed Judge of Rajasthan High Court in 1982 and then the Chief Justice of Sikkim High Court in 1993. Upon my retirement I was appointed as the Chairperson for the State Human Rights Commission of Manipur and Assam.

Recently, I had been requested by the Indian People's Tribunal (IPT) to head a panel to conduct a Public Hearing on the issue of the setting up of Utkal Alumina International Limited - a joint venture between a Canadian based MNC named ALCAN and HINDALCO (Birla Group of Industries) in Kashipur block of Orissa.

The panel members included - **Shri. Dillip Singh Bhuria** (former Chairman, National Commission for Scheduled Castes and Scheduled Tribes, New Delhi) **Prof. Ram Dayal Munda** (Former Vice - Chancellor of Ranchi University, Jharkhand) Dr. Parasuraman (Director, Tata Institute of Social Science, Mumbai), **Ms. Ilina Sen** (Feminist and writer) Raipur, Chhatisgarh, **Mr. Balgopal**, Lawyer and human rights activists (Secretary, Human Rights Forum, Andhra Pradesh) **Dr. V.T. Padmanabhan** (Environmentalism) and **Shri. Sagar Dhara**, (Senior Environmental Scientist and researcher)

The Public Hearing investigated broadly three critical issues -

- The impact that the UAIL project would have on the environment and tribal life and livelihood.
- The economic viability of the joint venture for both the state government of Orissa and the Tribals of Orissa.
- The protests launched by the tribals of the Kashipur block against the setting up of the Joint venture.

During the course of my discussions with the tribals of the area, it was brought to my notice that a large number of criminal cases have been filed against the people of the area, mostly dalits and adivasis for resisting the setting up of the above-mentioned Joint venture. Some of the cases, I was informed, date back to 1995. In this context I would appreciate if you kindly inform me of the total number of cases that have been registered against these tribals and adivasis and the status of the cases and the grounds on which these cases have been filed.

It is important for the tribunal members to know of these facts to investigate the issue in an unbiased manner. I am also given to understand that the IPT had sent formal letters to your goodself requesting you come and meet the panel members and give your opinion on the issue. The IPT had even contact-

ed your office when the panel was in the area however, as you were on leave we did not have the opportunity to speak to you.

I, therefore, request you to kindly cooperate in this matter. Please find enclosed the Press release given the panel members who conducted the Public Hearing. The comments given in the Press Release are not final and therefore in case you have any comments please do feel free to give the panel the same.

With best wishes and regards

Yours sincerely

(S.N.Bhargava)