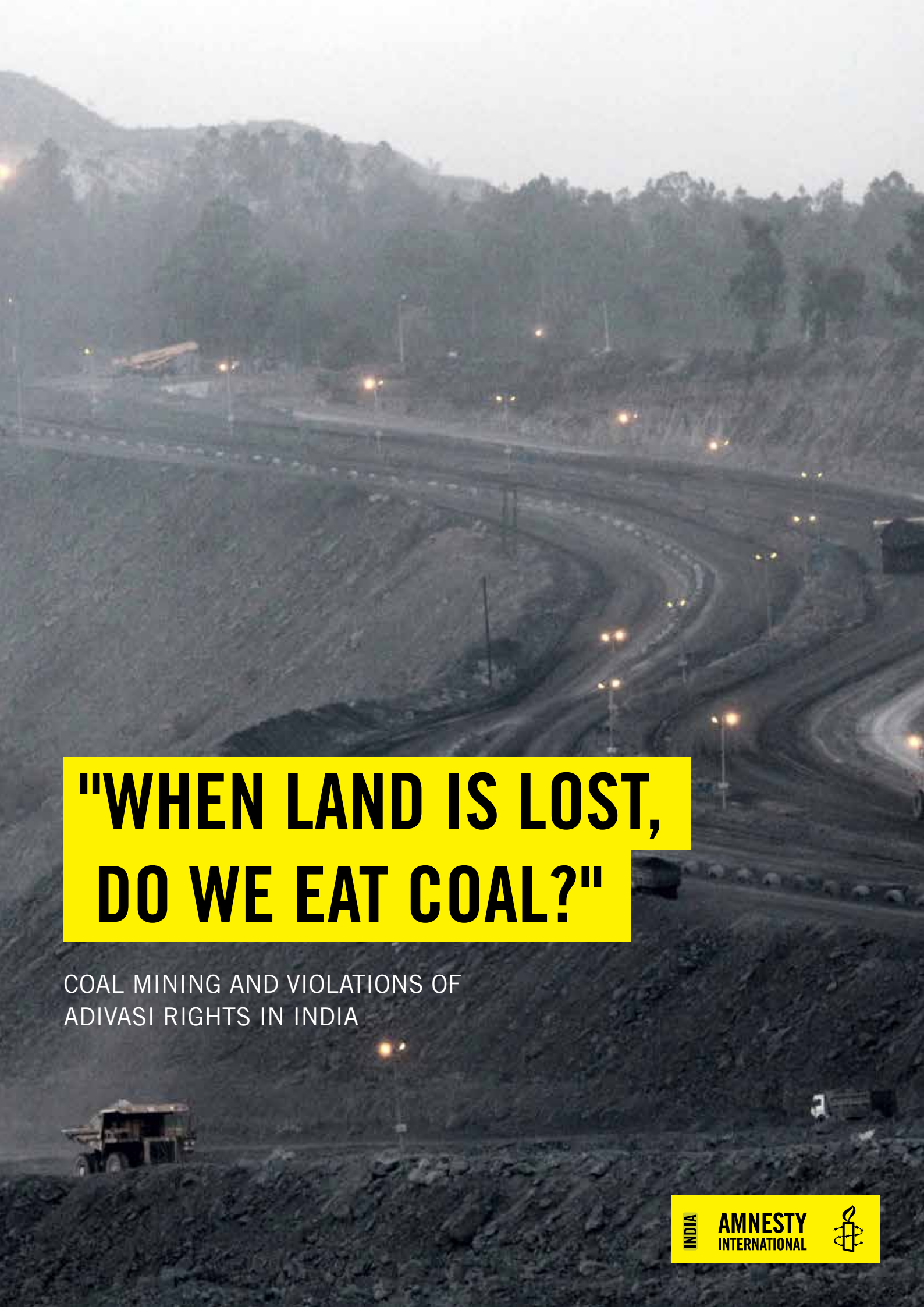




"WHEN LAND IS LOST, DO WE EAT COAL?"

COAL MINING AND VIOLATIONS OF
ADIVASI RIGHTS IN INDIA

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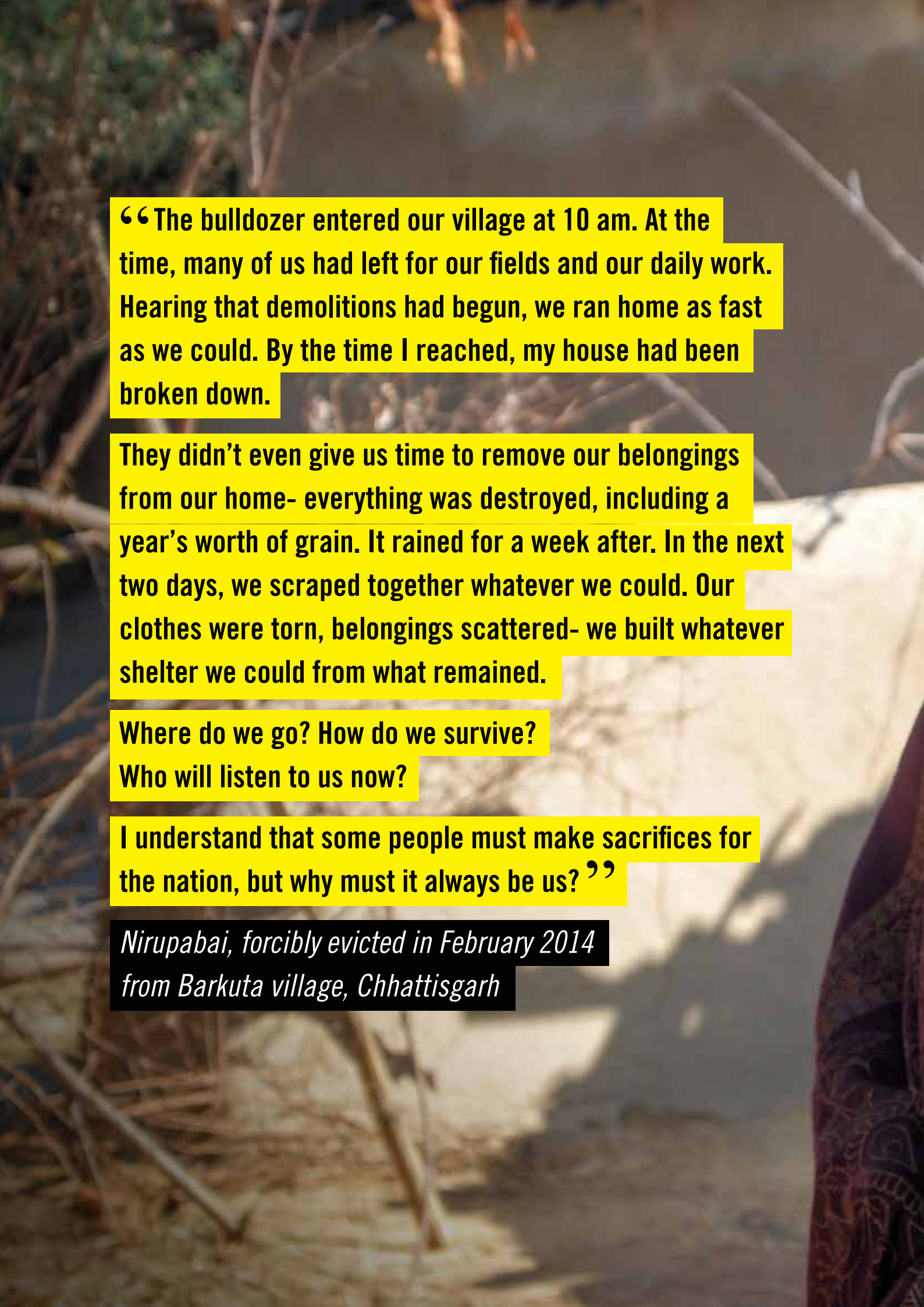
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Cover photo: Kusmunda open cast mine, as seen from Barkuta village, April 2014.
Front inside photo: Mining at the edge of Barkuta village, May 2016.
Back inside photo: A mining truck heads down into the Tetariakhar mine, Basiya village, July 2014.
Back photo: A Binjhwar adivasi woman who lives near the Basundhara-West mine, September 2014.

All photographs by Aruna Chandrasekhar for Amnesty International India

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“The bulldozer entered our village at 10 am. At the time, many of us had left for our fields and our daily work. Hearing that demolitions had begun, we ran home as fast as we could. By the time I reached, my house had been broken down.

They didn't even give us time to remove our belongings from our home- everything was destroyed, including a year's worth of grain. It rained for a week after. In the next two days, we scraped together whatever we could. Our clothes were torn, belongings scattered- we built whatever shelter we could from what remained.

Where do we go? How do we survive?
Who will listen to us now?

I understand that some people must make sacrifices for the nation, but why must it always be us? ”

*Nirupabai, forcibly evicted in February 2014
from Barkuta village, Chhattisgarh*



EXECUTIVE SUMMARY

Coal is an important part of India's economic growth story. Nearly two-thirds of India's electricity is derived from coal, and the country is the third largest producer and consumer of the mineral in the world. The Indian government now plans to nearly double annual coal production by 2020 to meet growing energy requirements.

However coal mining in India also has a different cost, borne by the communities affected by these mines, who are rarely meaningfully informed or consulted when their land is acquired, their forests decimated, and their livelihoods jeopardised.

Crucial to India's coal plans is the role of the giant Coal India Limited (CIL) – the country's primary state-owned coal mining company and the world's largest coal producer. CIL aims to increase its output to 1 billion tonnes annually by 2020, primarily by increasing production in existing mines. Nearly 93 per cent of CIL's total production is through surface, or 'open-cast', mines.

About 70 per cent of India's coal is located in the central and eastern states of Chhattisgarh, Jharkhand and Odisha, where over 26 million members of Adivasi communities live, nearly a quarter of India's Adivasi population. Adivasi communities, who traditionally have strong links to land and forests, have suffered disproportionately from development-induced displacement and environmental destruction in India.

"We worshipped the forest god. We got all our firewood from here. This place was green, now it is black with dust...When agricultural land is lost, what are we supposed to eat? Coal?"

*Hemanto Samrat from Gopalpur village,
Sundargarh, Odisha*

A raft of domestic laws require Indian authorities to consult, and in some cases seek the consent of, Adivasi communities before acquiring land or mining. International human rights law and standards also guarantee the right of Indigenous peoples to take part in the decisions that affect their lives and territories. However, these requirements are regularly flouted.

This report examines how land acquisition and mining in three mines in three different states run by three different CIL subsidiaries— which are all seeking to expand production— have breached Indian domestic laws, and India's obligations under international human rights law. It also demonstrates how CIL as a company has failed to meet its human rights responsibilities.

The three coal mines profiled are South Eastern Coalfields Limited's Kusmunda mine in Chhattisgarh, Central Coalfields

Limited's Tetariakhar mine in Jharkhand, and Mahanadi Coalfields Limited's Basundhara-West mine in Odisha.

Adivasi communities in these areas complain that they have been routinely shut out from decision-making processes around their traditional lands, rights and resources. Many have had to wait for decades for the compensation and rehabilitation they were promised. The violations of their rights to consultation and consent – around land acquisition, environmental impacts, indigenous self-governance, and the use of traditional lands – has led to serious impacts on their lives and livelihoods.

This report is based on research conducted between January 2014 and June 2016, which includes several interviews with members of Adivasi communities, activists and government officials.

“There is no answerability when this deliberate disrespect for the law is manifest.”

*High-Level Committee on Socio-Economic,
Health And Educational Status Of
Tribal Communities Of India*



LAND ACQUISITION: COAL BEARING AREAS ACT, 1957

Land acquisition for coal mining by the government is carried out under the Coal Bearing Areas (Acquisition and Development) Act (CBA Act). The Ministry of Coal is responsible for monitoring the implementation of the Act. Under the Act, when the government is satisfied that coal can be obtained from a certain area, it declares its "intention to acquire" the land in the official government gazette. There is no requirement to consult affected communities, or seek the free, prior and informed consent of Indigenous peoples, as stipulated by international law.

Anyone who objects to the acquisition and who is entitled to claim compensation must file written objections within 30 days of the notice of acquisition to the office of the Coal Controller, under the Ministry of Coal which goes on to make recommendations to the central government. After considering the recommendations, the central government can issue a declaration of acquisition of the land and all rights over it. These rights can then be transferred to a government company such as CIL.

There is no requirement for authorities to pay compensation before taking possession of land. The law has no provisions for ensuring that human rights impact assessments are conducted prior to land acquisition proceedings. There are no requirements to consult with non-landowners who may be affected by land acquisition, such as landless labourers. The law also does not offer adequate protection to communities from forced evictions.

The CBA Act undermines communities' security of tenure and creates the legal basis for CIL to operate without due regard for the impact of its operations on human rights. The procedure for notification of acquisition under the Act does not amount to adequate notice as set out by international human rights law and standards.

Despite a parliamentary committee pointing out in 2007 that "coal reserves in the country are mostly in the far-flung areas inhabited by the tribal communities" who "hardly have any access to the Official Gazette wherein they could see that their lands are to be acquired for public purposes", there have been no changes made to the process of informing communities that their land will be acquired.



Streams that feed the Basundhara river near the Basundhara (West) mine, Sundargarh, Odisha, September 2014. © Amnesty International India

KUSMUNDA, CHHATTISGARH

Kusmunda is one of India's largest coal mines, covering about 2382 hectares in Korba district. South Eastern Coalfields Limited (SECL), which operates the mine, increased production capacity from 10 mtpa (million tonnes per annum) to 15 mtpa in 2009, to 18.75 mtpa in 2014 and 26 mtpa in early 2016.

To facilitate expansion of the mine, in June 2009, the Ministry of Coal declared its intention to acquire land under the CBA Act in four villages around the mine - Risdi, Sonpuri, Pali and Padaniya - followed by the village of Jatraj in 2010, in the official government gazette and in a notice in a newspaper. Over 3600 people live in these villages. Over a third of the residents in each village are not formally literate.

None of the affected families that Amnesty International India spoke to said they had been directly informed about the government's intention to acquire land. Some found out that their land may be acquired only through word of mouth months or even years later.

Mahendra Singh Kanwar, an Adivasi man from Padaniya, said in April 2014: "We did not receive any notice about our land being acquired. We only heard recently that SECL now owns all our land."

In March 2010, the Ministry of Coal announced that it had acquired over 752 hectares of land for SECL.

In 2014, SECL said that it was planning to expand production at the mine by up to four times. The expansion would involve the acquisition of additional land in the five villages of Amgaon, Churail, Khodri, Khairbawna and Gevra. Over 13,000 people live in these villages.

On 20 July 2014, the Ministry of Coal published a notification in the official government gazette declaring its intention to acquire 1051 hectares of land, including the entire villages of Amgaon, Churail, Khodri, and Khairbawna and part of Gevra. The government invited objections to be submitted within 30 days by those who were entitled to claim compensation if the land was acquired.

Adivasi communities in the five affected villages who stand to lose their homes and agricultural fields said they have not received any information about the rehabilitation and resettlement they would be entitled to. Their objections sent to the Coal Controller and to SECL were met with no response.

Vidya Vinod Mahant from Amgaon village said, "The acquisition notice was pasted on the wall of the office of the panchayat (village council). How do we object to this?"

The Ministry of Coal has not yet stated whether the acquisition of land in the five affected villages has been completed.



A man evicted from his home in Barkuta village forges bricks to build his new home in the village of Padaniya, April 2014. © Amnesty International India

TETARIAKHAR, JHARKHAND

The Tetariakhar mine is operated by Central Coalfields Limited, and is seeking to expand production from 0.5 mtpa to 2.5 mtpa. It covers an area of 131 hectares, including parts of the villages of Basiya (which includes the hamlet of Tetariakhar), Nagara, Jala and Pindarkom. Over 6400 people live in these villages, over half of whom are not formally literate.

The central government first acquired land in five villages in the region under the CBA Act in October 1962, but mining officially began only in 1992. During the first phase of land acquisition, about 40 hectares of private land in Pindarkom were acquired to build a road for trucks at the entrance of the mine. Land owners here said that they were never consulted.

On 18 August 2015, the Ministry of Coal published notifications in the official government gazette declaring its intention to acquire 49 hectares in Nagara and 25 hectares in Basiya under the CBA Act. Local communities from these villages said they were unaware of the new notification, and had only heard rumours that more of their land was going to be acquired.

The Ministry of Coal has not yet stated whether the acquisition has been completed.

Communities in the villages surrounding the Tetariakhar mine are also concerned about the fate of common lands called *gair mazrua* lands. Under a state law which applies to the district, a senior-level official in the district administration has to approve any acquisition of *gair mazrua* land for mining by the central government. However the central government does not follow this process, and instead uses the CBA Act to acquire common land without any consultation with communities.

Communities say about 40 hectares of *gair mazrua* land already acquired by the Central government has not even been used by CCL. Villagers in Nagara and Basiya continue to oppose the taking over of this land, asserting that they have lived off it for decades.

"We have been surviving on this land for generations. CCL, on the other hand tells us that this is *gair mazrua* land and that no one can stop them from acquiring it", said Sukhinder Oraon from Basiya, who has agricultural fields right next to the mine.



A Turi Dalit man, Tetariakhar village, July 2014. © Amnesty International India

BASUNDHARA-WEST, ODISHA

The Basundhara-West mine in Sundargarh, Odisha is operated by Mahanadi Coalfields Limited, and is seeking to expand production from 2.4 mtpa to 8 MTPA. It spans 401 hectares across the villages of Sardega, Tiklipara and Kulapara. In 1989 and 1990, the central government acquired over 8000 hectares of land in fourteen villages, and transferred the land to MCL for coal mining. No consultations were held with affected communities, or consent sought.

Even after the acquisition, the government did not actively seek to use the land or evict families for many years. Several families received compensation only after a Supreme Court order in 2010.

MCL, through its subsidiary Mahanadi Basin Power Limited (MBPL), also aims to set up a 2x800 MW coal based 'super critical' thermal power plant on 860 hectares of land in the villages of Sardega, Tiklipara and Kulhapara, which were acquired under the CBA Act in 1989 and 1990 for coal mining.

Local gram sabhas (village assemblies) have objected to the proposal, saying that MCL could not begin proceedings for the transfer of their land for the power plant until the Supreme Court orders pertaining to compensation, rehabilitation and resettlement had been followed.



Families in Basiya village, July 2014. © Amnesty International India



Displaced families from Tetariakhar village now living in Nagara village, October 2015. © Amnesty International India

ENVIRONMENTAL IMPACT: ENVIRONMENT (PROTECTION) ACT, 1986

As part of the environment clearance process under India's Environment Protection Act (1986), state-level pollution control authorities are required to set up public consultations with local communities likely to be affected by the environmental impact of projects to give them an opportunity to voice any concerns.

The Environment Impact Assessment notification, 2006 (amended in 2009) requires the concerned pollution control authority to advertise the hearing widely, including by publishing notice of the hearing in at least one major national newspaper and one regional language newspaper. In areas where there are no newspapers, authorities are required to use other means such as drum-beating and radio/television advertisements to publicise public hearings.

Prior to the public hearings, the concerned company is required to submit copies of the draft Environmental Impact Assessment

(EIA) report, and summaries in English and the relevant local language, to various district-level authorities. These authorities are in turn required to provide publicity about the project and make the documents available for public inspection. EIA reports frequently use extremely technical language – there is unfortunately no requirement for either the concerned company or the pollution control board or any other authority to simplify the content of the EIA.

The EIA reports prepared are also supposed to involve social impact assessments. These are almost never carried out. Expert committees at the Ministry of Environment, Forests and Climate Change (MoEFCC) are supposed to consider applications for environmental clearances, and are supposed to submit them to 'detailed scrutiny'. However these committees often do not engage substantively with concerns raised at public hearings.

In recent years, successive central governments have sought to dilute requirements for public hearings for certain categories of mines, putting the rights of local communities at further risk.



An Oraon Adivasi man, Balumath, July 2014. © Amnesty International India

KUSMUNDA, CHHATTISGARH

SECL has expanded production at the Kusmunda mine three times. Public hearings that were held as part of the environment clearance process for the expansions have suffered from serious drawbacks.

On 27 August 2008, the Chhattisgarh Environment Conservation Board (CECB) called for a public hearing on the mine's expansion of its capacity from 10 to 15 mtpa. Around 3000 people live in the five affected villages of Padaniya, Pali, Barkuta, Sonpuri and Jataraj. Over a third of the residents most of these villages, mostly women, are not formally literate.

As required, the CECB published a notice about the hearing in a local newspaper, and provided a copy of the EIA report to the head of the village council. However, as far as Amnesty International India could discover, no other efforts were made to publicise the hearings.

Some local residents, who said they had heard about the hearing from activists and had gone on to attend, reported that many of their concerns, including concerns about rehabilitation and resettlement and the impact of mining on agricultural land, had been dismissed by CECB authorities as being irrelevant. An official record of the meeting suggests that many of the issues raised appear to have been met with minimalist responses which did not address the concerns of local people.

In the MoEF's letter granting environment clearance for the expansion in June 2009, the only mention made of the public hearing is: "Public hearing was conducted on 28.08.2008". The letter did not go into any more detail about the issues raised during the public hearing.

In December 2012, the MoEF allowed coal mines to expand their production by up to 25 per cent without a public hearing if they were expanding within the existing land leased to them. In September 2013, SECL applied to the Ministry to expand the Kusmunda mine again, this time from 15 mtpa to 18.75 mtpa. They received the clearance in February 2014.

The EIA for the expansion mentioned a range of potential environmental impacts from the expansion, including air and noise pollution and contamination of land and water. However, the MoEF's December 2012 notification meant that a public

hearing did not have to be conducted to inform or consult communities about the expansion.

In June 2014, four months after the approval of the previous expansion, SECL applied again for an environmental permit to expand production from 18.75 mtpa to 62.5 mtpa. The CECB called for a public hearing for this expansion on 11 February 2015. Over 13,000 people live in the five affected villages of Khodri, Gevra, Amgaon, Khairbawna and Churail. Over a third of the residents, mostly women, are not formally literate.

The CECB published notices for the public hearing in local newspapers. However many members of local communities, including heads of village councils of Pali and Khodri villages, said that this had been inadequate, as there had been no other public advertisement of the date of the hearing, or any explanation of the project's potential impacts by project or government authorities. At a focus group discussion involving 81 people from the affected villages, people said that they had only found out about the public hearing through a loudspeaker announcement that morning.

At the hearing, which was attended by Amnesty International India, SECL officials spent only a few minutes explaining the impact of the project. A large number of security force personnel were present at the hearing, which appeared to have intimidated locals from raising their concerns.

People raised concerns regarding rehabilitation and resettlement, compensation and employment, the impact of the mine on air quality, groundwater levels and agricultural activities, and the lack of information about land acquisition. Of 38 people who spoke at the public hearing, only one spoke in favour of the expansion. He was a CIL employee.

Mahesh Mahant, a resident of Khodri village, said, "We've lived next to this mine for almost 30 years, and watched our wells go dry, forests disappear and fields become unproductive. What is the point of this environmental public hearing, except to tell us that we're not fit to live here anymore?"

Yet, on 3 February 2016, the MoEF granted environmental clearance to SECL to expand capacity at the Kusmunda mine to 26 mtpa. The clearance perfunctorily referred to the fact that a public hearing had been held and listed the concerns raised, but did not discuss them any further. The Ministry did not respond to questions about the reasons behind its decision.



A Kavar Adivasi woman outside her demolished home, April 2014. © Amnesty International India



A Rathia Adivasi man plucks fruit from a guava tree, Sonpuri village, April 2014. © Amnesty International India

TETARIAKHAR, JHARKHAND

As part of the environment clearance process for the expansion of the mine's production from 0.5 mtpa to 2.50 mtpa, the Jharkhand State Pollution Control Board called for a public hearing on the mine's expansion on 17 April 2012 in Balumath, about seven kilometres from Basiya and Nagara.

