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HUMAN RIGHTS
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Under the Surface

HUMAN RIGHTS AND
ENVIRONMENTAL IMPLICATIONS
OF THE PROPOSED SIJIMALI
BAUXITE MINE IN ODISHA

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Executive Summary

This report studies the environmental and human rights impact of the proposed Sijimali (locally known as Tijimali) bauxite mine in Rayagada (Kashipur) and Kalahandi (Thuamul-Rampur) districts of Odisha by M/S Vedanta Ltd. The project pertains to the extraction of 9 MTPA bauxite, setting up of two crushers of 1200 TPH capacity, 18 MTPA waste generation and top-soil removal over 1549 ha of forest, government, and private land. The lease period is fifty years, with the life period of the mine being thirty-one years.

Both Rayagada and Kalahandi are Scheduled Areas under the Fifth Schedule of the Constitution with a predominant *adivasi* population, comprising both dry and moist deciduous forests and grasslands, with rich floral and faunal biodiversity. Both areas have witnessed a decrease in forest cover over the past decade, primarily on account of mining. This report interrogates whether the proposed project complies with the human rights of affected communities and key principles of environmental governance, particularly the precautionary principle.

The report proceeds in two parts. Part A identifies the normative and legal framework governing large mining projects in India. This covers the human, fundamental and constitutional rights vested in the affected communities as well as the applicable principles of environmental governance. This part also delineates the processes under mining, environmental, forest, pollution, and other laws for approval of such projects, particularly under a radically reformed regulatory environment over the past five years. To do this, reliance has been placed on international and domestic legal instruments pertaining to rights and environment, particularly relating to Scheduled Tribes (‘ST’)/indigenous peoples/*adivasis*. Among domestic instruments, the report draws from the Constitution, statutes, and various executive instruments such as Rules, Guidelines, Notifications, Circulars, and policies.

Part B analyses the claimed and potential impact of the proposed project on the people and the environment. This is undertaken through a meticulous scrutiny of all project-related documents available on the *Parivesh* website of the Ministry of Environment, Forests and Climate Change (‘MoEFCC’) submitted either by the proponent itself or by consultants hired by it. These include: the project proposal, the draft Environmental Impact Assessment (EIA) report, the Environment and

Conservation Management Plans. The claims in these project-related documents are then triangulated against reports and deliberations of state authorities involved in the clearance processes, specifically the Environmental Assessment Committee ('EAC') and the Project Screening Committee ('PSC'), as well as representations and objections raised by affected communities at various forums such as public hearings, news media, petitions etc. Lastly, this Part also undertakes secondary research on the impact of bauxite mining generally, drawing from assessments of mining sites in other parts of the world. As the clearance process for the project is ongoing, our report covers documents only up to the period of 20 January 2024.

Structure of the Report

Chapter 1 studies the human, fundamental and constitutional rights of STs, *adivasis* and indigenous peoples, by whatever name referred, under domestic and international law. These are identified under the five core pillars of: (i) right to autonomy and self-governance, including the right to free, prior and informed consent ('FPIC'); (ii) right to land, forest and customary resources; (iii) religious and cultural rights; (iv) socio-economic rights; and (v) right to development and environment. Instruments such as the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP'), Fifth and Sixth Schedule of the Constitution, Panchayat (Extension to Scheduled Areas) Act, 1996 ('PESA'), Forest Rights Act, 2006 ('FRA') etc. are studied. The chapter identifies corresponding obligations on the State under various instruments, as well as on businesses under the UN Guiding Principles on Business and Human Rights. The chapter brings attention to the centrality of rights to land and autonomy to the attainment of all other fundamental and human rights of *adivasis* and indigenous peoples.

Chapter 2 identifies key principles of environmental governance in the pursuit of equitable and sustainable development, namely, the polluter pays principle, the public trust doctrine, and the precautionary principle. An attempt is made to identify the meaning and content of these principles, and the corresponding obligations they cast on state and non-state actors for environmental protection and biodiversity conservation. It brings particular attention to the trusteeship or custodian relationship in which the State holds natural resources for the people, and its primary obligation to prevent devastating environmental harms, particularly in the presence of scientific uncertainties.