The JSPCB published notices of the public hearing in English and Hindi newspapers a month in advance. However, none of these newspapers are available in the villages of Nagara or Basiya, two of the main affected villages. Several villagers, including the village heads of Basiya and Jala, said that there had been no other publicity about the hearing.

The head of the Jharkhand State Pollution Control Board did not appear to know about the hearing, but told Amnesty International India that the onus of publicising any hearing was on CCL.

While the minutes of the public hearing are not publicly available, the EIA report includes a summary of the hearing. This summary mentions the opinions of only seven people, of whom only four were from affected villages. Two people from Nagara village who attended the hearing said that they had been invited to the hearing by CCL authorities a few hours prior to the hearing.

The EIA states that the issues raised at the hearing include dust pollution from the mines and from coal transportation and falling water levels.

On 2 August 2012, the MoEF's Expert Appraisal Committee wrote that "most of the Public Hearing issues have not been addressed properly". However, on 7 May 2013, the MoEF granted environment clearance for the Tetariakhar mine expansion. The only mention made of the public hearing was one line, which said: "The Public Hearing was held on 17.04.2012." No additional information was provided about whether CCL had taken any action on the issues raised in the public hearing.

BASUNDHARA-WEST, ODISHA

As part of the environmental clearance process for the expansion of the mine's production from 2.4 to 8 mtpa, the Orissa Pollution Control Board (OSPCB) called for a public hearing on 30 May 2009. Over 3500 people live in the affected villages of Sardega, Tiklipara and Kulapara. On average, over a third of them are not formally literate.

The OSPCB published notice of the hearing in Odia and English newspapers. However residents of Sardega and Tiklipara, including those who were village council chiefs at the time, said that MCL had not made a copy of the mine's draft EIA report available prior to the public hearing. They also said that the attempts made to advertise the hearing had been inadequate.

The hearing was held on 30 May 2009 in Garjanbahal, 6-8 kilometers from the affected villages, which made it difficult for poorer members of the community to attend. The OPSCB, in the official record of the public hearing, claimed that 100 people had attended, but only 48 had signed the attendance sheet. Over 80 per cent of the attendees were from the villages of Garjanbahal and Bankibahal, which are not directly affected. Of those who attended, only 12 people spoke.

The concerns expressed, as recorded in the minutes, ranged from control of dust and air pollution, provision of drinking water facilities and electricity, a coal transportation road and afforestation. More than half of those who spoke were not from the villages most affected by the mine.

On 25 February 2013, the MoEF granted an environment clearance for the expansion of the mine. The clearance letter referred to the hearing just once, in a line that reads: "Public hearing was conducted on 30.05.2009."



The Tetariakhar mine operated by Central Coalfields Limited, Latehar, July 2014. © Amnesty International India

INDIGENOUS SELF-GOVERNANCE: PANCHAYAT (EXTENSION TO SCHEDULED AREAS) ACT, 1996

Amendments made to India's Constitution in 1993-94 conferred powers in relation to local development to elected village councils (or 'panchayats'). In 1996, the Panchayat (Extension to Scheduled Areas) Act was enacted to extend these amendments to Scheduled Areas: certain Adivasi regions identified under the Constitution as deserving special protection.

The PESA Act requires that panchayats or gram sabhas be consulted before land is acquired in Scheduled Areas for development projects, and also before the resettlement or rehabilitation of people affected by such projects.

The central Ministry of Panchayati Raj is responsible for monitoring overall implementation of the Act. District-level authorities are responsible for seeking the consent of affected communities. The implementation of the Act has however been exceedingly poor.

KUSMUNDA, CHHATTISGARH

SECL has stated that land acquisition for CIL subsidiaries only has to follow the CBA Act, which does not require any form of consultation.

In March 2013, a local activist from Pali village, filed a Right to Information application asking for details about the project's compliance with the PESA Act. SECL responded that in cases of land acquisition under the CBA Act, the "PESA Act is not applicable".

In a case filed by another activist from Korba at the Chhattisgarh High Court, the Chhattisgarh government and the Ministry of Coal both said that the requirements of consultation under the PESA Act would apply to any land acquisition by CIL. However in a disappointing judgement, a single-judge bench of the High Court agreed with SECL, and ruled that the PESA Act would not apply in cases of land acquisition under the CBA Act. An appeal is pending before the Chhattisgarh High Court.

TETARIAKHAR, JHARKHAND

Jharkhand state authorities have not held any consultations with communities under the PESA Act on their rehabilitation or resettlement.

In an interview, the District Development Commissioner of Latehar - the authority governing all village councils in the district and responsible for implementing the PESA - said that he was not aware that Latehar was a 'Scheduled Area' under the Constitution with special protections for Adivasi communities. A CCL official said that "[Consultation under] PESA is not required under the Coal Bearing Areas Act."

Over 40 people in the affected villages told Amnesty International that they had not even heard of the PESA. Nor were they aware that gram sabha consultation was required for land

acquisition.

"If we haven't heard of the laws, then how can we use them?" asked Kishor Oraon, an Adivasi man from Basiya.

BASUNDHARA-WEST, ODISHA

The Odisha government has weakened the requirement under the PESA Act of consultation with gram sabhas before land acquisition or rehabilitation and resettlement in Scheduled Areas, by designating the *zila parishad* - a district-level body - as the body which needs to be consulted, and not the gram sabha. This discrepancy has been criticised by a number of official bodies.

Authorities have not consulted communities under the PESA Act in any of the three affected villages on the mine expansion. No consultation has been held on the upcoming Mahanadi Basin thermal power plant either.

The Divisional Land Acquisition Officer of the Sadar division of Sundargarh said that the PESA act was not applicable to land acquisition under the CBA Act. The Sub-Divisional Panchayat Officer of the Sadar division asked, "If Odisha has not even drafted the rules for the PESA Act, how are we supposed to monitor its implementation?"

A local activist, said, "The PESA Act was drafted by the government, the Fifth Schedule was drafted by the government, Coal India was created by the government. Then why doesn't the government follow its own laws?"

RIGHTS OVER TRADITIONAL LANDS: FOREST RIGHTS ACT, 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was enacted to correct the historical injustice faced by Adivasi communities in India and enable them to gain legal recognition of their rights over their traditional lands.

Under a 2009 order issued by the MoEF, for industrial projects to receive forest clearances from the Ministry, state governments have to obtain the consent of gram sabhas for any diversion of forest land. The gram sabhas are required to have a quorum of at least 50 per cent, and have to be recorded on video.



Abandoned houses near overburden dumps, Sardega village, September 2014. © Amnesty International India.

KUSMUNDA, CHHATTISGARH

The people affected by the Kusmunda mine include members of the Kwar, Gond, Rathia and Agaria Adivasi communities, who are all recognized officially as Scheduled Tribes under India's Constitution. Traditionally agrarian and dependent on the land and forest for their livelihood, these communities have lived next to the Kusmunda mine for decades.

State governments are responsible for obtaining certificates from gram sabhas declaring their consent. However, SECL wrote directly to the head of the Pali village panchayat in May 2011 and again in February 2012, asking her to conduct gram sabhas seeking consent for diversion of forest land for the mine.

The villagers did not agree. In a subsequent gram sabha conducted on 29 December 2013, villagers opposed the expansion, instead demanding that rehabilitation and compensation be given to those who had been evicted from their homes in a nearby village.

On 8 February 2016, the Block Development Officer, Katghora, issued a notice for the conduct of three separate gram sabhas on 16 February in Pali, Padaniya and Khodri villages to seek the consent of villagers for the diversion of forest land for the expansion of the Kusmunda mine. Government officials claim that three gram sabhas were accordingly conducted on 16 February. However local villagers said that the gram sabhas did not meet important requirements and two of them were invalid.

Villagers in Pali, including the head of the village council and her son, said that the gram sabha in Pali had only 42 attendees, when the quorum should have been about 800. They said that many villagers did not know of the gram sabha, and some who knew chose not to attend because they were opposed to the diversion of the forest land. Villagers who attended the gram sabha said that it had not been recorded on video and that they had not received any details about how the diversion of the forest land would affect them.

Activists, media persons and ten villagers from Padaniya, including the head of the village council, said that the gram sabha in Padaniya had been called off following opposition from the villagers who had attended, and nobody had consented to the diversion of forest land. They said that the gram sabha had not been recorded on video.

TETARIAKHAR, JHARKHAND

The Tetariakhar mine is surrounded by forests, villages, agricultural fields and streams. Communities affected by the mine include Oraon Adivasis, who have depended on the forests for generations for food, fuel, medicine and building materials.

"The forest is part of who we are. It is where we collect firewood for the house, mahua, lac and tendu leaves. It is where we graze our livestock and it is where our gods reside," said Suresh Uraon, 28, an Adivasi resident of Basiya village.

However members of local communities said that no gram sabhas had been conducted in the affected villages on the diversion of forest land for the mine. The Former Divisional Forest Officer, Latehar, and the Circle Officer, Revenue Administration, Balumath block, confirmed this. CCL authorities maintain there is no forest land involved in the project.

BASUNDHARA-WEST, ODISHA

Adivasi communities in the region surrounding the mine include Bhuiyan, Oraon, Kharia, Dhanwar, Gond, Agaria and Binjhar Adivasi communities, who rely on the forest and traditional common land for food, grazing their livestock, firewood, and religious purposes.

No gram sabhas have been conducted by MCL in the affected villages of Sardega, Tiklipara or Kulapara on the diversion of forest land for the mine or its expansion.

The Mahanadi Basin thermal power plant will also involve the diversion of 143 hectares of forest land. The then Divisional Forest Officer for the Sadar sub-division in Sundargarh, under which the affected villages fall, said that the forest land affected would be within the villages of Sardega and Tiklipara, which could further adversely impact the livelihoods of Adivasi communities in these villages.

Block-level officials proposed that gram sabhas be conducted on 11 and 12 September 2014 in Sardega and Tiklipara for the power plant. However, neither hearing took place. Local communities refused to conduct the gram sabhas, and instead wrote to district authorities that communities had not yet been fully compensated, and that the power plant was likely to further contaminate their air and water resources.



Trucks queue up to load coal mined from the Kusmunda opencast mine, Barkuta village, April 2014. © Amnesty International India

CONFUSION AND OBFUSCATION

Despite several legal provisions recognising Adivasi communities' rights to consultation and consent, authorities and companies are known to use the complex mosaic of laws to deny communities their rights.

Activists in these areas told Amnesty International India that authorities frequently choose to deploy provisions which require them to do as little as possible by way of consultation. In the examples in this report district, state government and central government authorities, besides companies, appear to see public hearings more as a bureaucratic hurdle to overcome than a genuine opportunity to hear and address community concerns.

"Is granting one land title more important to me or is a transmission line that is a State Government project? For local rights, I cannot stop development," said a former Divisional Forest Officer from Latehar, Jharkhand, while speaking to Amnesty International India. In this way, authorities appear to consider respect for Indigenous peoples' rights as not being part of development.

A lack of harmonisation of the various overlapping laws enables authorities to dodge their responsibilities.

In December 2011, the central government set up a 'Harmonisation Committee' to align existing central laws with the PESA Act. This committee specifically recommended that the CBA Act be amended to require prior consultation with gram sabhas before any land acquisition. This report appears to have been largely ignored by the government.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (PoA Act) was enacted to tackle particular kinds of caste-based discrimination and violence faced by people from Dalit and Adivasi communities. Amendments to the Act that came into force in January 2016 criminalize a range of new offences, including the wrongful dispossession of land.

INTERNATIONAL LAW AND STANDARDS

India is a state party to several international human rights treaties – including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and Convention on Elimination of Racial Discrimination (CERD), whose treaty monitoring bodies have recognized the rights of Indigenous peoples to land, consultation and free, prior and informed consent in decisions that affect them.

The right of Indigenous peoples to lands they traditionally occupy is also recognized in ILO Indigenous and Tribal Populations Convention 107, which India has ratified. India also supported the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which obligates states to consult and cooperate in good faith with indigenous peoples to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.

The ICCPR and ICESCR, along with other human rights treaties, also require India to refrain from and prevent forced evictions, defined as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."

Forced evictions may only be carried out as a last resort and only after all feasible alternatives to eviction have been explored in genuine consultation with affected people.

Companies such as CIL also have a responsibility to respect human rights in their operations. The UN Guiding Principles on Business and Human Rights require that companies "do no harm" or, in other words, take pro-active steps to ensure that they do not cause or contribute to human rights abuses within their global operations and respond to any human rights abuses when they do occur. CIL cannot point to the role of the government to defend the fact that it knowingly benefited from processes that violated the human rights of thousands of people.



Water from the Basundhara-West mine empties into the Basundhara river, October 2015. © Amnesty International India

CONCLUSION

As the Indian government rushes to increase coal production across the country, this report offers evidence of the very real human rights impacts of irresponsible mining, and of the pattern of human rights violations that appear to accompany mining by Coal India Limited.

The report demonstrates that Indian authorities have breached domestic laws and their obligations under international human rights law to protect the rights of Adivasi communities affected by CIL mines in Chhattisgarh, Jharkhand and Odisha.

State governments in these states must compensate affected communities for the loss of their assets and for impacts on their lives and livelihoods, undertake comprehensive human rights and environmental impact assessments and ensure that there will be no evictions until genuine consultations have taken place with affected communities and that resettlement and compensation measures have been fully implemented.

The domestic Indian legal framework does not fully recognize the rights of indigenous peoples. The Coal Bearing Areas Act legitimises land acquisition without consultation, enabling further human rights violations.

The central government must introduce a notification in Parliament ensuring that any land acquisition for coal mining involves social impact assessments and the seeking of the Free Prior Informed Consent (FPIC) of Adivasi communities. The potential human rights impact of proposed mines, or the expansion of existing mines, must be considered as part of the social impact assessment of the Environmental Impact Assessment process, and public hearings must always be carried out.

CIL and its subsidiaries have failed to respect human rights, thereby breaching well-established international standards on business and human rights. By continuing to acquire land through flawed processes that breach international law, CIL's failure to respect human rights is ongoing.

CIL must urgently address and remedy the existing negative environmental and human rights impacts of the expansions of the Kusmunda, Tetariakhar and Basundhara (West) mines, in full consultation with project-affected communities. It should ensure that these expansions do not go ahead until existing human rights concerns are resolved, and the free, prior and informed consent of affected Adivasi communities is obtained.

CIL should also conduct a comprehensive review of operations in all its coal mines across India to identify and assess human rights risks and abuses, and publicly disclose the steps taken identify, assess and mitigate them.



Trucks filled with coal cause a traffic jam near Balinga village, September 2014. © Amnesty International India

1. BACKGROUND

COAL MINING IS BOOMING IN INDIA.

The mineral fuels around 66 per cent of India's electricity production, and is critical to industries such as cement and steel.¹ Production of coal has increased more than six-fold in the last three decades, and India is now the third largest producer and consumer of the mineral in the world. The government now plans to nearly double coal production to 1.5 billion tons annually by 2020,² opening a new coal mine every month³ to meet growing energy requirements.

Crucial to this expansion is the role of the giant Coal India Limited (CIL) – the country's primary state-owned coal mining company and the world's largest coal producer – which produces about 82 per cent of India's coal.⁴ The company supplies coal at discounted prices to nearly every coal-based thermal power plant in India.⁵ It is aiming to double output to 1 billion tonnes annually by 2019-20, and plans to spend about 570 billion INR (8.4 billion USD) in doing so.⁶ CIL plans to meet these targets primarily by increasing production in existing projects.⁷

1. Coal India Limited, "About Us", at <https://www.coalindia.in/en-us/company/aboutus.aspx>
2. Press Trust of India, "Coal production to double to 1 billion tonnes by 2019: Piyush Goyal", *Economic Times*, 6 November 2014, at http://articles.economictimes.indiatimes.com/2014-11-06/news/55836084_1_coal-india-coal-production-india-economic-summit. However India is also among the world's largest coal importers. Nearly 25 per cent of coal used in India is imported, mostly from Indonesia, Australia and South Africa.
3. David Rose, "Why India is captured by carbon", *The Guardian*, 27 May 2015, at <http://www.theguardian.com/news/2015/may/27/why-india-is-captured-by-carbon>
4. Coal India Limited, "Annual report and accounts, 2014-15", p.3, at https://www.coalindia.in/DesktopModules/DocumentList/documents/Annual_Report_&Accounts_2014-15_Deluxe_version_In_English_03102015.pdf. Private companies can own and operate 'captive' coal mines for their own use. In August 2014, the Supreme Court of India cancelled the leases of 214 out of 218 privately-owned coal blocks, declaring the allocations of the blocks to be arbitrary and illegal. About 40 of these blocks have been re-auctioned, as of January 2016.
5. Ministry of Coal, Government of India, "Annual Report 2014-15", p.37, at http://coal.nic.in/sites/upload_files/coal/files/coalupload/chap5AnnualReport1415en.pdf
6. Indo-Asian News Service, "Coal India to invest Rs. 57,000 crore in 5 years to boost output", *Business Standard*, 3 December 2015, at http://www.business-standard.com/article/news-ians/coal-india-to-invest-rs-57-000-crore-in-5-years-to-boost-output-115120300941_1.html Exchange rate used is 67.6 INR to 1 USD.
7. Ministry of Environment, Forests and Climate Change, Minutes of the 41st Meeting of the Expert Appraisal Committee (Thermal and Coal Projects), 15 and 16 July 2015, p.34, at http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/0_0_8117122612171MOMof39thEAC_Coalheldon16th-17thJuly,2015.pdf



Kusmunda Open Cast Mining Project, Korba, Chhattisgarh, as seen from Barpali village, April 2014. © Amnesty International India

COAL INDIA LIMITED

Following the nationalization of coal mines in the early 1970s, the Indian government controls most domestic coal production through CIL. The company, with its seven wholly-owned subsidiaries, operates 430 mines across eight states. These subsidiaries are South Eastern Coalfields Limited, Central Coalfields Limited, Eastern Coalfields Limited, Western Coalfields Limited, Northern Coalfields Limited, Mahanadi Coalfields Limited and Bharat Coking Coal Limited. (The central government and the government of Andhra Pradesh also control Singareni Collieries Company Limited, which produces about 10 per cent of the country's coal.)

CIL is India's seventh most valuable company in terms of market value, with a market capitalization of over 1971 billion INR (nearly 29b USD) in May 2016.⁸ CIL and its subsidiaries employ over 333,000 people.⁹ In 2014-15, the company had sales worth over 950 billion INR (14b USD). It produced 536 million tons of coal in 2015-16, a rise of 8.5 per cent over the previous year, its fastest growth ever.¹⁰

The Indian government divested 10 per cent of its stake in CIL in 2010 for about 152 billion INR (2.2b USD), and another 10 per cent in 2015 for over 225 billion INR (3.3b USD). Its shareholding now stands at 79.65 per cent. Indian and overseas financial institutions, pension funds and other investors hold the rest of the shareholding. The government has stated that it plans to divest another 10 per cent in CIL in 2016.

However coal mining in India also has a different cost – one borne by the communities affected by these mines, who are effectively excluded from decisions that affect their lives and livelihoods, and whose rights are seen too often by authorities as being expendable in the 'public interest'.

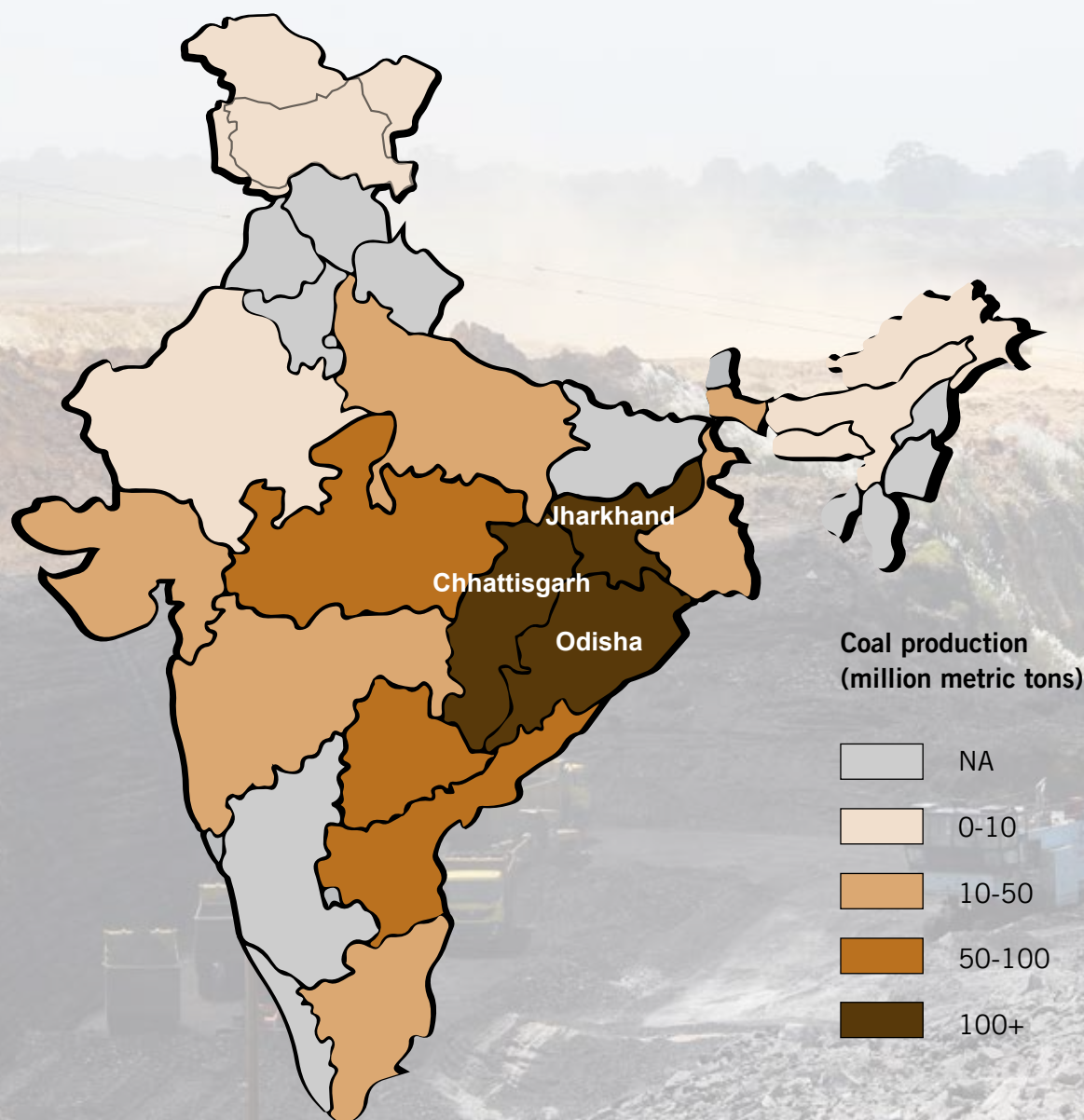
Much of India's coal, like its other minerals, lies under the same lands which hold most of the country's dense forests and are

home to its Adivasi (indigenous) communities.¹¹ About 70 per cent of India's coal is located in the central and eastern states of Chhattisgarh, Jharkhand and Odisha, where over 26 million members of Adivasi communities live.¹² These states are also the sites of a decades-long conflict between security forces and banned Maoist armed groups.

8. Capital Market, "Market Capitalisation: Top 50", 30 June 2016, at <http://www.capitalmarket.com/MarketWatch/marketcap.htm>
9. Coal India Limited, "Annual report and accounts, 2014-15", p.3, at https://www.coalindia.in/DesktopModules/DocumentList/documents/Annual_Report_&Accounts_2014-15_Deluxe_version_In_English_03102015.pdf. However CIL's 2012 R&R Policy suggests that this may have been an unforeseen consequence of its previous rehabilitation policy: "In the past, subsidiaries found it easy to acquire land if they were able to offer employment. Partly because of this practice, subsidiaries have built up a largely unskilled labour force beyond their needs. This has contributed to the heavy losses and (sic) many mines are incurring and has also affected their efficiency and viability". Coal India Limited, "Rehabilitation and Resettlement Policy (2012)", p. 1, at https://www.coalindia.in/DesktopModules/DocumentList/documents/CIL_RR_2012_100412.pdf
10. Press Trust of India, "Coal India achieves 536 million tonnes output in fiscal 2016, misses target", Mint, 2 April 2016, at <http://www.livemint.com/Industry/X3fOGm3EMrp7X6vqbj07OM/Coal-India-achieves-536-million-tonnes-output-in-fiscal-2016.html>
11. Centre for Science and Environment, "Rich Lands, Poor People", 2008, at <http://cseindia.org/mining/pdf/miningpub.pdf>. Also see Census of India, 2011, "Demographic Status of Scheduled Tribe Population of India", at <http://tribal.nic.in/WriteReadData/userfiles/file/Demographic.pdf>.
12. Ministry of Statistics and Programme Implementation, Government of India, "Energy Statistics – 2011", at http://mospi.nic.in/Mospi_New/upload/energy_stat_2011_pdf/table_section_1_es10.pdf. 'Scheduled Tribes' are government-recognized Adivasi communities. Also see Greenpeace, "How Coal Mining is Trashing Tigerland", 2012, at <http://www.greenpeace.org/india/Global/india/report/How-Coal-mining-is-Trashing-Tigerland.pdf>



Kusmunda Open Cast Mine, Korba, Chhattisgarh, as seen from Barkuta village, February 2015. © Amnesty International



(Source of Information: US Energy Information Administration, based on Provisional Coal Statistics 2013-14, Ministry of Coal, Government of India¹³)

Adivasi communities, who traditionally have strong links to land and forests, have suffered disproportionately from development-induced displacement and environmental destruction in India.¹⁴ Adivasis are estimated to comprise about eight per cent of India's population, but are estimated by the government to make up about 40 per cent of the 60 million people displaced by development projects in India since 1951.¹⁵

CIL and its subsidiaries are estimated to have displaced nearly 87,000 people since 1973, including over 14,000 Adivasis.¹⁶ These companies acquire land for their mines under a law called the Coal Bearing Areas (Acquisition and Development) Act— a law that contains provisions which fall well short of international human rights law and standards.

13. US Energy Information Administration, "India's coal industry in flux as government sets ambitious coal production targets", 25 August 2015, at <https://www.eia.gov/todayinenergy/detail.cfm?id=22652>

14. Adivasi communities also have much higher rates of poverty, illiteracy, and child and infant mortality, compared to the average population in India. See Ministry of Tribal Affairs, "Report of the High-Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities of India", May 2014, p. 26, at <http://www.indiaenvironmentportal.org.in/files/file/Tribal%20Committee%20Report,%20May-June%202014.pdf>. Also see World Bank, "Poverty and Social Exclusion in India", 2011, pp. 37-82, at <https://openknowledge.worldbank.org/bitstream/handle/10986/2289/613140PUB0pove158344B09780821386903.pdf?sequence=1>

15. Planning Commission of India, "Faster, Sustainable and More Inclusive Growth: An Approach to the Twelfth Five Year Plan (2012-17)", October 2011, p.55, at http://planningcommission.gov.in/plans/planrel/12appdrft/approach_12plan.pdf

16. Ministry of Tribal Affairs, "Report Of The High-Level Committee On Socio- Economic, Health And Educational Status Of Tribal Communities Of India", May 2014, p.261, at <http://www.indiaenvironmentportal.org.in/files/file/Tribal%20Committee%20Report,%20May-June%202014.pdf>

OVERBURDENED: HOW OPEN CAST MINING WORKS

In the 1970s, India's coal production shifted from underground mining to surface or open cast mining (also known as open pit or open cut mining), sparking an acceleration in large-scale land acquisition for coal mines.¹⁷ Open cast mining has steadily increased over time. Only about two in five of CIL's 430 mines in India today are open cast mines, but they account for nearly 93 per cent of its total production.¹⁸

Open cast or surface mining is used when deposits of minerals are close to the surface and the soil over the mineral is easy to remove. It involves removing all trees and vegetation on the surface of the land, blasting and clearing the layer of soil between the surface and the coal deposits to expose the coal seams, and then drilling into and extracting the coal in strips.

A distinctive feature of open cast coal mines in India are the mountains of 'overburden' - the overlying rock and soil dug away to reveal the coal underneath – which surround the

mines, and the massive craters within. Open cast mining has relatively low production costs, but leaves a large, adverse environmental footprint in the form of dust and noise pollution, land degradation, deforestation and soil erosion.¹⁹

Open cast mines are very land intensive, and can spread over thousands of hectares, depending on the extent of the coal deposit and the availability of cheap land. Additionally, the energy content of India's coal has been declining steadily over the past several decades - from 5900 kilocalories per kg in the 1960s to around 3500 kilocalories per kg in the 2000s - as mines deplete their resources.²⁰

This means that larger volumes of coal must be burned to achieve the same level of electricity generation, generating more pollutant emissions, and in turn requiring more land to be acquired and mined.



Kusmunda Open Cast Mine, Korba, Chhattisgarh, as seen from Barkuta village, February 2015. © Amnesty International India

17. Theodore E. Downing, "Avoiding New Poverty: Mining-Induced Displacement and Resettlement", April 2002, p.6, at http://commdev.org/files/1376_file_Avoiding_New_Poverty.pdf. Open-cast mining has a large footprint. A mine producing 40 mn tonnes of coal in its lifetime (approximately 15 years) will leave a scar of about 25 sq km in area. Tony Herbert and Kuntala Lahiri-Dutt, "Coal Sector Loans and Displacement of Indigenous Populations: Lessons from Jharkhand", *Economic and Political Weekly*, 5 June 2004, at <http://sanhati.com/wp-content/uploads/2010/10/coalsector-loans-displacement-jharkhand.pdf>
18. Coal India Limited, "Annual Report & Accounts 2014-15", October 2015, p.48 at https://www.coalindia.in/DesktopModules/DocumentList/documents/Annual_Report_&Accounts_2014-15_Deluxe_version_In_English_03102015.pdf
19. OECD/International Energy Agency, "India Energy Outlook", IEA Publishing, 2015, p.31, at http://www.worldenergyoutlook.org/media/weowebsite/2015/IndiaEnergyOutlook_WE02015.pdf. Greenpeace International, "Mining Impacts", April 2010, at: <http://www.greenpeace.org/international/en/campaigns/climate-change/coal/Mining-impacts/>
20. Office of the Chief Economist, Department of Energy and Science, Australian Government, "Coal in India 2015", June 2015, p.42, at <http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/Coal-in-India.pdf>.

Adivasi communities enjoy special protections under law in India, but they are frequently denied these rights in practice. As a government-appointed high level committee which submitted a comprehensive report on the status of Adivasis in 2014 states: "Tribal communities face disregard for their values and culture, breach of protective legislations, serious material and social deprivation, and aggressive resource alienation."²¹

A raft of legislations, including India's Panchayat (Extension to Scheduled Areas) Act, Forest Rights Act and Environment Protection Act, require authorities to consult, and in some cases seek the consent of, Adivasi communities before acquiring land or mining. International human rights law and standards guarantee the right of indigenous peoples to take part in the decisions that affect their lives and territories.

This report demonstrates how authorities in India have consistently violated these obligations under Indian and international law by failing to inform or meaningfully consult Adivasi communities on decisions around coal mines run by CIL.

The report profiles three coal mines run by three different CIL subsidiaries in three states: South Eastern Coalfields Limited's Kusmunda mine in Chhattisgarh, Central Coalfields Limited's Tetariakhar mine in Jharkhand, and Mahanadi Coalfields Limited's Basundhara-West mine in Odisha. It shows how land acquisition and mining in these mines have breached

India's obligations under domestic and international law, and how CIL as a company has failed to meet its human rights responsibilities. It also reveals how the continued use of the antiquated Coal Bearing Areas Act facilitates these abuses.

Each of the three mines profiled has existed for several years. Each of them is now seeking to expand production, in line with Coal India's push to increase its output to one billion tonnes by 2020. The Kusmunda mine is expected to become Asia's biggest coal mine in time. While these mines were at first welcomed by some local Adivasi communities who thought they would bring employment and prosperity, their expansion is now vehemently opposed until existing violations are remedied.

Adivasi communities in the areas complain that they have been routinely shut out from decision-making processes around their traditional lands, rights and resources. Many have had to wait for decades for the compensation and rehabilitation they were promised. The violations of their rights to consultation and consent has led to serious impacts on their lives and livelihoods.

Many Adivasi communities living in these regions continue to face urgent and grave risks to their rights, including the threat of forced evictions. As the Indian government rushes to increase coal production across the country, this report offers evidence of the very real human rights impacts of irresponsible mining, and of the pattern of human rights violations that appear to accompany mining by Coal India Limited.

THE COAL ALLOCATIONS SCAM AND THE SUPREME COURT

Coal mining in India has been riddled with crony capitalism. One of the biggest corruption scandals in Indian history is the coal mine allocation scam, in which many mines were allocated over years to private players with little or no experience in coal mining. Many of these companies earned windfall profits in the process.

In August and September 2014, the Supreme Court of India delivered a historic judgment that declared all 218 allocations of coal mines made to private coal producers between 1993 and 2011 to be illegal and arbitrary, and cancelled the allocations of 214 mines.²²

In March 2015, the government of India passed the Coal Mines Special Provisions Act, 2015,²³ which enabled auctions for coal blocks to private companies, including those implicated in the coal scam who face allegations of violating laws around consent and consultation. Around 40 coal mines have since been auctioned.²⁴

The cancellation of coal mine licenses has increased the government's emphasis on expanding production at CIL mines.

- 21 Ministry of Tribal Affairs, "Report Of The High Level Committee On Socio-Economic, Health And Educational Status Of Tribal Communities Of India", May 2014, p.32, at <http://www.indiaenvironmentportal.org.in/files/file/Tribal%20Committee%20Report,%20May-June%202014.pdf>
- 22 Supreme Court of India, *Manohar Lal Sharma v. The Principle Secretary and Ors*, 14 September 2014, at <http://supremecourtindia.nic.in/autoday/wr120.pdf>
- 23 The Coal Mines (Special Provisions Act), 2015, at http://coal.nic.in/sites/upload_files/coal/files/webform/notices/COALMINES%20SPL%20PROV%20ACT.pdf
- 24 The Act also allows foreign companies with Indian subsidiaries to mine coal commercially. The government has identified mines it plans to auction to private companies to mine coal commercially. See Krishna N. Das, "After 40 years, India set to re-open commercial coal mining to private firms", Reuters, 8 January 2016, at <http://in.reuters.com/article/india-coal-idINKBN0UM1K520160108>



A tractor drives past a mining dump, towards fields on common lands in Latehar, Jharkhand, October 2015. © Amnesty International India



Villagers in Pelma in Raigarh, Chhattisgarh, inspect documents around the acquisition of their lands by SECL, September 2015. © Amnesty International India

METHODOLOGY

This report is based on field research conducted by Amnesty International India between January 2014 and June 2016. Researchers visited the three profiled mines several times - in January, April, July and September 2014, in February and October 2015, and in March and June 2016.

Amnesty International India conducted one-on-one interviews with 61 members of affected Adivasi communities by the Kusmunda mine, 31 people affected by the Tetariakhar mine and 32 affected by the Basundhara-West mine. Researchers also conducted three focus group discussions with men and women from a range of Adivasi and non-Adivasi communities in villages surrounding the Kusmunda mine, seven in villages surrounding the Tetriakhar mine, and five in the villages surrounding the Basundhara-West mine. 33 people were interviewed across all three locations two or three times, to gauge any change in their situation.

Researchers also met several civil society organisations, including journalists and lawyers at the mine sites and in Chhattisgarh, Jharkhand, Odisha and Delhi.

Amnesty International India met several village, district and state government officials, including from the Jharkhand, Odisha and Chhattisgarh state forest departments and pollution control boards, and the Latehar, Sundargarh and Korba district administration offices.

Researchers also interviewed representatives of the three CIL subsidiary companies - South Eastern Coalfields, Mahanadi Coalfields and Central Coalfields, including the Project Officer of CCL's Tetariakhar mine, the Chief Manager (Environment) Central Coalfields in Ranchi, the Chief Manager (Land) Central Coalfields Ranchi, the Senior Manager (Survey) and the Senior

Manager (Environment) of Mahanadi Coal Fields (Basundhara) in September 2014 and October 2015, and the General Manager (Kusmunda Area) in March 2016.

Interviews with community members were conducted mainly in Hindi (and Odia in Odisha, translated into Hindi). Interviews with government officials and civil society representatives were conducted in Hindi or English.

In February 2015, Amnesty International India attended a public hearing in Korba, Chhattisgarh, which was held as part of the environment clearance process for the expansion of the coal mine in Kusmunda, Chhattisgarh.

In April 2016, Amnesty International shared the main findings of this report with the relevant state authorities and companies, seeking clarifications and offering them an opportunity for comment. No response was received. Letters were sent to the Chhattisgarh State Environment Conservation Board; the Jharkhand Pollution Control Board; the Odisha State Pollution Control Board; the Ministry of Environment, Forests and Climate Change; the Ministry of Coal; South Eastern Coalfields Limited; Central Coalfields Limited; and Mahanadi Coalfields Limited. No response was received.

This report also draws on extensive desk-based research, including analysis of India's legal framework and the environmental impact assessments for the three mines.

Amnesty International India thanks the communities and human rights defenders in Korba, Sundergarh, Raigarh and Latehar for their courage and generosity with their time and energy. Pseudonyms have been used for some community members in the interests of their safety and security.

2. A MOSAIC OF LAWS

Several laws and policies govern the rights of indigenous people affected by mining in India, ranging from laws granting community rights over forests and special protections to Adivasis to those regulating land acquisition and environment protection. In addition, there are provisions under the Constitution, state-specific laws and policies, and Coal India's own rehabilitation policies. A range of government agencies at the state and central government level are responsible for enforcing these laws.

This complicated set-up often leads to inconsistent and contradictory interpretations of the protections enjoyed by Adivasi families and the specific responsibilities of authorities in state governments, the central government and Coal India Limited. This chapter analyses some of the different laws that apply to coal mining in India, and the implementation gaps that exist on the ground.

CONSTITUTION OF INDIA

Indian law does not formally recognize any communities as being indigenous. However the Indian Constitution provides special status to several Adivasi communities (identified as 'Scheduled Tribes'), acknowledging their historic disadvantages and their unique cultures and relationship with their lands.²⁵

The Fifth Schedule of the Constitution lists certain districts and territories in nine states where Adivasi communities live as protected 'Scheduled Areas', where these communities have special customary rights over their land. The Constitution states that in these areas, state governments can make laws regulating the transfer of land by or among Adivasis.

In 1997, the Supreme Court ruled in the case of *Samatha v. State of Andhra Pradesh*²⁸ that the provisions of the Fifth Schedule also applied to the transfer of private or government land in Scheduled Areas to non-Adivasis.



Adivasi women in the village of Sardega walk back towards their homes carrying forest produce. Their lands were acquired by the government of India in 1989 and 1990 for the Basundhara (West) mine operated by Mahanadi Coalfields Limited, July 2014. © Amnesty International India

25. Article 342 of the Constitution of India. There are over 700 Scheduled Tribes in India. Ministry of Tribal Affairs, "Annual Report, 2014-15", p.59, at <http://tribal.nic.in/WriteReadData/CMS/Documents/201504291141421695180AnnualReport2014-15.pdf> Members of Scheduled Tribes have access to affirmative action quotas in state education and government.
26. States in North-East India are not covered by the Fifth Schedule, but by the Sixth Schedule of the Constitution.
27. Article 5(2) of the Fifth Schedule, Constitution of India.
28. Supreme Court of India, *Samatha v. State of Andhra Pradesh*, decided on 11 July 1997, at <http://indiankanoon.org/doc/1969682/>

COAL BEARING AREAS (ACQUISITION AND DEVELOPMENT) ACT, 1957

Land acquisition for coal mining by the government is carried out under the Coal Bearing Areas (Acquisition and Development) Act, passed in 1957 to "establish greater public control over the coal mining industry and its development." The Ministry of Coal is responsible for monitoring the implementation of the Act.

The CBA Act contains no provisions which require authorities to consult affected communities, or seek the free, prior and informed consent of indigenous peoples. There is no requirement for authorities to pay compensation before taking possession of land. Land acquisition under the CBA Act is explicitly exempted from the requirements of social impact assessment, consultation and consent imposed by the Land Acquisition Act of 2013.

The law also has no provisions for ensuring that human rights impact assessments are conducted prior to land acquisition proceedings. There are no requirements to consult with non-landowners who may be affected by land acquisition, such as landless labourers whose livelihoods are dependent on the land to be acquired. The law also does not offer adequate protection to communities from forced evictions. The only concession to consultation made is in allowing for objections to be filed by land-owners when land is sought to be acquired.

The government has used the CBA Act to acquire land for coal mining in contravention of both India's domestic laws and its international human rights obligations. The Act undermines communities' security of tenure and creates the legal basis for CIL to operate without due regard for the impact of its operations on human rights.



A woman plasters the walls of her house in Sonpuri village, April 2014.
© Amnesty International India

LAND ACQUISITION UNDER THE COAL BEARING AREAS ACT

The process of land acquisition under the CBA Act is as follows:

- Where it appears to the central government that a certain area is likely to contain coal deposits, it declares its intention to prospect for coal through a notification published in the official government gazette.²⁹ (There is no requirement to inform or consult any person who may be affected.)
- If the government is satisfied that coal is obtainable, it must declare its intention to acquire land within three years in the official gazette.³⁰ Again, there is no requirement to inform or consult people who may be affected.
- Any person who objects to the acquisition (presumably after reading about it in the official gazette) – and who is entitled to claim compensation – must file written objections to the Office of the Coal Controller within 30 days of the second notice being published, and has an opportunity to be heard.³¹ The Coal Controller then makes recommendations to the central government. [Even this step can be omitted if the government states that this is "in case of urgency".³²]
- After considering the recommendations, if the central government is satisfied, it issues a declaration of acquisition of the land and all rights over it. On the publication of this declaration in the official gazette, the land "shall vest absolutely in the central government [free from all encumbrances]".³³ These rights can be transferred to a government company such as Coal India.

In 2008, a parliamentary committee examined Coal India's rehabilitation and resettlement policies and land acquisition under the CBA Act.³⁴ The committee observed that "coal reserves in the country are mostly in the far-flung areas inhabited by the tribal communities" who "hardly have any access to the Official Gazette wherein they could see that their lands are to be acquired for public purposes". However the only solution it proposed was a mechanism to ensure that "people automatically become aware of the acquisition of their land", and be allowed to file their objections within 90 days. Even these measures have not been adopted.

Sreedhar Ramamurthi, Chairperson of 'mines, minerals & PEOPLE', a nationwide alliance of civil society organisations, told Amnesty International India: "Even as objections, the only issues that can be raised are the inadequacy of compensation, difference in the land area mentioned by the government to what you think is your land size. You cannot say that you do not want your land to be acquired. You can certainly write it, but it will be declared invalid."

29. Section 4(1) of the CBA Act.

30. Section 7(1) of the CBA Act.

31. Section 8(1) of the CBA Act.

32. Section 9(1) of the CBA Act.

33. Section 10(1) of the CBA Act.

34. Standing Committee on Coal and Steel, Ministry of Coal, "Rehabilitation and Resettlement by Coal India Limited", October 2008, at <http://www.indiaenvironmentportal.org.in/files/coal-steel.pdf>

PANCHAYAT EXTENSION TO SCHEDULED AREAS ACT (PESA), 1996

Amendments made to India's Constitution in 1993-94 conferred powers in relation to local development to elected village councils (or 'panchayats'). In 1996, the Panchayat (Extension to Scheduled Areas) Act³⁵ was enacted to extend these amendments to Scheduled Areas.

The PESA Act requires that panchayats or gram sabhas (village assemblies comprising all adult members of a village) be consulted before land is acquired in Scheduled Areas for development projects, and also before the resettlement or rehabilitation of people affected by such projects. The central Ministry of Panchayati Raj is responsible for monitoring overall implementation of the Act. District-level authorities are responsible for seeking the consent of affected communities.

In 1998, the Ministry of Rural Development issued executive instructions stating that any company (or 'requiring body') seeking land acquisition in a Schedule V area must obtain letters of consent from each of the concerned gram panchayats in favour of the acquisition.³⁶ The Ministry of Panchayati Raj has also issued suggested Draft Model Rules in 2009³⁷ and implementation guidelines in 2010³⁸, which state that land acquisition authorities are responsible for informing gram sabhas about the details of any proposed land acquisition and the social and environmental impact.

The implementation of the Act has largely been exceedingly poor.³⁹ In a welcome departure in April 2013, the Supreme Court ruled in a landmark judgement, relying on the PESA Act, that Adivasi communities in would have the final decision on plans for a bauxite mine by Vedanta Resources in the Niyamgiri hills of Odisha.⁴⁰ The Court ruled that the gram sabhas of villages located near the proposed mine would decide if the mine in any way affected their religious and cultural rights, including their right to worship.



A Kharia adivasi man walks towards the forests near Sardega village, acquired by Mahanadi Coalfields for its mine expansion and for an upcoming thermal power plant. No consultations have been held in Sardega on rehabilitation, in contravention of the PESA Act, September 2014. © Amnesty International India.

35. The Panchayats (Extension To The Scheduled Areas) Act, 1996, at <http://tribal.nic.in/WriteReadData/CMS/Documents/201211290242170976562pesa6636533023.pdf>
36. NC Saxena, S Parasumaran, Promode Kant and Amita Baviskar, "Report of the Four Member Committee for Investigation into the Proposal submitted by the Orissa Mining Company for Bauxite Mining in Niyamgiri", 16 August 2010, Annex VI, at http://envfor.nic.in/sites/default/files/Saxena_Vedanta-1.pdf
37. Ministry of Panchayati Raj, Model Rules for the Panchayats (Extension to Scheduled Areas) Act, 1996, at <http://www.panchayat.gov.in/documents/10198/0/MoPR%27s%20Model%20Rules%20on%20PESA.pdf>
38. Ministry of Panchayati Raj, Letter to Chief Secretaries of PESA states, No. N-11012/1/2007-PESA (Pt), Government of India, 21 May 2010, at <http://www.panchayat.gov.in/documents/10198/0/Guidelines%20for%20Implementing%20PESA.pdf>
39. Only four states have drafted the rules for implementation, which are essential for enforcement. Press Information Bureau, "Protection of tribals under PESA Act", 8 August 2014, at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=108320>. State laws on land acquisition in indigenous territories do not often conform to the spirit of the PESA. Village assemblies are often by-passed by higher levels of decision-making. Gram sabha resolutions have been forged or fraudulently obtained in a number of cases. See Ministry of Tribal Affairs, "Report Of The High Level Committee On Socio- Economic, Health And Educational Status Of Tribal Communities Of India", May 2014, p.334, 338, at <http://www.indiaenvironmentportal.org.in/files/file/Tribal%20Committee%20Report,%20May-June%202014.pdf>. Also see C R Bijoy, "Policy Brief on Panchayat Raj (Extension to Scheduled Areas) Act of 1996", UNDP, 2012, at <http://www.undp.org/content/dam/india/docs/UNDP-Policy-Brief-on-PESA.pdf>; Ajay Dandekar and Chitrangada Choudhury, "PESA, Left-Wing Extremism and Governance: Concerns and Challenges in India's Tribal Districts", Institute of Rural Management, 2010, at <http://www.scribd.com/doc/36994014/PESA-DeletedIRMA-20100723>; Oxfam India, "Implementing the Forest Rights Act: Lack of Political Will?", November 2015, at <https://www.oxfamindia.org/sites/default/files/PB-implementing-forest-rights-act-lack-of-political-will-261115-en.pdf>
40. Supreme Court of India, *Orissa Mining Corporation v. Ministry of Environment and Forests*, decided on 18 April 2013, at <http://supremecourtindia.nic.in/outtoday/judgments/180.pdf>

SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

Popularly referred to as the Forest Rights Act (FRA), this law was enacted to correct the historical injustice faced by Adivasi communities in India and enable them to gain legal recognition of their rights over their traditional lands.