Chapter 3 describes the statutory and executive framework governing approvals for mining projects in India, oriented as a chronological three-step process. Step 1 covers the exploration of minerals and grant of mining lease under the Mines and Minerals (Development and Regulation) Act ('MMDR'), which is undertaken wholly between state authorities and private actors with no participation of rightsholders and affected communities. Step 2 covers various statutory clearance processes pertaining to forests, environment, pollution, waste management etc. This includes the environmental clearance process under the EIA Notification 2006 (as updated following recent changes), forest clearance process under the Forest Conservation Act, 1980 ('FCA'), again updated to reflect changes brought in by Forest Conservation Rules and Guidelines in 2022, pollution clearances under the Air (Prevention & Control of Pollution) Act, 1981 ('Air Act'), Water (Prevention & Control of Pollution) Act, 1974 ('Water Act'), Hazardous Waste Management Rules, 2016 (as updated following recent changes), and finally the wildlife clearance process under the Wildlife Protection Act, 1972 ('WLPA') and Supreme Court judgments. Step 3 covers the final step by which land and forest rights are acquired by the state under the Land Acquisition, Rehabilitation, and Resettlement Act, 2013 ('LARR'). The Chapter concludes that the regulation of the mining industry and clearance processes vests an extremely high degree of quasi-legislative powers with the executive and does not ensure adequate protection to the right to land and autonomy, particularly FPIC, of rightsholders and affected communities.

Following the above description of the applicable normative, statutory, and executive standards, the report proceeds to analyse the proposed project.

Chapter 4 presents the profile and current status of the proposed project, based on a study of the project documents and other official sources. The chapter delves into the resource requirements of the project in terms of land and forest area, water and electricity requirements, and physical infrastructure for extraction, crushers, transportation, townships, and waste disposal. A mining project of this scale is extremely resource-intensive, particularly in terms of natural resource requirements placing heavy demands on land, forest and surface and ground water sources. Out of the area covered by the project, 699 ha comprise forest land as administratively classified, requiring 725 KLD water mostly drawn from groundwater sources.

Chapter 5 and 6 finally turns to the potential impact of the proposed project on the people and the environment, based on a scrutiny of project-related documents,

reports of state authorities, representations by rightsholders, and secondary sources. Environmental impact is studied in terms of the impact on land and forests (focusing on scale of deforestation, loss of fertility and waste disposal), impact on wildlife, and on water. Human rights are studied in terms of impact on rights (land and forests, autonomy, FPIC, cultural rights), health and livelihood.

Findings and Recommendations

The report concentrates on the following **ten** findings in particular:

1. The legal framework governing mining projects and the proposed project, both violate land, autonomy and cultural rights of *adivasis* and other forest-dwelling communities under domestic and international law.
2. The legal framework governing mining projects and the proposed project, both violate the right to free, prior, and informed consent of affected communities under domestic and international law.
3. The proposed project will likely cause long-term irreversible and irreparable harm to forest and wildlife biodiversity and likely increase in human-animal conflict.
4. The proposed project will likely lead to depletion and contamination of surface and ground water sources in the region.
5. The draft EIA report under-reports the probable forced displacement and loss of livelihoods in the affected villages.
6. The draft EIA report egregiously distorts the health impact of the proposed mine on affected communities and workers.
7. The central and state governments have unlawfully abdicated their obligations with respect to the right to health of affected communities.
8. Certain state authorities are responsible for violating their obligations under the precautionary principle of environmental governance.
9. The project proponent and its associates have violated their obligations under the UN Guiding Principles through their conduct before and during the clearance processes.

10. The proposed project results in skewed distribution of costs on marginalized ST and OFTD communities, and benefits to the project proponent and the State.
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Accordingly, we find that the proposed project not only violates the human and fundamental rights of *adivasis* and affected communities, even before the commencement of the project but continuing potentially throughout its lifecycle. It also violates the precautionary principle of environmental governance, as it has a high probability of resulting in long-term irreversible and irreparable environmental harm, all of which cannot be quantified, and has not been attempted to be quantified in the draft EIA report. This includes the permanent loss of endangered and vulnerable biodiversity in the region, identified as such both by the State and by the IUCN.

The project documents fail to view affected communities as empowered rightsholders under domestic and international law, with the right to autonomy, to FPIC, and to determine their own course of socio-economic and political development. Instead, the project documents reflect colonial stereotypes of affected communities as impoverished and undernourished populations, for whom the proposed project is necessary for health and livelihood. This entirely belies the large-scale destruction of land rights, health and livelihood that follows from similar mining projects.

The report concludes with recommendations to both State and civil-society actors, calling to uphold the rights to land, autonomy, FPIC, cultural beliefs and practices, as well as to health, livelihood, and development of affected communities in these Fifth Schedule areas. It calls for an immediate withdrawal of all criminal actions against individuals and leaders of affected communities in relation to the current project, and for the initiation of criminal and/or disciplinary action against state and non-state actors responsible for rights violations in Rayagada and Kalahandi since August 2023. Finally, it most urgently calls for independent scientific assessments by experts and civil society organizations through meticulous ground-truthing and fact-finding exercises to study the short-, medium- and long-term environmental and social impacts of the proposed project.