It recognizes the customary rights of forest-dwelling Scheduled Tribes and other 'traditional forest-dwellers' to land and other resources. Members of these communities can claim individual rights over forest land they depend on or have made cultivable. Communities can also file for rights over common property resources, including community or village forests, religious and cultural sites, and water bodies.⁴¹

Under the Forest Rights Act, village assemblies, known either as gram sabhas or pallisabhas, have a key role in determining who has rights to which forest resources. Gram sabhas also play a key role in deciding whether forest land can be 'diverted' – meaning destroyed – for non-forest use, including for mining. Under India's Forest (Conservation) Act, any diversion of forest land must be granted a 'forest clearance' by an advisory committee set up by the central Ministry of Environment and Forests. Under the Act, gram sabhas, supported by sub-divisional and district-level committees, have the authority to determine and verify forest rights. A state-level committee monitors implementation, while the central Ministry of Tribal Affairs is responsible for overseeing overall implementation.⁴²

In 2009, the Ministry of Environment and Forests issued an order stating that for projects to receive forest clearances, state governments had to obtain the consent of gram sabhas for any diversion of forest land (in addition to gram sabhas certifying that recognition of rights under the FRA was complete).⁴³

State governments were required to certify that decisions on diversion had taken place only when there was a quorum of at least 50 per cent of the members of the respective gram sabha. In 2012, the Ministry stated that the procedure of seeking

consent had to involve the provision of information, and the gram sabha meetings had to be recorded on video.⁴⁴ District-level authorities are responsible for seeking the consent of affected communities.

There has been widespread opposition to the implementation of this order from local government authorities. Several civil society organisations and even the Indian Ministry of Tribal Affairs⁴⁵ have noted that the order is followed mostly in the breach.



"We live on forest land, we herd our livestock here, we get our food from here, both by hunting and food from the forest. We worship the forest mother too." Dhani Mahakul, Sardega village, September 2014.
© Amnesty International India.

41. Implementation of this law, particularly in terms of recognition of community forest rights, has been staggeringly poor. Nation-wide data on the FRA has shown that many states have shown more rejections than acceptance of claims made under the FRA. By one independent estimate, only 1.2 per cent of the community forest rights potential in India has been legally recognized. Rights and Resources Initiative, Potential for Recognition of Community Forest Rights under India's Forest Rights Act: A Preliminary Assessment, July 2015, p.12, at http://www.rightsandresources.org/wp-content/uploads/CommunityForest_July-20.pdf. Civil society organizations have pointed to interference by the government in the process of recognizing individual and community rights over land use. See Tatpati, M. (Ed), Citizens' Report 2015: Community Forest Rights under the Forest Rights Act, Kalpavriksh and Vasundhara in collaboration with Oxfam India on behalf of Community Forest Rights Learning and Advocacy Process, May 2015, p.61, at <http://kalpavriksh.org/images/LawsNPolicies/CITIZENSREPORT2015.pdf>; UshaRamanathan, "Where do Adivasis stand in Indian law?", *Yahoo.com*, 27 February 2015, at <https://in.news.yahoo.com/where-do-adivasis-stand-in-indian-law-064753172.html>
42. Oxfam India, "Implementing the Forest Rights Act: Lack of Political Will?", November 2015, at <https://www.oxfamindia.org/sites/default/files/PB-implementing-forest-rights-act-lack-of-political-will-261115-en.pdf>
43. Ministry of Environment and Forests, Letter to Chief Secretaries of States, F.No.11-9/1998-FC(pt), Government of India, 30 July 2009, at [http://forestsclearance.nic.in/writereaddata/public_display/schemes/337765444\\$30-7-2009.pdf](http://forestsclearance.nic.in/writereaddata/public_display/schemes/337765444$30-7-2009.pdf)
44. Ministry of Tribal Affairs and Panchayati Raj, Letter to Minister of Environment and Forests, 7 December 2012, at <http://fra.org.in/document/Circular%20of%20MoEF%20to%20State%20Govts.%20on%20Diversion%20of%20Forest%20land%20%287.12.12%29.pdf>
45. Minister of Tribal Affairs and Panchayati Raj, Letter to Minister of Environment and Forests, 19 November 2012, at http://fra.org.in/document/MoTA_letter_to_MoEF_on_diversion_of_forest_land.pdf

ENVIRONMENT (PROTECTION) ACT, 1986

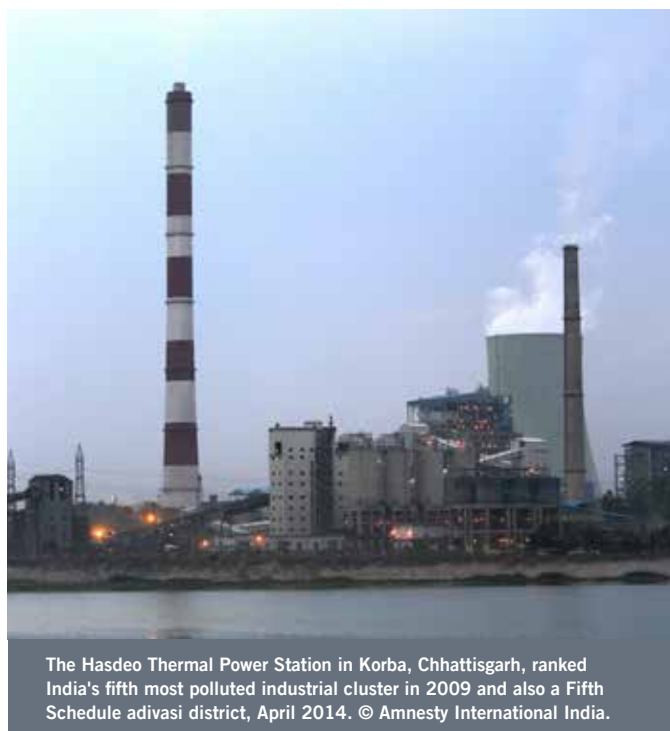
India's Environment Protection Act, 1986, empowers the central government to take any necessary measures to protect the environment and prevent environmental pollution. In 1994, Environmental Impact Assessment (EIA) reports were made mandatory for industrial projects. The Ministry of Environment, Forests and Climate Change (MoEFCC) is responsible for monitoring the implementation of the Act.

In 2006, the MoEF passed a notification which comprehensively amended how EIAs were conducted (the public hearing procedure was updated in 2009). Under the notification, all projects of a certain size require an environmental clearance from an 'Expert Appraisal Committee' set up by the MoEF. As part of the environment clearance process, state-level pollution control authorities are required to set up public consultations with local communities likely to be affected by the environmental impact of projects to give them an opportunity to voice any concerns.

Prior to these public hearings, the concerned company is required to submit copies of the draft EIA report, and summaries in English and the relevant local language, to various district-level authorities. These authorities are in turn required to provide publicity about the project and make the documents available for public inspection. EIA reports frequently use extremely technical language – there is unfortunately no requirement for either the concerned company or the pollution control board or any other authority to simplify the content of the EIA.

Pollution control authorities are required to advertise the hearing widely, including by publishing notice of the hearing in at least one major national newspaper and one regional language newspaper. In areas where there are no newspapers, they are required to use other means such as 'beating of drums' and radio/television advertisements.⁴⁶

The public hearing should be held near the proposed project site, and authorities have to seek written responses from other concerned persons with a "plausible stake" in the project's environmental aspect. Pollution control authorities are required to arrange for the proceedings to be recorded on video. The District Magistrate or Collector (the senior-most government official in the district) or a representative is supposed to supervise the hearing.



The Hasdeo Thermal Power Station in Korba, Chhattisgarh, ranked India's fifth most polluted industrial cluster in 2009 and also a Fifth Schedule adivasi district, April 2014. © Amnesty International India.

Representatives of the concerned companies are required to make presentations about the projects and present the summary EIA report. The state pollution control authority submits the minutes of the hearing to the MoEF Expert Appraisal Committee which consider applications for environmental clearances, and is supposed to submit them to 'detailed scrutiny'. However these committees often do not engage substantively with concerns raised at public hearings.⁴⁷

The EIA reports prepared are also supposed to involve social impact assessments. These are almost never carried out. The MoEF committees or the state pollution control authorities are also not required to evaluate the EIAs to assess their accuracy or completeness. The environment clearance process, in practice, is overly dependent on EIA reports commissioned by project proponents. These reports are written by consultants chosen and paid by the companies, leading to an inherent conflict of interest. A former Environment Minister stated, "Environmental impact assessment report is a bit of joke. I admit it publicly. In our system, the person who is putting up the project will be preparing the assessment report."⁴⁸

In recent years, successive central governments have sought to dilute requirements for public hearings for certain categories of mines, putting the rights of local communities at risk.⁴⁹

46. Ministry of Environment and Forests, Notification S.O. 3067(E), 19 January 2009, p.27, at <http://www.moef.nic.in/downloads/rules-and-regulations/3067.pdf>

47. Human Rights Watch, "Out of Control: Mining, Regulatory Failure and Human Rights in India", 14 June 2012, at <https://www.hrw.org/report/2012/06/14/out-control/mining-regulatory-failure-and-human-rights-india>.

48. Times News Network, "Environment Impact Assessment system for projects flawed", *The Times of India*, 20 March 2011, at <http://timesofindia.indiatimes.com/city/hyderabad/Environment-impact-assessment-system-for-projects-flawed/articleshow/7745512.cms> In January 2014, the Supreme Court ordered the government to set up an independent national regulator to conduct EIAs. See Supreme Court of India, *T N Godavarman Thirumulpad v. Union of India*, decided on 6 Jan 2014. At <http://supremecourtindia.nic.in/outtoday/WC2021995.pdf>. The regulator is yet to be set up.

49. Amnesty International India, "Changes to environment, land acquisition laws jeopardize human rights", 5 November 2014, at <https://www.amnesty.org.in/show/news/changes-to-environment-land-acquisition-laws-jeopardize-human-rights>; Amnesty International India, "Changes to environment policies could undermine human rights of communities", 15 January 2014, at <https://www.amnesty.org.in/show/entry/changes-to-environment-policies-could-undermine-human-rights-of-communities>. Also see Kanchi Kohli, "When people are merely roadblocks", *India Together*, 6 February 2015, at <http://indiatogether.org/people-participation-and-public-hearing-in-eia-considered-roadblock-government>

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

Until 2013, land acquisition for development projects in India was carried out under the Land Acquisition Act, 1894. This law's lack of safeguards and loose definition of the 'public purpose' for which land could be acquired led to large-scale forced evictions, uprooting millions of families from their homes without adequate compensation, rehabilitation or remedy. The law contained no provisions for consulting affected communities, obtaining the consent of Adivasi communities, or assessing the human rights impacts of land acquisition.

A new law on land acquisition – the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR) – came into force in January 2014, which vastly improved on the law of 1894, and

contained several progressive provisions related to consultation, consent and social impact assessment.

The Act states that the consent of 70 per cent of affected families is mandatory where land is sought to be acquired for public-private partnership projects, and 80 per cent for private projects. It also contains a provision requiring the prior consent of the concerned gram sabhas in Scheduled Areas before land can be acquired.⁵⁰ The Act also mandates, prior to land acquisition, a social impact assessment (SIA) – a study by independent experts to map a project's impact on people's lands and livelihoods, and its economic, social and cultural consequences, in consultation with affected communities.

However the Act explicitly exempts land acquired under 13 other laws – including The Coal Bearing Areas Acquisition and Development Act, 1957, under which land is acquired for public-sector coal mining – from its requirements. The provisions on compensation, rehabilitation and resettlement under the Act were extended to these laws by the central government in August 2015⁵¹, but the requirements of social impact assessment, consultation and consent still don't apply.⁵²



Avdhabai and her family outside the ruins of their home in the village of Barkuta. 17 houses and a school were demolished by authorities on 9 February 2014 for the Kusmunda mine's expansion without adequate notice or the consent of affected Adivasi communities, April 2014. © Amnesty International India

50. However the Act also appears to recognize that "involuntary displacement" of Scheduled Tribes families can take place elsewhere.

51. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order 2015, at <http://dolr.nic.in/dolr/downloads/pdfs/RFTLARR%20%28Removal%20of%20Difficulties%29%20Order,%202015.pdf>

52. In 2015, the central government passed a bill seeking to introduce major amendments to the Land Acquisition Act, including limiting the applicability of provisions on consultation, consent and social impact assessments to a wide range of projects. The bill was passed by the lower house of Parliament, but following popular opposition, the government dropped the measures. See Amnesty International India, "Submission to the Joint Parliamentary Committee examining the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015", 2015, at https://www.amnesty.org.in/images/uploads/articles/Amnesty_International_India-_LARR_Submission.pdf



Women from Dalit Turi families outside their homes on the edge of the Tetariakhar mine in Latehar, Jharkhand. They were displaced without adequate rehabilitation and now reside near the mine's overburden dump, July 2014. © Amnesty International India

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 (AS AMENDED IN 2016)

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (PoA Act) was enacted to tackle particular kinds of caste-based discrimination and violence faced by people from Dalit and Adivasi communities. Amendments to the Act that came into force in January 2016 criminalize a range of new offences, including the wrongful dispossession of land.

Under Section 3(1)(g) of the amended Act, anyone who is not a member of a Scheduled Caste or a Scheduled Tribe who “wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities” can be imprisoned for up to five years.⁵³

(The implementation of this law has historically been extremely poor. In 2014, the rate of convictions for crimes under the Act was under 29 per cent.⁵⁴ Civil society groups have said that many crimes against Dalits and Adivasis are not registered under provisions of the PoA Act because the police are reluctant to use the law.⁵⁵)

“Is granting one land title more important to me or is a transmission line that is a State Government project? For local rights, I cannot stop development.”⁵⁹

Former Divisional Forest Officer, Latehar, Jharkhand

CONFUSION AND OBFUSCATION

Despite several legal provisions recognising Adivasi communities' rights to consultation and consent, authorities and companies are known to use the complex mosaic of laws to deny communities their rights.⁵⁶

Under Indian law, Adivasi communities affected by mining by Coal India in Scheduled Areas need to be consulted under the PESA Act (on land acquisition and rehabilitation) and the Environment (Protection) Act (as part of the environment impact assessment process). Their consent needs to be sought under the Forest Rights Act (on diversion of forest land).

These laws fall short of international law and standards which stipulate the free, prior and informed consent of indigenous peoples on all decisions which affect them. Yet even these inadequate laws are frequently not enforced.

Activists in these areas told Amnesty International India that authorities frequently choose to deploy provisions which require them to do as little as possible by way of consultation. In the examples in this report, district, state government- including pollution control boards⁵⁷- and central government authorities such as the Ministry of Environment, Forests and Climate Change⁵⁸, besides companies, appear to see public hearings more as a bureaucratic hurdle to overcome than a genuine opportunity to hear and address community concerns.

In this way, authorities appear to consider respect for Indigenous people' rights as not being part of development.

A lack of harmonisation of the various overlapping laws enables authorities to dodge their responsibilities.

In December 2011, the central government set up a 'Harmonisation Committee' to align existing central laws with the PESA Act. This committee specifically recommended that the CBA Act be amended to require prior consultation with gram sabhas before any land acquisition.⁶⁰

This report appears to have been largely ignored by the government. As a result, South Eastern Coalfields Limited, a subsidiary of Coal India Limited, continues to claim that the land acquisition by CIL subsidiaries in Scheduled Areas only has to follow the CBA Act, and not the PESA Act. (The PESA Act requires authorities to consult Adivasi gram sabhas before acquiring land, while the CBA Act does not require any consultation.)



Mining trucks ply close to villages in Basiya, Nagara and Pindarkom, July 2014. © Amnesty International India

53. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, at <http://www.prsindia.org/uploads/media/SC%20ST%20Atrocities%20%28A%29,%202014/SCST%20%28Prevention%20of%20Atrocities%29%20Act,%202015.pdf>
53. Ministry of Social Justice and Empowerment, Reply to Unstarred Question No. 599: "Punishments Under SC and ST (Prevention of Atrocities) Act", Rajya Sabha, 3 December 2015, at <http://164.100.47.234/question/annex/237/Au599.pdf>
54. National Coalition for Strengthening SCs & STs (Prevention of Atrocities) Act, "The Status of Implementation and Need for Amendments in Prevention of Atrocities Act, India", 2010, at http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/India/SCST_Postionpaper_final.pdf
56. For instance, a district Land Acquisition Officer in Korba told Amnesty that the older Coal Bearing Areas Act would apply over the newer and more specific PESA Act (see p.58). SECL attempted to argue that PESA would not apply in the case of Chhattisgarh High Court, *Sarthak Janatmak Sanstha v. Union of India*, decided on 11 November 2014, WPIL/5/2013 (see p.19). Korba officials said municipalities had consented to diversion without calling for ward assemblies, which conflict with guidelines issued by the Ministry of Tribal Affairs (see p.34). Based on these examples, Amnesty International India believe that district and state government authorities and Coal India's subsidiaries are denying communities their rights to being adequately consulted and their FPIC sought prior to land acquisition.
57. See p. 37 and 39 and 41 on inadequate consultations for the expansion of the Kusmunda mine.
58. See box on "Diluting the Right To Consultation" on p.33.
59. Interview with Divisional Forest Officer at the time, 5 July 2014, Latehar.
60. Department of Legal Affairs, Government of India, "Recommendations of the Committee with respect to various other Central Laws vis- à-vis the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996", 2011, para 8, at <http://www.panchayat.gov.in/documents/10198/348968/Harmonisation%20Committee%20Report.pdf>. A similar recommendation had been made by the Administrative Reforms Commission in 2008. See Second Administrative Reforms Commission, Government of India, "Seventh Report: Capacity Building for Conflict Resolution", p.210, at http://arc.gov.in/arc_7th_report/ARC_7thReport_con_sum_rec.pdf

In a case filed by Chhattisgarh activist Laxmi Chauhan at the Chhattisgarh High Court, the Chhattisgarh government and the Ministry of Coal both said that the requirements of consultation under the PESA Act would apply to any land acquisition by CIL. However in a disappointing judgement, a single-judge bench of the High Court agreed with SECL, and ruled that the PESA Act would not apply in cases of land acquisition under the CBA Act.⁶¹

Similarly, there is confusion on the ground about the applicability of the Forest Rights Act of 2006. Government officials who Amnesty International India interviewed at the village, district and state-level in the forest, tribal welfare and land acquisition departments, were unclear about the applicability of the FRA in areas where the CBA was applied to acquire land for coal mining. The confusion around, and the misreading of these laws and their application have created a situation where the rights of Adivasi communities to consultation and free, prior and informed consent continue to be violated with impunity.

A committee appointed by the central government in 2014 to comprehensively assess the status of Adivasi communities in the country spoke of the "disregard for laws that have been enacted to protect the interests of [Adivasis]." It put the matter pithily: "There is no answerability when this deliberate disrespect for the law is manifest."⁶²



An Oraon Adivasi man outside his village that faces the Tetariakhar mine in Latehar, Jharkhand, July 2014. © Amnesty International India



A Dalit family displaced by the Tetariakhar mine, which lives near the overburden dump in Nagara village, July 2014. © Amnesty International India

61. Chhattisgarh High Court, *Sarthak Janatmak Sanstha v. Union of India*, decided on 11 November 2014, WPPIL/5/2013. An appeal is pending before the High Court.

62. Ministry of Tribal Affairs, "Report Of The High Level Committee On Socio- Economic, Health And Educational Status Of Tribal Communities Of India", May 2014, p.344, at <http://www.indiaenvironmentportal.org.in/files/file/Tribal%20Committee%20Report,%20May-June%202014.pdf>

DILUTING THE RIGHT TO CONSULTATION

In recent years, successive governments have sought to dilute requirements for public hearings for coal mines of certain sizes, following requests by the Ministry of Coal, putting the rights of local communities at risk.

On 19 December 2012, when a Congress party-led coalition government was in power, the MoEF allowed all coal mines to expand their production capacity by up to 25 per cent without conducting a public hearing.⁶³

On 7 January 2014, the Ministry extended this exemption to coal mines with an existing production capacity of up to 8 mtpa (million tons per annum) seeking to expand their capacity by up to 50 per cent.⁶⁴

On 30 May 2014, after a Bharatiya Janata Party-led coalition government came to power, the MoEF issued an executive memorandum further extending the exemption from conducting public hearings to coal mines with a production capacity between 8 and 16 mtpa. The memorandum said these mines could expand by up to 25 per cent, with an additional production of 4 mtpa, if they met certain conditions around the transportation of coal.⁶⁵

On 28 July 2014, the Ministry issued another memorandum, this time extending the exemption from conducting public hearings to mines with a capacity above 16 mtpa seeking to expand their capacity by up to 5 mtpa.⁶⁶

On 2 September 2014, the Ministry went further, exempting mines with a production capacity of over 20 mtpa seeking to expand capacity by up to 6 mtpa from conducting public hearings.⁶⁷

Amnesty International India's research indicates that between January 2014 and April 2016, 11 out of 21 Coal India mine expansion projects which were granted environmental clearances used the exemptions they were granted by the MoEF to avoid conducting public hearings.

In July 2015, the Ministry of Coal made another special request of the MoEF: that CIL be allowed to not conduct public hearings at all in mines where it wanted to increase production capacity by up to 50 per cent.⁶⁸

The company emphasized that the "responsibility of enhancement of coal production has been given to CIL to meet country's coal demand". In any case, it said, public hearings were not necessary because there was "no additional component in the public hearing...and all the issues of Public Hearing remain addressed."

An MOEF expert committee correctly pointed out that any increase in production would adversely impact local communities, and refused to grant blanket permission for expanding mine production without conducting public hearings. However CIL's request itself speaks volumes of the company's attitude to consulting communities.

The company's apparently casual dismissal of communities' human rights and environmental concerns as having been already addressed is emblematic of the approach taken by both its subsidiaries and government authorities, which appear to regard consultation as an irritant to be dealt with perfunctorily at best, and completely ignored at worst.



"We are thankful that you have finally given us an opportunity to speak." Surajiya, an Adivasi leader speaking at a public hearing for the four-fold expansion of the Kusmunda mine. The previous expansion was exempted from conducting a public hearing, February 2015. © Amnesty International India

63. Ministry of Environment and Forests, "Guidelines for granting Environment Clearance for expansion of Coal Mining Projects involving one-time Production Capacity Expansion of up to 25% in the existing operation", Office Memorandum, 19 December 2012, at http://www.cmpdi.co.in/env/OM%2019_12_2012.pdf
64. Ministry of Environment and Forests, "Guidelines for granting Environment Clearance for expansion of Coal Mining Projects involving one-time Production Capacity Expansion in the existing operation – reg", Office Memorandum, 7 Jan 2014, at <http://www.moef.nic.in/sites/default/files/OM%2007.01.2014.pdf>
65. Ministry of Environment, Forests and Climate Change, "Guidelines for granting Environment Clearance for expansion of Coal Mining Projects involving one-time Production Capacity Expansion in the existing operation – reg", Office Memorandum, 30 May 2014, at <http://www.moef.nic.in/sites/default/files/ia-30052014.pdf>
66. Ministry of Environment, Forests and Climate Change, "Guidelines for granting Environment Clearance for expansion of Coal Mining Projects involving one-time Production Capacity Expansion in the existing operation – reg", Office Memorandum, 28 July 2014, at <http://www.moef.nic.in/sites/default/files/OM%20dated%2028.07.2014%20one%20time%20expansion.pdf>
67. Ministry of Environment, Forests and Climate Change, Office Memorandum No. J-11015/30/2004.IA.II(M), "Guidelines for granting Environment Clearance for expansion of Coal Mining Projects involving one-time Production Capacity Expansion in the existing operation – reg", 2 September 2014, at http://www.moef.nic.in/sites/default/files/OM%20dt%2002.09.2014_6%20MTPA_onetime%20expansion.pdf
68. Ministry of Environment, Forests and Climate Change, Minutes of the 41st Meeting of the Expert Appraisal Committee (Thermal and Coal Projects), 15 and 16 July 2015, p.33, at http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/0_0_8117122612171MOMof39thEAC_Coalheldon16th-17thJuly,2015.pdf

3. HUMAN RIGHTS VIOLATIONS IN COAL INDIA'S MINES

KUSMUNDA MINE



Nirabai, a Kavar adivasi woman from the village of Padaniya which was acquired by SECL in 2009, Padaniya village, April 2014. © Amnesty International India



**KORBA,
CHHATTISGARH**



**Operated by
South Eastern
Coalfields Limited**



Current expansion: 18.75 to 26 mtpa. Plans to further expand capacity to 62.5 mtpa.



40%
of Korba's population are
members of Scheduled Tribes.



Over a third of the residents in the affected villages of Padaniya, Pali, Barkuta, Sonpuri, Khodri, Churail, Amgaon, Risdi and Khairbhawna mostly women, are not formally literate.

THE SCALE OF IMPACT

Vulnerable communities that are affected:



Kawar, Gond, Agaria, Rathia, Binjhar.

How much land has been acquired:



2382 hectares. Plans to acquire an additional 1127 hectares of land.

How much forest land destroyed:



397 hectares

At risk of displacement:



9250 families from 17 villages

Pollution:



Ranked the 5th most polluted industrial cluster in 2009-2010 by the Central Pollution Control Board.



Satellite map of Kusmunda Open Cast Mine.

Source: Google Earth

The Kusmunda mine has undergone three expansions since 2009. The rights of communities to consultation and consent were violated during each of these expansions.

KUSMUNDA, CHHATTISGARH

Kusmunda is one of India's largest coal mines. Operated by South Eastern Coalfields Limited (SECL), CIL's biggest subsidiary, it is located in the district of Korba in Chhattisgarh – one of the most critically polluted areas in India – along with four other mines: Gevra, Dipka, Kusmunda and Manikpur.⁶⁹ Korba, which is about 200 kilometres away from the state capital Raipur, is also host to over a dozen coal-fired power plants and several existing and proposed public and private coal mines.

Chhattisgarh has the highest proportion of Scheduled Tribes of any state in India (30.6 per cent).⁷⁰ Those affected by the Kusmunda mine include members of the Kavar, Gond, Rathia, Agaria and Binjhar Adivasi communities, who are all recognised officially as Scheduled Tribes. Traditionally agrarian and dependent on the land and forest for their livelihood, these communities have lived next to the Kusmunda mine for decades.

Land acquisition for the Kusmunda mine under the CBA Act

began in 1977.⁷¹ The government acquired land in seven villages – Durpa, Dullarpur, Barkuta, Jarajhel, Khamariya, Barpali and Barampur. SECL began mining two years later in 1979.

In 2005, faced with signs of a significant shortage of coal required to meet energy needs, the government drew up an "emergency coal production plan" to boost coal output. The Kusmunda mine was among 16 mines the government identified to increase production.⁷²

SECL increased production capacity at the mine from 10 mtpa to 15 mtpa in 2009, to 18.75 mtpa in 2014 and 26 mtpa in early 2016. SECL is seeking to expand capacity to a staggering 62.5 mtpa, which will require over 1100 hectares to be acquired. CIL plans to invest 76 billion INR (1.1b USD) into its continued expansion, which will make Kusmunda one of the largest coal mines in the world. An estimated 9250 families in 17 villages will eventually be displaced by the mine if the expansion goes through.⁷³

This section examines violations of the rights to consultation and consent which took place during each of the expansions.



The remains of houses in Barkuta after forced evictions in February 2014, April 2014. © Amnesty International India

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69. Korba is one of 24 'problem areas' identified for 'priority action' by the Central Pollution Control Board. See Central Pollution Control Board, "Frequently Asked Questions", at <http://www.cpcb.nic.in/faq2.php>
70. Ministry of Tribal Affairs, "State-Wise Tribal Population in India", at <http://tribal.nic.in/content/statewisetribspopulationpercentageinindiascheduletribes.aspx>
71. EIA Report for the 15-18.75 MTPA expansion, p. 68, at <http://environmentclearance.nic.in/writereaddata/EIA/260520155TVKBT7PKSMEIAEMP.pdf>
72. Ministry of Coal, "Annual Report 2007-08", p.21, at http://coal.nic.in/sites/upload_files/coal/files/coalupload/dchap3.pdf
73. Economic Times Bureau, "Coal India Ltd to invest Rs 7.6k-crore to develop Kusmunda mine", *Economic Times*, 10 December 2013, at http://articles.economictimes.indiatimes.com/2013-12-10/news/45035156_1_coal-india-ltd-tonne-south-eastern-coalfields-ltd
74. South Eastern Coalfields Limited, "Executive Summary for Environmental Impact Assessment of Proposed Kusmunda Open Cast Expansion Project", at <http://www.enviscecb.org/205/KUSMUNDA%20%28ENGLISH%29.pdf>
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10-15 MTPA EXPANSION WITHOUT CONSULTATION IN 2009

In 2007, SECL sought permission from the Ministry of Environment and Forests to increase the production capacity of the mine from 10 mtpa to 15 mtpa, and the mine area from 1673 hectares to 2536 hectares, including 235 hectares of forest land. The expansion was estimated to affect 1064 families.⁷⁵

EIA HEARING

Accordingly, as part of the environment clearance process for the expansion, the Chhattisgarh Environment Conservation Board (CECB) called for a public hearing on 27 August 2008. The five villages that stood to be affected were Padaniya, Pali, Barkuta, Sonpuri and Jataraj. Around 3000 people live in these villages. Over a third of the residents, mostly women, are not formally literate.⁷⁶

As required under the EIA notification of 2006, the CECB published a notice about the hearing in a local newspaper, and provided a copy of the EIA report to the head of the village council.⁷⁷ However, as far as Amnesty International could discover, no other efforts were made to publicize the hearings. Over 70 people from Padaniya, Pali, Barkuta, Sonpuri and Jataraj told Amnesty International India in 2014 that they were not aware that a public hearing had been called, or took place, in 2008.

They said that local government authorities or the regional Chhattisgarh Environment Conservation Board had not advertised the hearing in any way apart from publishing notices in newspapers.

The hearing was conducted near a sports stadium in Kusmunda, about six kilometres from the affected villages, which made it difficult for people from poorer sections of communities to attend, even if they had known about it, because they would have had to pay for their own transportation, as there is no regular public transport in the area. According to government records, 117 local people attended the hearing.⁷⁸

Some local residents said they had heard about the hearing from activists who had seen the newspaper notice, and went on to attend. However, they told Amnesty International that many of their concerns, including concerns about rehabilitation and resettlement and the impact of mining on agricultural land, had been dismissed by CSECB authorities as being irrelevant.⁷⁹

An official record of the meeting suggests that many of the issues raised appear to have been met with minimalist responses which did not address the concerns of local people. For example, one issue raised was: "In R&R (rehabilitation and resettlement) villages, land oustee villagers should be provided basic amenities", SECL's reply, as presented in the record, was "Basic amenities are provided".

To another concern that "agricultural land would be affected in the nearby area of the mine due to its expansion", the response was: "No such complaint has been received so far." A grievance about explosives near the mine causing cracks inside houses was answered with: "Controlled blasting is practiced for coal production as of now and minimum explosives are used which takes care of vibration and its effects that is why the vibration are within limit (sic)".⁸⁰

Brajesh Shrivastava, a local activist who attended the public hearing, said, "There were more police than people. The 70 or so people who showed up from local villages wanted to raise questions regarding rehabilitation and employment, but these questions were dismissed as not pertaining to the environment. At one point, one of the persons who had raised objections got into a scuffle with the police, and was dragged away. In that kind of atmosphere, how could we raise our objections?"⁸¹

The CECB submitted a record of the hearing to the MoEF's Expert Appraisal Committee, which is supposed to submit it to detailed scrutiny. However, in the MoEF's letter granting environment clearance for the expansion in June 2009, the only mention made of the public hearing is: "Public hearing was conducted on 28.08.2008".⁸² The letter did not go into any more detail about the issues raised during the public hearing.



Young men play cricket in the shadow of the Kusmunda mine's massive overburden dumps, Pali village, April 2014. © Amnesty International India

COAL-BEARING AREAS ACT AND PESA CONSULTATION

To facilitate the expansion, in June 2009,⁸³ the Ministry of Coal declared its intention to acquire land under the Coal Bearing Areas Act in four villages - Risdi, Sonpuri, Pali and Padaniya - followed by the village of Jatraj in 2010 - in the official government gazette and in a notice in a newspaper.

Over 3600 people live in these villages. Over a third of all residents in each of the villages are not formally literate.⁸⁴ None of the affected families that Amnesty International India spoke to said they had been directly informed about the government's intention to acquire land. Some found out that their land may be acquired only through word of mouth months or even years later- usually when they tried to sell their lands. Local activists told Amnesty International India that they eventually managed to obtain a copy of the notification through a Right to Information application.

Mahendra Singh Kavar, 45, a Kavar Adivasi man from the village of Padaniya, told Amnesty International India in April 2014: "We did not receive any notice about our land being acquired. We only heard recently that SECL now owns all our land.... We have had no discussion with SECL in our village. The land value is increasing in our villages, but we don't know how much it is worth or when we will receive any compensation."⁸⁵

"To SECL, we say that leave us alone, we are fine in this condition as we are. Please look for land elsewhere."

Nirabai, a 42-year old Adivasi woman from the same village, said: "The Collector announced in a place near the school two years ago that this an SECL affected area. They said that we would be compensated for our land being acquired. But we have still not received any official notice about our land or when we will get our compensation." ⁸⁶



A Kavar Adivasi man, in his home in Padaniya. His land was acquired without his knowledge, April 2014. © Amnesty International India

In March 2010, the Ministry of Coal announced that it had acquired over 752 hectares of land in this phase for SECL.⁸⁷ The PESA Act requires gram sabhas to be consulted before land is acquired in Scheduled Areas, and before people affected by projects are resettled or rehabilitated. However SECL claims that land acquisition for CIL subsidiaries only has to follow the CBA Act, which does not require any form of consultation.

In March 2013, Brajesh Shrivastava, a lawyer from Pali village, filed a Right to Information application asking for details about the project's compliance with the PESA Act. SECL responded that in cases of land acquisition under the Coal Bearing Areas Act, the "PESA Act is not applicable".⁸⁸

In September 2014, Brajesh Shrivastava filed a petition before the High Court of Chhattisgarh arguing that the land acquisition under the CBA Act in 2009 had breached the requirements for consultation under the PESA. The petition states that the PESA Act of 1996, being a special law, should prevail over the CBA of 1957, an older and more general law. ⁸⁹ The petition is pending in court.⁹⁰

75. Ministry of Environment and Forests, Letter granting environment clearance for Kusmunda OCP Expansion from 10 mtpa to 15 mtpa, No. J-11015/1205/2007-IA.II(M), 3 June 2009, p.1, at <http://www.secl.gov.in/secl/writereaddata/Environment/15.pdf>
76. Census of India, 2011, See details for Padaniya: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=449567>; Pali: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=449568>; Barkuta: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=449569>; Sonpuri: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=449570> The Census does not list the population of Jatraj; estimates were made based on conversations with residents.
77. Interview with Brajesh Shrivastava, 19 April 2014, Pali village.
78. Central Mine Planning and Design Institute Limited, "Application for Form-I and EIA/EMP for Peak Capacity of Existing Kusmunda Opencast Project", August 2013, p.49, at <http://environmentclearance.nic.in/writereaddata/EIA/111120121512131ec.pdf>
79. Testimonies collected in January and April 2014, March and June 2016, Pali, Padaniya, Sonpuri and Khodri villages.
80. Central Mine Planning and Design Institute Limited, "Application for Form-I and EIA/EMP for Peak Capacity of Existing Kusmunda Opencast Project", August 2013, p.49, at <http://environmentclearance.nic.in/writereaddata/EIA/111120121512131ec.pdf>
81. Interview with Brajesh Shrivastava, 19 April 2014, Pali village.
82. Ministry of Environment and Forests, Letter granting environment clearance for Kusmunda OCP Expansion from 10 mtpa to 15 mtpa, No. J-11015/1205/2007-IA.II(M), 3 June 2009, at <http://www.secl.gov.in/secl/writereaddata/Environment/15.pdf>
83. Gazette of India, 20 June 2009, on file with Amnesty International India
84. Census of India, 2011. See details for Risdi: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=449566>; Sonpuri: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=449570>; Pali: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=449568>; Padaniya: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=449567>
85. Interview with Mahendra Singh Kavar, 25 April 2014, Padaniya village.
86. Interview with Nirabai Kavar, 25 April 2014, Padaniya village.
87. Gazette of India, S.O. 861 Ministry of Coal, 29 March 2010, on file with Amnesty International India
88. South Eastern Coalfields Limited, Letter from Staff Authority, Kusmunda Area in response to a Right to Information request filed by Brajesh Shrivastava on 7 April 2013, 16 April 2013. Available on file with Amnesty International India.
89. Chhattisgarh High Court, Writ Petition (Civil) Number 1779 of 2014, *Brajesh Shrivastava and Ors vs. Union of India*. Copy of petition on file with Amnesty International India.
90. Chhattisgarh High Court Website, Case Status as of 6 June 2016, available at http://cg.nic.in/hcbilaspurweb/query/case_detail_report_action2.php?filing_no=082210190782014&y=add

EXPANSION WITHOUT CONSULTATION IN 2014

In December 2012, the Ministry of Environment allowed coal mines to expand their production by up to 25 per cent without a public hearing, if they were expanding within the existing land leased to them.⁹¹ In September 2013, SECL applied to the Ministry to expand the Kusmunda mine again, this time from 15 mtpa to 18.75 mtpa, without acquiring any further land. They received the clearance in a few months, in February 2014.⁹²

In 2008-09, SECL had produced coal beyond its mandated capacity in the Kusmunda mine, in violation of India's Air Act, Water Act and Environment Protection Act. The Chhattisgarh Environment Conservation Board had filed a case against SECL,

and this fact was noted by the MoEF committee in 2014 when considering SECL's proposal for expansion to 18.75 mtpa. This did not disqualify SECL from expanding production, though. All the company had to do was have a formal resolution filed by its Board stating that the violations would not be repeated. SECL complied, and the clearance was given, "subject to the outcome of the (pending) case."

"These cases often get stuck for years in district courts, while proponents continue to expand their production," says Ritwick Dutta, a prominent environmental lawyer. "Allegations of serious environmental violations are dismissed as mere formalities. As long as a case has been filed, their job is done."⁹³

The MoEF again noted that a forest clearance had not yet been obtained for mining on the 235 hectares of forest land in the mine area.



An SECL engineer marks the spot where blasting will take place, Barpali village, April 2014. © Amnesty International India

EIA HEARING

In granting the clearance, the Ministry of Environment made a passing reference to the fact that a public hearing had been conducted in 2008, but did not go any further. The EIA for the expansion mentioned a range of potential environmental impacts from the expansion, including air and noise pollution and contamination of land and water.⁹⁴ However, the MoEF's December 2012 notification meant that a public hearing did not have to be conducted to inform or consult communities about the expansion.

The Regional Officer of the Chhattisgarh Environment Conservation Board confirmed to Amnesty International India in April 2014 that the Board had not held a public consultation on the environmental or social impacts of the mine expansion.⁹⁵ The impacts of the expansion were never discussed with local communities.

"This entire place was a jungle, deer used to walk here. All of this changed after they found coal here and started to mine and destroy the forest," said Ramadhar Shrivastava from the village of Pali.



An elderly Adivasi woman in Barpali village who lives near the mine, April 2014. © Amnesty International India

FRA GRAM SABHAS

In June 2009, the MoEF - while granting environment clearance to the Kusmunda mine to expand production capacity from 10 mtpa to 15 mtpa - had noted that the project did not yet have a forest clearance for mining on 235 hectares of forest land. (The Ministry repeated this observation in 2014.)

In July 2009, the MoEF issued an order stating that gram sabha consent to forests being 'diverted' for industry was mandatory before the Ministry could grant a forest clearance. State governments were made responsible for obtaining certificates from gram sabhas declaring their consent.⁹⁷

However, instead of the state government initiating the process of seeking gram sabha consent in Kusmunda, SECL wrote directly to the head of the Pali village panchayat in May 2011 and again in February 2012, asking her to conduct gram sabhas for diversion of forest land for the mine.⁹⁸ SECL requested that the gram sabhas give their permission for the diversion, so that there was no delay in the mining of coal in the 'national interest' of the country.

The villagers did not agree. In a subsequent gram sabha conducted on 29 December 2013⁹⁹, villagers opposed the expansion, instead demanding that rehabilitation and compensation be given to people from Barkuta village, who had received eviction notices. (see box on forced evictions in Barkuta).



A shop owner in the village of Sonpuri who stands to be displaced by the mine, April 2014. © Amnesty International India

91. Ministry of Environment and Forests, "Guidelines for granting environment clearance for expansion of coal mining projects involving one-time production capacity expansion of up to 25% in the existing operation -reg.", Office Memorandum, 19 December 2012, at <http://www.moef.nic.in/assets/ia-19122012-a.pdf> In doing so, the Ministry reversed the position it had taken in a previous notification that any project seeking expansion would have to conduct a public hearing. See Ministry of Environment and Forests, "Consideration of Projects under Clause 7(ii) of the EIA Notification, 2006 - Exemption of Public Hearing - Instructions Regarding", Office Memorandum, 24 August 2009, at http://www.moef.nic.in/divisions/iass/OM_consideration.pdf
92. Ministry of Environment and Forests, Letter granting environment clearance for Kusmunda OCP Expansion from 15 mtpa to 18.75 mtpa, No. J-11015/374/2013-IA.II(M), 19 February 2014, at http://environmentclearance.nic.in/writereaddata/Form-1A/EC/022120141KusmundaOCP_EC.pdf
93. Interview with Ritwick Dutta on 9 February 2016 over the phone.
94. Central Mine Planning and Design Institute Limited, "Application for Form-I and EIA/EMP for Peak Capacity of Existing Kusmunda Opencast Project", August 2013, pp. 12-14, at <http://environmentclearance.nic.in/writereaddata/EIA/111120121512131ec.pdf>
95. Interview with the Regional Officer, Chhattisgarh Environment Conservation Board, April 2014, Korba city.
96. Interview with Ramadhar Shrivastava, 25 April 2014, Pali village.
97. Ministry of Environment and Forests, "Diversion of forest land for non-forest purposes under the Forest Conservation Act, 1980- ensuring compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act) Act 2006", F.No.11-9/1998-FC (pt), 3 August 2009, at <http://www.moef.nic.in/divisions/forcon/3rdAugust2009.pdf>
98. Letters issued on 28 May 2011 and 8 February 2012. On file with Amnesty International India. See Annexure I, p.223 of the EIA report for the 15-18.75 MTPA expansion, at <http://environmentclearance.nic.in/writereaddata/EIA/111120121512131ec.pdf>
99. Copy of relevant pages of gram sabha meeting minutes on file with Amnesty International India.

PROPOSED FOUR-FOLD EXPANSION

In June 2014¹⁰⁰, just four months after the approval of the previous expansion, SECL applied again for an expansion – the biggest one yet. SECL proposed to expand production at the mine almost four-fold, from 18.75 mtpa to 62.5 mtpa¹⁰¹. This expansion would require the acquisition of over 1127 hectares of land in the villages of Khodri, Khairbawna, Amgaon, Churail and Gevra, displace thousands of families, and make Kusbunda the largest coal mine in India.



Protests at an environmental public hearing for the Kusbunda mine's expansion from 18.75 to 62.50 mtpa, Kusbunda Indira Stadium, Korba, February 2015. © Amnesty International India

EIA HEARING

As part of the environment clearance process for the expansion, the Chhattisgarh Environment Conservation Board (CECB) called for a public hearing on the expansion on 11 February 2015 in Korba.

The CECB is required to give due notice of the public hearing and advertise it widely (including by publishing newspaper notices and, where newspapers are not available, through radio/TV advertisements), and seek written responses from persons with a stake in the project's environmental aspects. Prior to the public hearing, the CECB and district authorities are required to publicise the project and the hearing and give local communities access to the draft and summary EIA reports.

The CECB did publish notices for the public hearing in local newspapers. However many members of local communities, including heads of village councils of Pali and Khodri villages, told Amnesty International India that this had been inadequate, and they had not received adequate prior information. They said there had been no other public advertisement of the date of the hearing, or any explanation of the project's potential impacts by project or government authorities.¹⁰³ The CECB did not respond to questions from Amnesty International India about whether they had taken any other steps to publicise the hearing.

Over 13,000 people live in the five affected villages of Khodri, Gevra, Amgaon, Khairbawna and Churail. Over a third of the residents, mostly women, are not formally literate.¹⁰⁴

Amnesty International India was present in the village of Khodri two days before the public hearing. At a focus group discussion involving 81 people from the five affected villages, not a single person knew where they could find the draft or summary EIA reports. People at the meeting said that they had only found out about the public hearing through a loudspeaker announcement that morning.

"SECL should present this before the public and first discuss the impacts with us, point by point before holding this kind of a hearing. How do we know what concerns to raise?" asked Ramesh Kumar Rathore, a lawyer from Gevra.¹⁰⁵

The draft Environmental Impact Assessment Report contained technical information which communities said was not explained to them.

The summary EIA report did not mention details about the Adivasi communities who could be affected by the expansion, and contained no details on impacts on health, data on health monitoring, and how damage from past evictions, pollution and poor waste management would be remediated. It also did not contain a cumulative impact assessment of pollution and impacts resulting from mining activities in the three large mines located close to each other in the vicinity: Gevra, Dipka and Kusbunda.¹⁰⁶

Laxmi Chauhan, a local environmental activist, said, "The EIA report prepared provides no information regarding the rehabilitation and resettlement of families living in Khodri, Churail, Khairbawna or Amgaon." He has filed a case in India's National Green Tribunal challenging the expansion of the Kusbunda mine.¹⁰⁷

According to MoEF regulations, public hearings must either be held at or near project sites. However, the public hearing on 11 February was conducted inside an SECL-owned sports stadium in Kusbunda, located between 5 and 12 kilometres away from many of the 17 affected villages. Residents of Khodri, Pali, Khairbawna and Amgaon villages requested a change in venue to facilitate access for communities and open expression of opinions.¹⁰⁸ However, district and state pollution control board authorities at the hearing said they had no power to take a decision on the venue and were only there to listen to people's views.

SECL's representative stated at the hearing that the stadium was chosen as a venue as it was close to Gevra, which had the most number of affected families.¹⁰⁹ A large number of security force personnel were present at the hearing, which locals and activists told Amnesty International India intimidated them from raising their concerns.

At the hearing, which was attended by Amnesty International India, SECL officials spent only a few minutes explaining the impact of the project. Authorities from the CECB and district administration did not clarify whether affected communities would be eligible for compensation and rehabilitation under the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013, which had recently been made applicable to cases of land acquired for coal mining by the state.¹¹⁰

Many people at the hearing berated officials for the pollution and environmental degradation they said they had to deal with,

due to the existing mining activity.¹¹¹ Concerns were raised regarding rehabilitation and resettlement, compensation and employment, the impact of the mine on air quality, groundwater levels and agricultural activities, and the lack of information about land acquisition.¹¹²

Mahesh Mahant, a resident of Khodri village, told Amnesty International India, "We've lived next to this mine for almost 30 years, and watched our wells go dry, forests disappear and fields become unproductive. What is the point of this environmental public hearing, except to tell us that we're not fit to live here anymore?"¹¹³

Of 38 people who spoke at the public hearing, only one spoke in favour of the expansion. He was a CIL employee.¹¹⁴

Subsequently, in July 2015, the Expert Appraisal Committee of the MoEF stated that no expansion beyond the sanctioned capacity would be permitted, "pending a policy decision in respect of violation of Environmental Laws, duly endorsed by the Court of Law and also till the infrastructure proposed is put in place".¹¹⁵ (The Committee was referring to the case pending in court regarding SECL having produced coal beyond its mandated capacity in 2008-09, in violation of the Air Act, Water Act and Environment Protection Act.)

SECL subsequently wrote to the MoEF eleven times in seven months about the environment clearance: on 18 August, 31 August, 5 October, 8 October, 19 October, 16 November, 1 December, 16 December, 23 December, 7 January 2016 and 29 January.¹¹⁶

On 3 February 2016, the Ministry of Environment reversed its earlier position. Although the conditions it had laid out in July 2015- which spoke of policy decisions endorsed by a court of law- had not been met, the Committee granted environmental clearance to SECL to expand capacity at the Kusmunda mine to 26 mtpa.¹¹⁷ The various concerns raised at the public hearing in February 2015 appear to have been given short shrift. The clearance perfunctorily referred to the fact that a public hearing had been held and listed the concerns raised, but did not discuss them any further. In April 2016, Amnesty International India asked the Ministry to explain the reasons behind its decision. No response was received. Laxmi Chauhan's case in the National Green Tribunal challenging the expansion is ongoing.

100. Ministry of Environment and Forests, Letter granting Terms of Reference for expansion of Kusmunda Opencast Project from 18.75 to 62.50 mtpa (peak), No. J-11015/176/2014-IA-II(M), 1 December 2014, at <http://environmentclearance.nic.in/writereaddata/Form-1A/TOR/120120141KusmundaTOR.pdf>
101. South Eastern Coalfields Limited, "Executive Summary for Environmental Impact Assessment of Proposed Kusmunda Open Cast Expansion Project", at <http://www.enviscecb.org/205/KUSMUNDA%20%28ENGLISH%29.pdf>
102. Ministry of Environment and Forests, "Point-wise reply of Additional Information Sought from Kusmunda Area by EAC for further consideration of Kusmunda Expansion Project 50 mty", at http://environmentclearance.nic.in/writereaddata/Online/EDS/0_0_11_Jul_2015_1352159671EACPOINTSGBKSMAREA_edited-02072015.pdf
103. South Eastern Coalfields Limited, "Executive Summary for Environmental Impact Assessment of Proposed Kusmunda Open Cast Expansion Project", at <http://www.enviscecb.org/205/KUSMUNDA%20%28ENGLISH%29.pdf>
104. Census of India, 2011. See details for Khodri: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=449563>; Gevra: 11,851 residents as per 2014 electoral rolls. Amgaon: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=449571>; Khairbawna: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=456729>; Churail: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=449565>
105. Interview with Ramesh Kumar Rathore, 9 February 2015, Khodri village.
106. South Eastern Coalfields Limited, "Executive Summary for Environmental Impact Assessment of Proposed Kusmunda Open Cast Expansion Project", at <http://www.enviscecb.org/205/KUSMUNDA%20%28ENGLISH%29.pdf>
107. Testimony by Laxmi Chauhan at the public hearing, Kusmunda Stadium, 11 February 2015. National Green Tribunal, Central Zone, Appeal No. 07/2016 (CZ), *Laxmi Chauhan Vs. Union of India & 2 Ors.*, M.A. No. 357/206 & M.A. No. 358/2016.
108. Letters and resolutions by village councils, available on file with Amnesty International India.
109. Chhattisgarh Environment Conservation Board, Proceedings of public hearing for expansion of Kusmunda Opencast Mine project to 62.50 mtpa, pp. 32, 34, at: <http://www.enviscecb.org/205/Proceedings.pdf>
110. Chhattisgarh Environment Conservation Board, Proceedings of public hearing for expansion of Kusmunda Opencast Mine project to 62.50 mtpa, pp. 32, 34, at: <http://www.enviscecb.org/205/Proceedings.pdf>
111. Rohini Mohan, "Why Do They Protest Being Looted When It's For Their Own Good?", *Yahoo*, 3 March 2015, at <https://in.news.yahoo.com/why-do-they-protest-being-looted-when-it-s-for-their-own-good-100859341.html>
112. Chhattisgarh Environment Conservation Board, Proceedings of public hearing for expansion of Kusmunda Opencast Mine project to 62.50 mtpa, pp. 32, 34, at: <http://www.enviscecb.org/205/Proceedings.pdf>. See also Ministry of Environment and Forests, "Point-wise reply of Additional Information Sought from Kusmunda Area by EAC for further consideration of Kusmunda Expansion Project 50 mty", at http://environmentclearance.nic.in/writereaddata/Online/EDS/0_0_11_Jul_2015_1352159671EACPOINTSGBKSMAREA_edited-02072015.pdf
113. Interview with Mahesh Mahant, 9 February 2015, Khodri village.
114. R Krishna Das, "Villagers say 'no' to Coal India's Chhattisgarh plan", *Business Standard*, 12 February 2015, at http://www.business-standard.com/article/companies/coal-india-denies-job-to-girls-community-says-no-to-its-chhattisgarh-expansion-plan-115021101247_1.html
115. Ministry of Environment, Forests and Climate Change, "Minutes of the 39th Expert Appraisal Committee (Thermal and Coal Mining Projects) Meeting", July 2015, at http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/0_0_8117122612171MOMof39thEAC_Coalheldon16th-17thJuly,2015.pdf
116. Ministry of Environment, Forests and Climate Change, Letter granting environment clearance for expansion of Kusmunda Opencast Coal Mine Project Expansion from 18.75 to 26 mtpa, No. J-11015/176/2014-IA-II(M), 3 February 2016, at <http://environmentclearance.nic.in/writereaddata/Form-1A/EC/020320161LetterofKusmundaOC.PDF>
117. Ministry of Environment, Forests and Climate Change, Letter granting environment clearance for expansion of Kusmunda Opencast Coal Mine Project Expansion from 18.75 to 26 mtpa, No. J-11015/176/2014-IA-II(M), 3 February 2016, at <http://environmentclearance.nic.in/writereaddata/Form-1A/EC/020320161LetterofKusmundaOC.PDF>

CBA CONSULTATION

The expansion of the mine also involves additional acquisition of land in the same villages. According to the project EIA, the expansion of the mine to 62.5 mtpa would involve the acquisition of additional land in the five villages of Amgaon, Churail, Khodri, Khairbawna and Gevra. Over 13,000 people live in these villages.

On 24 May 2014, the Ministry of Coal published a notification under the CBA Act in the official government gazette about its intention to prospect for coal in these villages (the step prior to acquiring land).¹¹⁸ A village council leader told Amnesty International India that they had only heard about this notification through word of mouth, and this notice had not been publicised. They objected to this in a written complaint to SECL's headquarters ten days after and to the Coal Controller's office in Kolkata but said they received no response to date.¹¹⁹

Five months later, on 20 July, the Ministry of Coal published another notification in the official government gazette declaring its intention to acquire 1051 hectares of land, including the entire villages of Amgaon, Churail, Khodri, and Khairbawna and part of Gevra.¹²⁰ The notification stated that nearly 3300 plots of land would be acquired. It did not mention the impact on landless labourers.

The government invited objections to be submitted within 30 days by those who were entitled to claim compensation if the land was acquired. Adivasi communities in the five affected villages who stand to lose their homes and agricultural fields said they have not received any information about the rehabilitation and resettlement they would be entitled to.

In a focus group discussion with over 80 affected people in these villages in February 2015, many villagers said that they had little idea about what land acquisition in the area would involve, or what they could do.

Vidya Vinod Mahant from Amgaon village said, "The acquisition notice was pasted on the wall of the office of the panchayat (village council). How do we object to this?" Ramesh Mahant from Khodri village, said, "There is a law that says we are supposed to get four times the value of our land (a reference to the 2013 Land Acquisition Act). If this is being applied for private companies, is it not applicable to SECL?"¹²²

The Ministry of Coal has not yet issued any notification about whether the acquisition of land in the five affected villages has been completed.

PESA AND FRA GRAM SABHAS

No gram sabhas under the PESA Act have been conducted in the affected villages as part of the expansion.

In March 2014, the state revenue department wrote to the District Collector of Korba, emphasizing that the PESA had to be followed in cases of land acquisition in Scheduled Areas.¹²³ However many members of Adivasi communities in the villages of Pali, Padaniya, Sonpuri, Khodri, Jatraj, Amgaon, Gevra and Barpali confirmed to Amnesty International India that no gram sabhas had been conducted as part of the expansion to 62.5 mtpa (or for the earlier phases of expansion as well).

Interviews with local officials, and SECL's own stand in official records, show that the company does not think it is required to consult communities under these laws under the PESA Act.

Proof of this lies in SECL's formal reply to a committee under the MoEF, when asked to respond to issues raised in the February 2015 public hearing. One of the concerns raised was: "As per Schedule 5, PESA Act and FRA is applicable. Under PESA Act, Gram Sabhas should be consulted but no such Gram Sabhas had been arranged by SECL Management."

SECL's response was: "PESA act is not applicable for the land acquired under CBA Act (A&D), 1957."¹²⁴ (SECL has also taken this position officially in court).

Under the FRA, the consent of Adivasi communities must be obtained before forest land can be diverted for industry.

On 13 January 2016, the office of SECL's General Manager in Kusmunda wrote to the District Collector of Korba, stating that gram sabha resolutions for the diversion of 142 hectares of forest land in the villages of Sonpuri, Pali, Padaniya and Khodri were pending.¹²⁵

Subsequently, on 8 February 2016, the Block Development Officer of Katghora issued a notice for the conduct of three separate gram sabhas on 16 February to seek gram sabha consent for diversion of forest land for the expansion of the Kusmunda mine.¹²⁶ The three gram sabhas were to be held in Pali (covering both Pali and Sonpuri- even as Sonpuri has a significantly large population), Padaniya, and Khodri villages.

Government officials claim that three gram sabhas were accordingly conducted on 16 February. However village council heads, activists, media persons and local villagers told Amnesty International India that the three gram sabhas did not meet important requirements, and two of them were invalid.¹²⁷ The Ministry of Tribal Affairs has said that gram sabha decisions on consenting to diversion of forestland require a quorum of at least 50 per cent. It has also clarified that the procedure of seeking consent must involve the provision of information, and gram sabha meetings have to be recorded on video.

Villagers in Pali, including the head of the village council and her son who was present at the hearing, said that the gram sabha in Pali had only 42 attendees, when the quorum should have been about 400 each for Pali and Sonpuri.¹²⁸ They said that many villagers did not know of the gram sabha, and some who knew chose not to attend because they were opposed to the diversion of the forest land. Eight villagers who attended the gram sabha said that it had not been recorded on video and that they had not received any details about how the diversion of the forest land would affect them.¹²⁹

Activists, media persons and six villagers from Padaniya, including the head of the village council, told Amnesty International India that the gram sabha in Padaniya had been called off following opposition from the villagers who had attended, and nobody had consented to the diversion of forest land. The gram sabha had not been recorded on video.¹³⁰

In Khodri village, the gram sabha recorded its consent to the diversion of forest land. However, the head of the village council and her husband who attended the gram sabha said that it had not been recorded on video.¹³¹



A meeting of villagers in Khodri two days before the public hearing for the four-fold expansion, February 2015. © Amnesty International India

When Amnesty International India spoke to the Deputy Collector of Korba¹³², he said that all three gram sabhas had been conducted successfully and that people who attended them had given their consent to the diversion of forest land. However he said that he did not have any copies of the gram sabha resolutions. The Korba Sub-Divisional Magistrate, who attended all three gram sabhas, claimed to not know the outcome of the meetings. He said that local authorities did not have adequate financial resources to record all gram sabhas on video.¹³³

The Ministry of Tribal Affairs had clarified in 2013 that the Forest Rights Act applied to municipal areas as well, and 'mohalla sabhas' (neighbourhood assemblies) would play the role that gram sabhas played in initiating, considering and

approving the process of recognizing forest rights under the Act.¹³⁴ On 8 February 2016, the Municipal Corporation of Korba wrote to the Korba District Collector, stating that it was giving its consent under the Forest Rights Act to divert 304 hectares of forest land in eight villages, which fell within the municipality, for the expansion of the mine.

However, an official at the Korba Municipal Corporation and two different ward councillors told Amnesty International India that the Corporation had not consulted neighborhood assemblies and sought their consent for the use of forest land that fell within the municipality.¹³⁵

SECL has still not obtained a forest clearance for the expansion or for any part of the mine on which it has diverted forest land.

118. Ministry of Coal, S.O. 1524, Gazette of India, part II, Section 3, Sub-section (ii), 24 May 2014, available on file with Amnesty International India.

119. Interview with Pratap Singh Kavar, March 2016, Khodri village.

120. Ministry of Coal, Gazette of India, part II, Section 3, Sub-section (ii), 20 July 2015, at <http://www.egazette.nic.in/WriteReadData/2015/165111.pdf>

121. Ministry of Coal, Notification under Section 4(1) of the Coal Bearing Areas Act 1957, 13 May 2014, available on file with Amnesty International India.

122. Interview with Vidya Vinod Mahant, 9 February 2015, Khodri village.

123. Government of Chhattisgarh, Letter from KC Varma, Under-Secretary, Revenue and Disaster Management Department to District Collector Korba, 28 March 2014, available on file with Amnesty International India.

124. Ministry of Environment and Forests, "Point-wise reply of Additional Information Sought from Kusmunda Area by EAC for further consideration of Kusmunda Expansion Project 50 mty", p.55, at http://environmentclearance.nic.in/writereaddata/Online/EDS/0_0_11_Jul_2015_1352159671EACPOINTSBUYKSMAREA_edited-02072015.pdf

125. Office of the General Manager, South Eastern Coalfields Ltd., Kusmunda Area, Letter to the Collector of Korba, 13 January 2016, available on file with Amnesty International India.

126. Letter issued by the Block Development Officer, Katghora to the Chief Executive Officer, District Panchayat Office, 8 February 2016, available on file with Amnesty International India.

127. Interviews with village council heads- Khodri, Pali- and local activists, media persons, 15 and 17 March 2016 and 26 June 2016, Khodri, Pali and Padaniya villages and Korba city.

128. Interviews with Kamlabai and Inderpal Singh, 15 March 2016, Pali village.

129. Interviews with residents, 15 and 17 March 2016, Pali village.

130. Interviews with residents, 15 and 17 March 2016, Padaniya village.

131. Interview with the village council head and other residents, 17 March 2016, Khodri village.

132. Interview with Deputy Collector, Korba, 18 March 2016, Korba.

133. Interview with Sub-Divisional magistrate, 17 March 2016, Katghora block office.

134. Ministry of Tribal Affairs, Letter to all Principal Secretaries/Secretaries/Commissioners of the States/Union Territories on applicability of Forest Rights Act in Municipal Areas, F. No. 19020/02/2012-FRA, 29 April 2013, at <http://tribal.nic.in/WriteReadData/CMS/Documents/201306070306589009071LetterMunicipalareas.pdf>

135. Municipal Corporation of Korba, Letter to the District Collector of Korba, 8 February 2016, available on file with Amnesty International India. The officials did not want to be named. Telephonic interview on 20 May, 2016.

FORCED EVICTIONS IN BARKUTA

Barkuta is a village on the northern edge of the Kusmunda mine. The central government acquired land here in 1979 and transferred the rights over its usage to SECL. Even after the acquisition, though, the government did not actively seek to use the land for several years, or seek to evict the families.

SECL began to pay compensation to families well over a decade and a half later- in 1994 for their houses and other assets- and in 1996 for their land. Residents said that SECL had promised each affected family a job. Itawar Singh, an 87 year-old Kavar Adivasi man, said, "SECL officials, the patwari (land record officer), and the Sub-Divisional Magistrate came here in 1994 and said that everyone would receive jobs."¹³⁶ Avdhabai, a 40-year-old Kavar Adivasi woman, said, "SECL officials told us in 1994 that five people would receive jobs from our family."¹³⁷

The compensation formally consisted of a one-time lump sum cash payment, a plot of land in a rehabilitation colony 6 kilometres away, and employment at SECL for one male member of certain eligible families, under the provisions of the then-Madhya Pradesh Rehabilitation and Resettlement Policy.¹³⁸

Many families in Barkuta left for other villages or the rehabilitation colony. But over 35 households stayed. Some were still fighting to obtain the jobs they said SECL had promised them. Nirupabai, an Adivasi woman from Barkuta, said she had travelled to the SECL headquarters on several occasions seeking employment, but to no avail. "Daughters should donate their land, this is what I was told," she said.¹³⁹

SECL has acknowledged that it does not offer jobs to women from families displaced by the Kusmunda mine. As explanation, it has said: "Employment is provided to project affected persons as per vacancy exist in the company. Presently major vacancy in the company is in underground mines, as per Mines Act, 1952. Women cannot be deployed in underground mines. Hence no employment is being given to women [project affected persons] ." ^{140 141}

Shivram Singh, a 42-year-old Kavar adivasi man, told Amnesty International India, "If we had got our jobs, we would have shifted to the rehabilitation colony in Vaishali Nagar. But until then, we had to live here, close to our fields."¹⁴²

Kamlabai, the head of the Pali village council, said, "The jobs that people in Barkuta were promised 20 years ago by state and SECL officials, they have still not got. These are not paltry figures of land- this is for 5, 10, 15 acres of productive land, on which we get a return every year. What is the kind of future that SECL can assure us of? And how do they expect us to be content?"

Others in Barkuta stayed because they were unhappy with the conditions in the rehabilitation colony. Since the rehabilitation colonies fall under land acquired under the Coal Bearing Areas Act, the rehabilitated families receive no formal titles or proofs of residence, and are unable to buy or sell their plots, or use them as collateral for loans or as proof of residence for official purposes. The rehabilitation plots do not include agricultural fields.

However those who stayed in Barkuta could also not lease or sell their land there, since it had been acquired by SECL. Vishnu Prasad Tiwari, a Dalit man, said, "We are poor people, for us land is everything. Before, if we needed to send our children to college, get them married, we could sell a piece of our land. But since 1979, everything is acquired. Even the rehabilitation colony in Khamariya is acquired. What do we do in case of an emergency? How do we say this land is ours?"

According to SECL, 187 families lost their land during the acquisition. The company gave 45 people jobs, and five people cash compensation in lieu of employment.¹⁴³ The company claims that Barkuta "has already been rehabilitated".¹⁴⁴

On 21 March 2013, the Deputy Collector of Korba – a senior official in the district administration – wrote to the families still living in Barkuta, asking them to demolish their homes within five days, by 26 March, in the 'national interest'.¹⁴⁵ The letter offered villagers a 'final opportunity' to present any objections they had at a hearing at the district office in Korba on 26 March. The villagers met the official the next day and asked for their lands not to be acquired until they were fully rehabilitated and given jobs that they were promised by SECL. According to six villagers who were in the meeting with the officials, and who later who spoke to Amnesty International India, they did not receive any assurances that their demands would be met.

In early July 2013, another authority – the block development officer – issued a notice and invited villagers to present their views on the evictions. Nirupabai, who attended the meeting along with thirty other residents of Barkuta, said, "We asked for more time, since it was the monsoon and our crops were being sown. But we also told them that we did not want to move until we were fully rehabilitated."¹⁴⁶ The evictions did not take place.

Later in July, the residents of Barkuta wrote to the magistrate, saying that their water and electricity connections had been disconnected for the last five months by SECL management, as, they believed, a tactic to force them out of their homes.¹⁴⁷

"They think that by making us uncomfortable, we will run away from the village and give up our claims for employment, for which we have been running around in circles for the last 16-17 years. Because of this action, we don't have water to wash, to drink, to cook and are facing infinite difficulties as a result," said the letter. They received no response to their complaint.

On 20 December 2013, the General Manager, Kusmunda Area, SECL issued a notice to the residents of Barkuta telling them to demolish their homes within seven days.¹⁴⁸ The notice referred to the letters written in March and July, and said that compensation and rehabilitation for the land acquisition had already taken place, and previous requests for postponement of evictions had been granted. However it did not include any information about the date or time during which evictions would be carried out.

Two months passed, and then, without any warning, at about 9.30 am on February 2014, the bulldozers arrived.

29-year-old Radhabai Kavar, an Adivasi woman, told Amnesty International India: "I was inside my house, when I heard an announcement on a loudspeaker. They had a bulldozer, and were asking people to immediately get out of their homes. Then

they started tearing down the houses.”¹⁴⁹

According to the villagers, police personnel and senior district administration officials, including the Sub-divisional Magistrate, were present at the evictions.

Nirupabai, a Kavar adivasi woman from Barkuta said, “Many of us had left for work. When I heard that they had started to demolish the houses, I ran back home. But by the time I arrived, my house had been destroyed. I had 100 quintals of grain, corn, clothes, and vessels inside. I tried to gather my belongings, but the police made me sit inside their van.”¹⁵⁰

Over the day, authorities demolished 17 houses and a school in Barkuta. Eleven people who protested against the evictions were rounded up into a police van. They were released later in the evening, after the demolition had ended. No charges were filed.

40-year old Avdhabai, another Adivasi woman, said: “My daughter-in-law and I were both at home. They didn’t give us any time to remove our belongings and broke down our house.” Swaraj Bai, an Adivasi woman, said, “The police pulled us out of our homes, without giving us time to move our belongings. Pulses, rice, everything was destroyed.”¹⁵¹

No legal remedies were made available to those who were evicted. Several families lived with relations in neighbouring villages, while others rebuilt their shelters from rubble and materials from their own homes.

“Our belongings were crushed inside our homes,” said Nirupabai. “We had to buy everything again. Neither the police nor the company officials came by to ask us how we were living.”¹⁵² Nirupabai now lives in the village of Pali.

At least four families from Barkuta that Amnesty International spoke to in April 2014 had moved to the neighbouring village of Padaniya after the evictions. Many were building their homes from bricks that they were forging themselves, in kilns fuelled by coal scavenged from the Kusmunda mine. When

Amnesty International India last visited Barkuta in June 2016, there were still a few families living in the village. Most other families had shifted to Pali, Sonpuri and Padaniya, which SECL has said are next in line to be evacuated for the mine’s expansion in 2017-18.

The evictions in Barkuta, which were carried out without adequate notice and a near-total absence of proper consultation, amount to forced evictions, are prohibited under international law (see box on forced evictions). The families living in Barkuta were not meaningfully consulted about their evictions, compensation or resettlement. They were also not given adequate notice about the demolition of houses, and few had enough time to salvage their belongings.

Thousands of other people in villages near Kusmunda have also not been meaningfully consulted on the acquisition of their land. Their rights as indigenous peoples to free, prior and informed consent before any kind of relocation from their land continue to be at risk.



A man displaced by forced evictions in Barkuta village outside his makeshift home, April 2014. © Amnesty International India

136. Interview with Itawar Singh, 31 January 2014, Barkuta village

137. Interview with Avdhabai, 20 April 2014, Barkuta village.

138. Compensation records available on file with Amnesty International India.

139. Interview with Nirupabai, 19 April 2014, Barkuta village.

140. Ministry of Environment and Forests, “Point-wise reply of Additional Information Sought from Kusmunda Area by EAC for further consideration of Kusmunda Expansion Project 50 mty”, at http://environmentclearance.nic.in/writereaddata/Online/EDS/0_0_11_Jul_2015_1352159671EACPOINTSBUYKSMAREA_edited-02072015.pdf

141. See p.48 for more details on CIL’s employment policies towards women displaced by its mines.

142. Interview with Ram Singh, 21 April 2014, Padaniya village.

143. Ministry of Environment and Forests, “Point-wise reply of Additional Information Sought from Kusmunda Area by EAC for further consideration of Kusmunda Expansion Project 50 mty”, p.46, at http://environmentclearance.nic.in/writereaddata/Online/EDS/0_0_11_Jul_2015_1352159671EACPOINTSBUYKSMAREA_edited-02072015.pdf

144. Ministry of Environment and Forests, “Point-wise reply of Additional Information Sought from Kusmunda Area by EAC for further consideration of Kusmunda Expansion Project 50 mty”, p.53, at http://environmentclearance.nic.in/writereaddata/Online/EDS/0_0_11_Jul_2015_1352159671EACPOINTSBUYKSMAREA_edited-02072015.pdf

145. Officer of the Collector and District Magistrate, Korba, Chhattisgarh, Letter from the Deputy Collector to Barkuta resident, 21 March 2013, available on file with Amnesty International India

146. Interview with Nirupabai, 19 April 2014, Barkuta village.

147. Letter from Barkuta residents to the Sub-divisional Magistrate, July 2013, available on file with Amnesty International India.

148. Notice from the General Manager’s Office, Kusmunda Area, SECL, to Barkuta resident, 20 December 2013, available on file with Amnesty International India.

149. Interview with Radhabai Kavar, 20 April 2014, Barkuta village.

150. Letter from Nirupabai to the District Collector of Korba, 15 February 2014, available on file with Amnesty International India.

151. Interview with Avdha Bai, 20 April 2014, Barkuta village.

152. Interview with Nirupabai, 19 April 2014, Barkuta village.

ENVIRONMENTAL IMPACT ASSESSMENTS

Authorities are not required to carry out, and have not conducted, any sort of meaningful human rights impact assessment at any stage of expansion of the Kusbunda mine.

The Adivasi communities who are likely to be displaced by the expansion are not named in the EIA reports for the two expansions and there is no detailed disaggregation of data that looks at gender and caste-based impacts, as well as impacts on the landless and those without titles.¹⁵³ There is no reference to the fact that the mine exists in a constitutionally-protected Fifth Schedule district.

Every person interviewed in the villages of Barkuta, Pali, Padaniya, Barpali or Padaniya said they were neither consulted nor interviewed as part of the impact assessment process. The EIA also does not analyze the ways in which these communities currently use water, wood and other natural resources, or how they grow crops and their traditional land usage, and how these could be affected by the mining project.

It does not consider the damage that is likely to be caused to traditional and existing livelihoods and the impact any such effects could have on the culture of the Adivasi communities. It also fails to analyse or consider the impact of the influx of outsiders and machinery from the existing mine or its proposed expansion, or other arrangements that will accompany the mining, on communities living close to the mine site.

An independent evaluation of the EIA by the Environmental Law Alliance Worldwide – an alliance of scientists, lawyers and activists – found it deficient in several respects, including details of resettlement and rehabilitation.¹⁵⁴

The study states that the EIA omitted discussion of: how average pollutant levels in the study area exceeded long-term air quality standards established by the MoEF, and how daily pollutant levels in the study area exceeded short-term air quality guidelines of the World Health Organisation (WHO).

"If the baseline data were compared to WHO guideline values, ambient air quality would be considered to be very impaired," it said. The study also highlighted that the EIA had no information with respect to the rehabilitation and resettlement of persons residing in Amgaon, Churail, Khodri, Khairbhawna and Gevra. "The EIA provides no information for persons residing in these villages to ascertain their fate, should the project be granted clearance."



Pipes carrying slurry mixed with fly ash from Korba's thermal power plants criss-cross the landscape. The plants draw coal from SECL's mines, April 2014. © Amnesty International India

153. Central Mine Planning and Design Institute Limited, "Application for Form-I and EIA/EMP for Peak Capacity of Existing Kusbunda Opencast Project", August 2013, pp. 12-14, at <http://environmentclearance.nic.in/writereaddata/EIA/111120121512131ec.pdf>. Central Mine Planning and Design Institute Limited, EIA/EMP for Kusbunda OCP Expansion to 62.5 mtpa, at <http://environmentclearance.nic.in/writereaddata/EIA/260520155TVKBT7PKSMEIAEMP.pdf>

154. Analysis by eLAW's Mark Chernaik available on file with Amnesty International India.

CIL has its own rehabilitation policy, which apply to all its subsidiaries (although they are authorized to modify the policy as appropriate). CIL's existing policy has been in force since 2012. It states that it intends *"to ensure a humane, participatory, informed, consultative and transparent process for land acquisition and allied activities with the least disturbance to the owners of the land and other affected families."*¹⁵⁵

Consultation, Consent and Social Impact Assessment

CIL's 2012 R&R policy does not include any scope for seeking the free, prior and informed consent of Adivasi communities. The policy includes a provision for the formation of a *"Rehabilitation and Resettlement Committee"* at the project-level, under the chairmanship of the District Collector, which is responsible for consulting village leaders and NGOs in finalising rehabilitation action plans. One of the requirements is that this Committee *"approves the Rehabilitation Plan for the project in consultation with the displaced persons and gram sabhas."*¹⁵⁶

The policy states that a socio-economic survey must be carried out within two months of the declaration of CIL's intention to acquire land.¹⁵⁷ But this again does not envisage any consultation on the land acquisition, or towards determining rehabilitation and resettlement, or developing alternatives or mitigation plans.

Employment

The 2012 policy states that CIL may also offer permanent jobs with the company as part of its rehabilitation benefits; many affected families say is the most important benefit of all. CIL can offer one job to families who have lost at least two acres of land, *"subject to availability of vacancy and suitability of the candidate in the descending order of land lost."*¹⁵⁸ The policy does allow families to consolidate their land-holdings in order to qualify for employment.

There are no provisions for fixed employment to be given to the landless, or those dependent upon forest or traditional lands for their livelihoods.¹⁵⁹ People in these categories will only receive assistance in *"non-farm self employment"*.

In 2008, a parliamentary standing committee which examined CIL's 2008 rehabilitation policy had observed that since the provision of jobs was not guaranteed, *"the assurance of employment is often found as a lip-service rather than any serious efforts to achieve it"*.¹⁶⁰ It recommended that CIL provide employment mandatorily within a reasonable time. However the recommendation was not implemented in the 2012 policy.

The Mines Act¹⁶¹ prohibits women from working in underground mines, but allows women to be employed otherwise between 6 am and 7 pm.

In 2005, a young Rathia Adivasi woman named Rathobai applied for employment with SECL after her family's land was acquired for mining by the company for the expansion of the Chhal Opencast Mine. She was denied employment by SECL under its 'Uniform Guideline for employment to Land Losers' of 2002, which prohibited the employment of women in the company who had been displaced due to land acquisition. Rathobai filed a petition before the Chhattisgarh High Court, which ruled in July 2015 that women displaced by land acquisition were also eligible to receive employment as rehabilitation.¹⁶²

Compensation

CIL's 2012 rehabilitation policy provides for compensation for land either at a rate notified by the concerned state government, or when there is no such policy equivalent, at a rate determined by the CIL subsidiary, depending on the nature and productivity of land.¹⁶³

The policy provides for one-time monetary compensation in place of an alternate house site (INR 300,000) for people whose homesteads are acquired. It also allows for compensation in place of fixed employment (INR 500,000 per acre of land acquired). It states that affected tribal families will be given one-time financial assistance for the loss of customary rights or usage of forest produce.¹⁶⁴

Rehabilitation

The policy states that the subsidiary must provide a resettlement site, with infrastructural amenities such as a school, roads with street lights, drains, ponds, dugwells or tubewells to provide drinking water, a community centre and place of worship, along with a dispensary, grazing land and a playground. CIL's 2008 rehabilitation policy specified the size of the rehabilitation plot that land oustees are entitled to (a 100 sq. m alternate house site). However the 2012 policy provides no specific details on rehabilitation, or whether titles will be granted for these plots of land. It states that planning of community facilities and their construction resettlement sites should be *"undertaken in consultation with the affected community."*¹⁶⁵

155. Coal India Limited, "Rehabilitation and Resettlement Policy of Coal India Limited 2012", at https://www.coalindia.in/DesktopModules/DocumentList/documents/CIL_RR_2012_100412.pdf

156. Section 9 of CIL's rehabilitation and Resettlement Policy, 2012.

157. Section 5 of CIL's rehabilitation and Resettlement Policy, 2012.

158. Standing Committee on Coal and Steel, Ministry of Coal, "Rehabilitation and Resettlement by Coal India Limited", October 2008, at <http://www.indiaenvironmentportal.org.in/files/coal-steel.pdf>

159. Standing Committee on Coal and Steel, Ministry of Coal, "Rehabilitation and Resettlement by Coal India Limited", October 2008, p.16, at <http://www.indiaenvironmentportal.org.in/files/coal-steel.pdf>

160. Chhattisgarh High Court, *Ratthobai and Chamrin Bai v. South Eastern Coalfields Limited*, decided on 23 July 2015. WPS No. 432 of 2011

161. Section 46 of The Mines Act, at <http://indiankanon.org/doc/103934/>

162. Chhattisgarh High Court, *Ratthobai v. South Eastern Coalfield Limited*, decided on 23 July 2015. WPS No. 432 of 2011, available at [http://cg.nic.in/hcbpsjudgement/judgements_web/WP\(S\)432_11\(23.07.15\).pdf](http://cg.nic.in/hcbpsjudgement/judgements_web/WP(S)432_11(23.07.15).pdf)

163. Section 8.1 of CIL's rehabilitation and Resettlement Policy, 2012

164. Section 8.1 of CIL's rehabilitation and Resettlement Policy, 2012.

165. Section 10 of CIL's rehabilitation and Resettlement Policy, 2012.

TETARIAKHAR MINE



Central Coalfields Limited's Tetariakhar opencast mine and Basiya village that lies above it, July 2014. © Amnesty International India



LATEHAR,
JHARKHAND



Operated by
Central Coalfields
Limited (CCL)



Current expansion – 0.50 to 2.50 mtpa.



45%
of Latehar's population are
members of Scheduled Tribes.



Over 6400 people live in these villages,
of whom over half are not formally literate.

THE SCALE OF IMPACT

Vulnerable
communities that
are affected:



Oraon,
Turi, Ganjhu.

How much land has
been acquired:



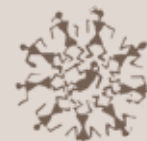
131 hectares.
Expansion includes
the acquisition of
172 hectares of
land.

How much forest
land acquired:



Status of 52 hectares
of land required for the
mine expansion is under
dispute.

At risk of
displacement:



6400 people



Satellite map of
Tetariakhar Open Cast
Mine.

Source: Google Earth.

The name of the mine
originates from the
words in Oraon for
jungle fowl (*tetaria*)
and forest (*khar*).
Communities in certain
affected villages where
land was acquired in
1962 have not yet
been compensated.

TETARIAKHAR, JHARKHAND

The Tetariakhar mine is located in Latehar district in Jharkhand – the state with India's largest coal reserves¹⁶⁶ and the second highest proportion of Scheduled Tribes (26 per cent).¹⁶⁷ Latehar is a protected Scheduled Area, about 100 kilometres from the state capital of Ranchi. Over 45 per cent of Latehar's population are members of Scheduled Tribes.¹⁶⁸ Latehar has been particularly affected in recent years by violence between security forces, Maoist armed groups and other armed vigilante groups.

Tetariakhar is one of eight coal blocks in Latehar, and one of its two functional mines. It is operated by Central Coalfields Limited (CCL), one of CIL's subsidiaries in Jharkhand. Its name originates from the words in the Oraon language for jungle fowl (*tetaria*) and forest (*khar*).

The central government first acquired land in five villages in the region under the Coal-bearing Areas Act in October 1962, but mining officially began only in 1992.¹⁶⁹ The Tetariakhar mine lease covers an area of 131 hectares, including parts of the villages of Basiya (which includes the hamlet of Tetariakhar), Nagara, Jala and Pindarkom. The communities in these villages include Oraon Adivasis, who have depended on the forests for generations for food, fuel, medicine and building materials. Over 6400 people live in these villages, of whom over half are not formally literate.¹⁷⁰

In 2008, CCL wrote to the MoEF asking for permission to expand the capacity of the mine from 0.5 mtpa to 2.5 mtpa. The expansion would require the acquisition of 172 hectares of land.¹⁷¹ This section examines how authorities in Jharkhand have since violated requirements for meaningful consultation and consent under domestic and international law and standards.

EIA HEARING

As part of the environment clearance process, the Jharkhand State Pollution Control Board (JSPCB) called for a public hearing on the mine's expansion on 17 April 2012 in Balumath, about seven kilometres from Basiya and Nagara (the location was suggested by the MoEF, in light of the fact that the area was 'infested with Naxalite problem').¹⁷²

The JSPCB published notices of the public hearing in English and Hindi newspapers a month in advance. However, none of these newspapers are available in the villages of Nagara or Basiya, two of the main affected villages.¹⁷³ EIA regulations state that in areas which newspapers do not reach, pollution control authorities are required to use other means such as "beating of drums" and radio/television advertisements.¹⁷⁴ Over 150 people to whom Amnesty International India spoke, including the village heads in Basiya and Jala, across the four villages however said that they had seen no publicity about the public hearing and they had had no prior knowledge about it.¹⁷⁵

"If it happened that recently, I wouldn't have forgotten it," said Saritabai, the head of the Basiya village council. "No, if they had called us for the hearing, then we would have gone for it. We get letters for all other meetings and attend them. We received no letters or documents that you are talking about, and so we didn't reach there."¹⁷⁶

The Member Secretary of the Jharkhand State Pollution Control Board did not appear to know about this particular hearing, but told Amnesty International in an interview that the onus of publicizing any hearing was on CCL (although under the EIA public hearing rules, publicity is the responsibility of the Pollution Control Board and district authorities.)¹⁷⁷



The village of Tetariakhar, as seen from Basiya village that lies across it. The village is now part of the mine, July 2014. © Amnesty International India

Lala Uraon, Saritabai's husband, was one of the few who attended the hearing, and only by chance. He said, "We had gone to the block office at Balumath for some other official work and got to hear about the hearing. We reached there after the proceedings began. From what we heard, we had no idea that this was a public hearing on pollution."

Surendra Dhale, an activist from Latehar, who also attended the hearing, said, "I got to know about it only because someone from the head office of the NGO I work with read the notice in a newspaper in Ranchi. There was not even a banner outside."¹⁷⁸

CCL in its EIA report from June 2012 states that 150 people attended the public hearing, and 200 people who attended were from the mine lease area (possibly a typographical error). While the minutes of the public hearing are not publicly available, the EIA report includes a summary of the hearing.¹⁷⁹ This summary mentions the opinions of only seven people.¹⁸⁰ Of these, three were from Nagara and one from Pindarkom. Not a single person who spoke was from Basiya or Jala, according to this record.

One of the speakers was Bihari Prasad Yadav, a former landlord, who told Amnesty International India that he had been personally told to attend the hearing by the CCL officials. He said, "The CCL Project Officer called us 2-3 hours before the meeting. There were only 20-25 people present in total at the hearing."¹⁸¹

The EIA states that the issues raised at the hearing include dust pollution from the mines and from coal transportation, the lack of medical and health facilities, falling water levels, provision of jobs to local people, the lack of a proper road, and a request to not shift the overburden dump into the village of Nagara.¹⁸²

On 2 August 2012, the MoEF's Expert Appraisal Committee wrote that "most of the Public Hearing issues have not been addressed properly", and asked CCL to list the issues raised in a table.¹⁸³ In November 2012, the Committee noted, "The proponent assured to take necessary action on the issues raised during public hearing."¹⁸⁴

This cursory examination seemed to have satisfied the committee. On 7 May 2013, the MoEF granted environment clearance for the expansion.¹⁸⁵ The only mention made of the public hearing was one line, which said: "The Public Hearing was held on 17.04.2012."¹⁸⁶

While it is clear that the Expert Appraisal Committee had identified a number of issues, it did not make public its specific concerns. It is therefore difficult to determine if the company actually addressed these issues, and for communities to know whether their concerns have been heard. Amnesty International asked the committee for details on how it considered issues raised by communities at the public hearing. No response was received.

166. Ministry of Coal, "Coal Reserves", at <http://coal.nic.in/content/coal-reserves>

167. Ministry of Tribal Affairs, "State-wise Tribal Population percentage in India", at <http://tribal.nic.in/content/statewisetribalpopulationpercentageinindiascheduletribes.aspx>

168. Ministry of Tribal Affairs, "Report of the High-Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities of India", May 2014, p. 420, at <http://www.indiaenvironmentportal.org.in/files/file/Tribal%20Committee%20Report,%20May-June%202014.pdf>

169. Gazette of India, Ministry of Coal, Notification under Section 7(1) of the Coal Bearing Areas Act, October 1962, available on file with Amnesty International India.

170. Census of India, 2011. See details for Basiya: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=385232>; Nagara: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=385194>; Pindarkom: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=385234>; Jala: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=385193>

171. Central Mine Planning And Design Institute, "Environmental Impact Assessment & Environmental Management Plan For The Tetariakhar Expansion", June 2012, p.82, at http://environmentclearance.nic.in/writereaddata/EIA/21_EIA%20&%20EMP%20OF%20TETARIAKHAR%20OCP%2014.06.2012.pdf.

172. The location of the public hearing is not mentioned in the EIA. Testimonies from Surender Dhale, Bihari Prasad Yadav, Lala Oraon, Giridhari Prasad Yadav, 2 and 4 July 2014, October 2015, Balumath block, Latehar.

173. Testimonies from Basiya, Tetariakhar, 4 July 2014, Tetariakhar and Basiya villages.

174. Ministry of Environment and Forests, Notification S.O. 3067(E), 19 January 2009, p.27, at <http://www.moef.nic.in/downloads/rules-and-regulations/3067.pdf>

175. Interviews in July 2014 and October 2015, Tetariakhar, Basiya, Jala and Nagara villages.

176. Interview with Saritabai, 4 July 2014, Basiya village.

177. Interview with Mahendra Mahto, 8 July 2014, Ranchi.

178. Interview with Surendra Dhale, 2 July 2014, Chandwa.

179. This summary lacks crucial information such as the signatures of those who had attended the hearing.

180. Central Mine Planning And Design Institute, "Environmental Impact Assessment & Environmental Management Plan For The Tetariakhar Expansion", June 2012, p.275, at http://environmentclearance.nic.in/writereaddata/EIA/21_EIA%20&%20EMP%20OF%20TETARIAKHAR%20OCP%2014.06.2012.pdf.

181. Interview with Bihari Prasad Yadav, 23 October 2015, Balumath.

182. Central Mine Planning And Design Institute, "Environmental Impact Assessment & Environmental Management Plan For The Tetariakhar Expansion", June 2012, p.275, at http://environmentclearance.nic.in/writereaddata/EIA/21_EIA%20&%20EMP%20OF%20TETARIAKHAR%20OCP%2014.06.2012.pdf.

183. Central Mine Planning and Design Institute, "Reply To Issues Raised By EAC Members Vide letter number- J/11015/319/2009-IA.II (M)", August 2012, at http://environmentclearance.nic.in/writereaddata/Public%20Hearing/Folder/7/811512471211120_ReplyFinal.pdf

184. Ministry of Environment and Forests, "Minutes of the 59th Expert Appraisal Committee (EAC), (Thermal and Coal Mining) Meeting", 7 November 2012, p.10, at http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/1%20_6-7%20NOV%2020-12%20Minutes.pdf

185. Ministry of Environment and Forests, Letter granting environment clearance for expansion of Tetariakhar Opencast Mine Project from 0.5 mtpa to 2 mtpa, No. J-11015/318/2009-IA.II(M), 7 May 2013, at http://environmentclearance.nic.in/writereaddata/Form-1A/EC/O_0_14_May_2013_1804273101ECTetariakhar.pdf

186. Ministry of Environment and Forests, Letter granting environment clearance for expansion of Tetariakhar Opencast Mine Project from 0.5 mtpa to 2 mtpa, No. J-11015/318/2009-IA.II(M), 7 May 2013, at http://environmentclearance.nic.in/writereaddata/Form-1A/EC/O_0_14_May_2013_1804273101ECTetariakhar.pdf

LAND ACQUISITION

On 6 April 2015, the Ministry of Coal published a notification in the official government gazette about its intention to prospect for coal in Nagara and Basiya villages – the first step in acquiring land under the CBA.¹⁸⁷ On 18 August 2015, it published another notification declaring its intention to acquire land in 49 hectares in Nagara and 25 hectares in Basiya, and gave interested parties 30 days to file any objections.¹⁸⁸

360 families still live in Nagara, and 405 families in Basiya. Although their agricultural lands have already been acquired by the Central government in 1962 for the Tetariakhar mine, their homesteads have not. When Amnesty International India met some of these families in October 2015, they said they were unaware of the new CBA notification, and had only heard rumours that more of their land was going to be acquired.

"Can you tell us how much of the land in our village has been acquired under the CBA?" asked Ramchandra Uraon from the village of Jala.¹⁸⁹

Gandhu Oraon from Basiya village said, "This is a matter of total arbitrariness, right, if you say that you are taking this land and the public should move...Be it the ACP, DCP or Prime Minister, without our consent, we cannot be removed from here. Whenever they felt like it, they evicted us. Whenever they felt like it they started mining. There is no value for humanity here."¹⁹⁰

The Additional Collector of Latehar claimed that the state government had no role to play in the acquisition. He said, "In CCL cases, the government acquires land under the CBA Act and simply notifies us that this land has been acquired. Our duty is to authenticate that land and to whom this land belongs to. And the CBA is done centrally. We have to only see to the R&R (Rehabilitation and Resettlement)."

CCL has not yet issued any notification about whether the acquisition of land in the five affected villages has been completed.



An Adivasi man walks towards his fields on *gair mazrui* common lands, July 2014, © Amnesty International India

PESA GRAM SABHA

Jharkhand state authorities have not held any consultations with communities under the PESA Act on their rehabilitation or resettlement.

In an interview with Amnesty International India, the District Development Commissioner of Latehar - the authority governing all panchayats in the district and responsible for implementing the PESA – said that he was not aware that Latehar was a Scheduled Area under the Constitution with special protections for Adivasi communities.¹⁹¹

The Commissioner said, "Jharkhand has not yet notified rules for PESA. The question that remains is whether PESA is part of the Constitution or whether it is not. It has rules that make a Schedule of the Constitution actionable, which makes it very different from an ordinary legislation."

CCL, like CIL's other subsidiary SECL¹⁹², appears to believe that consultations with gram sabhas are not required when land is acquired for coal mining by the state. CCL management for the Tetariakhar mine told Amnesty International India in an interview, "PESA is not required under the CBA (Coal Bearing Areas Act)."¹⁹³

Over 40 people in the affected villages told Amnesty International that they had not even heard of the PESA, nor were they aware that gram sabha consultation was required for land acquisition. "If we haven't heard of the laws, then how can we use them?" asked Kishor Oraon, an Adivasi man, during a focus group discussion in Basiya in July 2014.

FRA GRAM SABHA

The Tetariakhar mine is surrounded by forests, villages, agricultural fields and streams. Communities here have traditionally depended on the forest for generations. "The forest is part of who we are. It is where we collect firewood for the house, mahua, lac and tendu leaves. It is where we graze our livestock and it is where our gods reside," said Suresh Uraon, 28, an Adivasi resident of Basiya village and the leader of a movement of displaced families.

"There's everything in the jungle- from firewood to food. There is no life without the jungle, especially for the poor. We depend on it for everything" said Sura Oraon, who lives with her husband and four children in the village of Basiya.¹⁹⁴

The Forest Rights Act requires gram sabhas to certify that all forest rights claims have been settled, and to consent to any diversion of forest land for mining, for a project to receive a forest clearance.

However members of local communities told Amnesty International India that no gram sabhas had been conducted in the affected villages on the diversion of forest land for the mine.¹⁹⁵ The Divisional Forest Officer, Latehar, and the Circle Officer, Revenue Administration, Balumath block, confirmed this.¹⁹⁶

The status of about 52 hectares of land required for the mine expansion is not clear. In July 2012, CCL said that this land was "scrub land & plantation (forest)". The next month, it told the MoEF expert committee that "the word forest was printed

by mistake", and that the expansion would actually not require any forest land.¹⁹⁷

The MoEF, in its environment clearance letter in May 2013, refused to permit mining on the 52 hectares since there was a doubt about the status of the land. It directed the State Forest Department to determine whether the land was forest land. No such inspection had been conducted as of October 2015.

CCL continues to maintain that the expansion will not impact forest land. CCL's Chief Manager (Environment) in Ranchi told Amnesty International India, "We have not disturbed the forest at all in Tetariakhar. Do you know the meaning of forest? I'm not talking in terms of the Supreme Court order on forests. I'm talking about forest land in Tetariakhar. So far we have not touched the forest land in Tetariakhar."¹⁹⁸ However the official was not aware of the MoEF directions, the 52 hectares of land, or any proposed inspection.

FOREST RIGHTS CLAIMS

Under the Forest Rights Act, state governments are obligated to settle individual and community claims over forest lands. However virtually no community forest rights (CFRs) have been granted in Latehar.¹⁹⁹

In Basiya, Nagara and Pindarkom, over 70 people who Amnesty International spoke to said they were not aware that they could file collective claims over common forest lands and resources. Officials in the state Forest Department and Revenue Department said that no forest rights claims had been filed from any of the three affected villages.

"We've never tried to claim our rights. What will we claim when we are told that everything under 3 feet of ground belongs to them (CCL)?" said Pardesi Ram from the village of Pindarkom.²⁰⁰

In Jala, villagers had filed claims for their community forest

rights over 456 hectares of forest in October 2011. However, the Sub-divisional Committee on forest rights rejected this claim, recognising only two burial grounds that encompassed less than one acre of land.²⁰¹

George Monippally, an activist from the Bharat Jan Andolan, a nation-wide collective working to promote forest rights, argued, "Even if communities are in the dark about their rights, their usage and dependencies don't change or merely go away. Even if no forest rights claims have been filed, the relevant authority must grant a community forest resources title and ensure that rights are claimed and distributed."²⁰²

However government officials continue to be less sympathetic. A former Divisional Forest Officer in Latehar's Forest Department told Amnesty International India "So it is their historic right. Is granting one land title more important to me or is a transmission line that is a State Government project? For local rights, I cannot stop development."²⁰³

"I agree that they are the traditional owners of the land. But can they practice their livelihoods inside a coal block or a power plant? We are doing this for their own safety."



A woman from the Turi community outside her home in the Tetariakhar village, who has since moved to the village of Nagara as the mine expands, July 2014. © Amnesty International India

187. Gazette of India, Ministry of Coal Notification, dated 6 April 2015, at <http://www.egazette.nic.in/WriteReadData/2015/163832.pdf>

188. Gazette of India, Ministry of Coal, Notification under Section 7(1) of the Coal Bearing Areas Act, 20 August 2015, at <http://www.egazette.nic.in/WriteReadData/2015/165447.pdf>

189. Interview with a focus group of 83 villagers, 24 October 2015, Jala village.

190. Interview with a focus group of 71 villagers, 24 October 2015, Basiya village.

191. Interview with District Development Commissioner, Zilla Panchayat, 2 July 2014, Latehar.

192. South Eastern Coalfields Limited, a subsidiary of Coal India Limited, continues to claim that the land acquisition by CIL subsidiaries in Scheduled Areas only has to follow the CBA Act, and not the PESA Act. It has officially taken this position in court in the case of JanatmakSanstha v. Union of India, decided on 11 November 2014, WPIL/5/2013, for which an appeal is pending before the Chhattisgarh High Court. See p.19 of the report.

193. Interview with Project Officer, Tetariakhar mine, Central Coalfields Limited, 25 October 2015, Balumath.

194. Interview with Sura Oraon, 4 July 2014, Basiya village.

195. Interview with District Development Commissioner, Zilla Panchayat, 2 July 2014 Latehar.

196. Interview with Divisional Forest Officer, 5 July 2014, Latehar.interview with Circle Officer, 23 October 2015, Balumath Block.

197. Central Mine Planning and Design Institute, "Reply To Issues Raised By EAC Members Vide letter number- J/11015/319/2009-IA.II (M)", August 2012, at http://environmentclearance.nic.in/writereaddata/Public%20Hearing/Folder7/811512471211120_ReplyFinal.pdf

198. Interview with Chief Manager (Environment), Central Coalfields Limited, 26 October 2015

199. Forest Rights Records on file with Amnesty International India.

200. Interview with Pardesi Ram, 6 July 2014, Pindarkom village.

201. Anumeha Yadav, "Tribal villagers resist attempts to deny them their forest rights", The Hindu, 8 January 2014, at <http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/tribal-villagers-resist-attempts-to-deny-them-their-forest-rights/article5551584.ece>

202. Interview with George Monnipally, 2 July 2014, Balumath village.

203. Interview with former Divisional Forest Officer, 5 July 2014, Latehar.

RIGHTS OVER TRADITIONAL LAND

Communities in the villages surrounding the Tetariakhar mine are also concerned about the fate of common lands called *gair mazrua* lands. Customary community rights on these lands were recognized before 1950, but following land reforms, these rights were vested in the state government. Members of Adivasi communities told Amnesty International India that several landless labourers have depended on *gair mazrua* land for their livelihoods for generations, and continue to do so.

The Chotanagpur Tenancy Act – a state law which applies to certain districts in Jharkhand including Latehar – restricts the transfer of land from Adivasis to non-Adivasis.²⁰⁴ Under the Act, the Deputy Commissioner – a senior-level official in the district administration – has to approve any acquisition of *gair mazrua* land for mining by the central government. The official must first invite objections from anyone interested in the land and decide on them, before approving the acquisition.²⁰⁵

However the central government does not follow this process, and instead uses the Coal Bearing Areas Act to acquire common land without any consultation with communities.

Communities say about 40 hectares of *gair mazrua* land already acquired by the Central government has not even been used by CCL. Villagers in Nagara and Basiya continue

to oppose the taking over of this land, asserting that they have lived off it for decades.

"We have been surviving on this land for generations. CCL, on the other hand tells us that this is *gair mazrua* land and that no one can stop them from acquiring it", said Sukhinder Oraon from Basiya, who has agricultural fields right next to the mine.

"This land is ours but, on paper, CCL says that it is theirs. The land belongs to those who depend on it- be them Adivasi or Harijan or Dalit. Not to the ones with the pieces of paper," said Prabhu, an Adivasi activist from Basiya.²⁰⁶

CCL also plans to acquire more common land as part of the expansion. District authorities and CCL have confirmed that this is largely forest and *gair mazrua* land.

Gandhu Oraon, an Adivasi man from Basiya said, "This is a matter of total arbitrariness, if you say that you are taking this land and the public should move. We say, at least save the *gair mazrua* land. We depend on it for our sustenance. We can't go build our houses in another state. If we move from here, we will get nothing anywhere else."²⁰⁷

COMPENSATION

During the first phase of land acquisition for the Tetariakhar mine in 1992, about 40 hectares of private land²⁰⁸ in Pindarkom village were acquired by the central government to build a road for trucks at the entrance of the mine. Land owners here are yet to receive compensation, 23 years later.

"They've been running their trucks over this road for the last 15 years, but they haven't paid a single rupee of compensation to the local people," said R Yadav, a resident of Pindarkom.²⁰⁹

CCL's project officer at the Tetariakhar mine acknowledged that compensation and rehabilitation was yet to be paid to those who had lost their lands in Pindarkom. He said, "Initially, these people were so welcoming of the mine that they gave us their lands for free. Now their descendants are demanding compensation and we will see to this in due course."²¹⁰

More land was acquired in Nagara in 1994, and Basiya

in 2004. Communities in these villages allege that many people of those whose lands were acquired are yet to receive compensation. CCL company officials, including the Project Officer for the Tetariakhar mine and the Chief Manager – Land at the CCL head office in Ranchi, agreed that no one from these villages had been paid compensation for this land yet.²¹¹

"People were ready to give their land. They did this with the hope that they would get jobs. But while we cleared out our houses in 2004, only some of us received employment in CCL in 2009 as compensation," says H Turi, a resident.

"Those who were cultivating the *gair mazrua* land did not receive anything."²¹²

Amnesty International wrote to CCL to ask for their response to the allegations that people in the affected villages whose land has been acquired were not properly consulted, and some people did not receive compensation. The company did not respond.

204. Several colonial land revenue laws which apply to Jharkhand were enacted to recognize community rights over land and other resources and prevent alienation of Adivasi land. See Alex Ekka, "A Status of Adivasis/Indigenous Peoples Land Series – 4", 2011, at http://theothermedia.in/downloadables/SAIP_Reports/SAIP_Land_Series_4_Jharkhand.pdf.

205. Section 50(3) of Chotanagpur Tenancy Act, 1908. Also see Alex Ekka, "A Status of Adivasis/Indigenous Peoples Land Series – 4", 2011, p.89, at http://theothermedia.in/downloadables/SAIP_Reports/SAIP_Land_Series_4_Jharkhand.pdf.

206. Interview with Prabhu, activist and village surveyor, 1 July 2014, Basiya village.

207. Interview with focus group, 25 October 2015, Basiya village

208. Land acquisition records, testimonies from village elders.

209. 24 October 2015, Basiya village.

210. Interview with GC Saha, Project Officer, Tetariakhar mine, Central Coalfields Limited, 25 October 2015

211. Interviews with GC Saha, Project Officer, Tetariakhar mine, Central Coalfields Limited, 25 October 2015, interview with SK Jha, Chief Manager (Land), Central Coalfields Limited, 27 October 2015

212. Interview with H Turi, 25 October 2015, Basiya village.

BASUNDHARA-WEST MINE



The Basundhara-West mine, as seen from across the Basundhara river. October 2015. © Amnesty International India



**SUNDARGARH,
ODISHA**



Operated by
Mahanadi Coalfields
Limited (MCL)



Current expansion : 2.4 to 8 mtpa



>50%
of Sundargarh's populations are
members of Scheduled Tribes



523 families live here. On average,
over a third of them are not formally
literate.

THE SCALE OF IMPACT

Vulnerable
communities that
are affected:



Oraon, Binjhar,
Kharia, Bhuiyan,
Dhanwar.

How much land has
been acquired:



459 hectares

How much forest
land acquired:



149.50 hectares

At risk of
displacement:



3570 people

Pollution:



Situated in the Ib Valley area
and near Jharsuguda, ranked
the 28th and 33rd most
polluted industrial clusters in
2009.



Satellite map of
Basundhara-West
Mine.

Source: Google Earth

The mine borrows its
name from the nearby
Basundhara river.
About a third of the
mine area is forest land
abutting the villages of
Sardeg, Tiklipara and
Kulapura.

Image © 2016 CNES / Astrium
© 2016 Google

BASUNDHARA-WEST, ODISHA

The Basundhara-West mine is located in Hemgir block in Sundergarh, one of Odisha's largest districts. The mine is operated by Mahanadi Coalfields Limited (MCL), a subsidiary of Coal India Limited, along with four other mines.

More than half of Sundergarh's population are members of Scheduled Tribes and the entire district is a Scheduled Area under the Constitution of India.²¹³ The district is home to the Ib-river coalfields that have estimated reserves of over 24,000 million tonnes of coal.²¹⁴ It has been particularly affected by violence between Maoist armed groups and security forces.

Sundergarh is the parliamentary constituency of the central Minister of Tribal Affairs, Jual Oram.

The Basundhara-West mine spans 401 hectares across the villages of Sardega, Tiklipara and Kulapara.²¹⁵ It borrows its name from the nearby Basundhara river. Adivasi communities in the region surrounding the mine include Bhuiyan, Oraon, Kanwar, Kharia, Gond, Agaria and Binjhar Adivasi communities, who rely on the forest and traditional common land for food, grazing their livestock, firewood, and religious purposes. Over 3500 people live in these villages. On average, over a third of them are not formally literate.²¹⁶



The Basundhara-West mine's overburden dump, as seen from the village of Sardega, October 2015. © Amnesty International India

213. Census of India, 2011. See details for Sundergarh: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=401518>

214. Indian Minerals Yearbook, 2014, Part I, State Reviews- Odisha, available at http://ibm.nic.in/writereaddata/files/03162016100252IMYB2014_Odisha%28Adv%29.pdf

215. Ministry of Environment and Forests, Letter granting environment clearance for expansion of Basundhara (W) Open-Cast mine from 2.4 mtpa to 8 mtpa, No. J-11015/205/2008-IA.II(M), 25 February 2013, at http://environmentclearance.nic.in/writereaddata/Form-1A/EC/1704020438_EC_Basundhara.pdf

216. Census of India, 2011. See details for Sardega: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=400842>; Tiklipara: <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=400862>; Gopalpur (where Kulapara is located): <http://www.censusindia.gov.in/pca/SearchDetails.aspx?Id=400859>

A LONG BATTLE FOR COMPENSATION

MCL began prospecting for coal in the area in November 1984.²¹⁷ In 1989 and 1990, the central government acquired over 8000 hectares of land in fourteen villages, and transferred the land to MCL for coal mining. No consultations were held with affected communities, or consent sought. No compensation was paid.²¹⁸ Even after the acquisition, the government did not actively seek to use the land or evict families for many years.

In 1997, the company paid partial compensation to residents of Sardega, Kulapara and Tiklipara.²¹⁹

The Ministry of Environment and Forests gave MCL an environmental clearance to mine 2.4 mtpa of coal from the Basundhara-West mine in April 2002.²²⁰

MCL began mining in the Basundhara West mine in 2003, within 100 metres of the Basundhara river.²²¹ Some of the residents Amnesty International spoke to whose lands were acquired moved further into Sardega and others to the village of Kulapara.

In 2003, Mathias Oram, an Oraon adivasi man from the area, filed a case in the Orissa High Court challenging the lack of payment of compensation to villagers whose lands had been acquired for MCL's mining projects under the CBA. In November 2006, the High Court directed the central government and MCL to determine and pay compensation to displaced land owners within six months.²²²

MCL argued that it did not need the lands that had been acquired 20 years ago any more, and had asked the central government to 'denotify' any land which had not been used for mining – a proposal the government had rejected. MCL challenged the High Court judgement in the Supreme Court of India in 2007. It claimed that it was not liable to pay compensation for the acquired land, because the land was not likely to be used for mining. It also claimed – in an odd circular argument – that the acquisition process was not complete, because compensation had not yet been paid.²²³

The petition remained pending in the Supreme Court of India for three years. In July 2010, the Court finally ruled that the affected communities had been wrongfully deprived of compensation. It said the case was a "textbook example" of "a scenario where even the most basic obligation under the law is not complied with and even the fig leaf of legality is dispensed with".²²⁴

The Court directed the establishment of a Claims Commission which would conduct a survey to reevaluate the rate of compensation, and would enable communities to claim compensation. Compensation finally began to be given in 2011, 27 years after the compulsory acquisition of land in Hemgir.

However, the villages of Sardega and Tiklipara where compensation had already been partly paid by MCL have not yet received the revised compensation. Communities in these villages are still demanding enhanced compensation, similar to that ordered by the Supreme Court.



Trucks carrying coal from the Basundhara West and Kulda mines, September 2014. © Amnesty International India

217. Mahanadi Coalfields Limited's land acquisition records, on file with Amnesty International India.

218. Interview with MCL Land Acquisition Officer, 10 September 2014, MCL Headquarters, Basundhara-Garjanbahal Area.

219. Compensation records, available on file with Amnesty International India.

220. Ministry of Environment and Forests, Letter granting environment clearance for the Basundhara (W) Open-Cast Mine up to 2.4 mtpa, 12 April 2002, available at [http://www.mcl.gov.in/Environment/pdf/EC/Basundhara\(W\)%20EC-2.4%20Mtpa%20\(April%202002\).pdf](http://www.mcl.gov.in/Environment/pdf/EC/Basundhara(W)%20EC-2.4%20Mtpa%20(April%202002).pdf)

221. Ministry of Environment and Forests, Letter granting environment clearance for expansion of Basundhara (W) Open-Cast mine from 2.4 mtpa to 8 mtpa, No. J-11015/205/2008-IA.II(M), 25 February 2013, at http://environmentclearance.nic.in/writereaddata/Form-1A/EC/1704020438_EC_Basundhara.pdf

222. High Court of Orissa, Mathias Oram v. Mahanadi Coal Fields, decided on 13 November 2006.

223. The Supreme Court said about this argument: "If this is not adding insult to injury we do not know what else is!"

224. Supreme Court of India, Mahanadi Coal Fields v. Mathias Oram, decided on 19 July 2010, at <http://judis.nic.in/supremecourt/imgs1.aspx?filename=36529>

EXPANSION OF THE MINE

In 2007, MCL wrote to the Ministry of Environment seeking permission to increase the mine's production from 2.4 mtpa to 5 mtpa. Within less than a year, in May 2008, before it had assessed impacts or conducted a public hearing, it sought an expansion in production to 8 mtpa, and an increase in the mine area by 36 hectares.²²⁵ MCL estimated that the coal reserves in the Basundhara mines would be exhausted soon after the expansion.²²⁶

Writing to MCL in July 2008, the Ministry of Environment and Forests noted that the company had already expanded production to 4 mtpa even before receiving an environmental clearance.²²⁷ (In June 2012, the District Collectors of Jharsuguda and Sundargarh filed a complaint in a local court against MCL for producing coal beyond its mandated capacity.²²⁸

EIA HEARING

As part of the environmental clearance process for the expansion to 8 mtpa, the Orissa Pollution Control Board called for a public hearing on 30 May 2009.²²⁹

The OSPCB published notice of the hearing in Odia and English newspapers. However residents of Sardega and Tiklipara, including those who were village council chiefs at the time,

told Amnesty International India that MCL had not made a copy of the mine's draft EIA report available prior to the public hearing, as required.²³⁰ They also said that the attempts made to advertise the hearing had been inadequate. (Over a third of the people in the affected villages are not formally literate.)

LP Panda from Tiklipara village told Amnesty International India, "There were no announcements for this hearing. They publish things anywhere they like and send a notice. We haven't read any EIA report."²³¹

(As of July 2016, the EIA report for the mine expansion is still not available on the MoEF website, as required under the Environment (Protection) Act, 1986.²³² Amnesty International India was able to access copies only at the MCL project office in Hemgir, and Regional Office of the Odisha Pollution Control Board in Jharsuguda.)²³³

Nearly 40 villagers who Amnesty International India, including village council heads at the time interviewed said they were not aware of the public hearing.

N Naik, a resident of Tiklipara, said, "The public hearing was not conducted in the affected villages. There were less than four people from our village who attended. I came to know only because I work with MCL."²³⁴

Kshirodra Nag, a Dalit man from Kulhapara village, said "We were never called for any public hearing for the mine. There was no loudspeaker announcement...We haven't benefited from



A Kharia adivasi man paints a sign for the Forest Department. Sundargarh has the worst rate of recognition of forest rights in the country, Hemgir block, October 2015. © Amnesty International India



Signs outside the neighbouring Kulda mine operated by MCL signalling mine blast timings, October 2015. © Amnesty International India

225. Ministry of Environment and Forests, Letter granting terms of reference for Basundhara (West) Expansion from 2.4 mtpa to 8 mtpa, No. J-11015/205/2008-IA.II(M), 11 July 2008, at <http://environmentclearance.nic.in/Auth/openletter.aspx?TOR=1478>

226. The environment clearance letter mentions that coal reserves will be exhausted by 2013-14.

227. Ministry of Environment and Forests, Letter granting terms of reference for Basundhara (West) Expansion from 2.4 mtpa to 8 mtpa, No. J-11015/205/2008-IA.II(M), 11 July 2008, at <http://environmentclearance.nic.in/Auth/openletter.aspx?TOR=1478>

228. Copy of order passed by Sundargarh District Collector on file with Amnesty International India. MCL's Board of Directors submitted a resolution to the MoEF stating that the violation would not be repeated. See Ministry of Environment and Forests, Letter granting environment clearance for expansion of Basundhara (W) Open-Cast mine from 2.4 mtpa to 8 mtpa, No. J-11015/205/2008-IA.II(M), 25 February 2013, p.2, at http://environmentclearance.nic.in/writereaddata/Form-1A/EC/1704020438_EC_Basundhara.pdf

229. Ministry of Environment and Forests, Letter granting terms of reference for Basundhara (West) Expansion from 2.4 MTPA to 8 MTPA, No. J-11015/205/2008-IA.II(M), 11 July 2008, at <http://environmentclearance.nic.in/Auth/openletter.aspx?TOR=1478>

230. Amnesty International India wrote to the Odisha State Pollution Control Board and MCL in April 2016 regarding this. No response was received.

231. Focus group discussion with 41 persons, 9 September 2014, Tiklipara Village.

232. Amnesty International accessed copies of the EIA report at the MCL office and at the Regional Office of the Odisha Pollution Control Board in Jharsuguda.

233. Amnesty International accessed copies of the EIA report at the MCL office and at the Regional Office of the Odisha Pollution Control Board in Jharsuguda.

234. Interview with affected resident, 9 September 2014, Tiklipara village

the mine but our land is being used twice over."

The hearing was held on 30 May 2009 in Garjanbahal, 6-8 kilometers from the affected villages, which made it difficult for poorer members of the community to attend. The OSPCB, in the official record of the public hearing, claimed that 100 people had attended, but only 48 had signed the attendance sheet.²³⁵ Over 80 per cent of the attendees were from the villages of Garjanbahal and Bankibahal, which are not directly affected. Of those who attended, only 12 people spoke.²³⁶

The concerns expressed, as recorded in the minutes, ranged from control of dust and air pollution, provision of drinking water facilities and electricity, a coal transportation road and afforestation. More than half of those who spoke were not from the villages most affected by the mine.²³⁷

Subsequently, on 25 February 2013, the Ministry of Environment and Forests granted an environment clearance for the expansion of the mine to 8 mtpa.²³⁸ The Ministry said the clearance was subject to the outcome of the case filed against MCL for mining coal beyond its mandated capacity. However MCL has already begun expanding operations.²³⁹

The clearance letter referred to the hearing just once, in a line that reads: "Public hearing was conducted on 30.05.2009."

LAND ACQUISITION

MCL does not plan to acquire any additional land for the expansion of the Basundhara-West mine. However several families in the affected villages continue to live on land that has been acquired, but which MCL has not yet taken into possession.

According to MCL authorities²⁴⁰, 53 families in Sardega and over 100 families in Tiklipara are still living in their homes on acquired land, despite being served eviction notices. Many of these families told Amnesty International India that they were unwilling to leave without receiving adequate compensation.

K Patnaik, from Sardega village, said, "Those who had titles over their land were compensated, while those who had no titles like us received nothing."

Amnesty International India wrote to MCL in April 2016 asking for details of compensation paid to affected villagers. No response was received.

PESA GRAM SABHA

The PESA Act of 1996 requires gram sabhas to be consulted on land acquisition in Scheduled Areas. However the Odisha government has weakened this requirement by designating the *zila parishad* – a district-level body – as the body which needed to be consulted, and not the gram sabha.²⁴¹ This discrepancy has been criticized by a number of official bodies.²⁴²

Authorities have not consulted communities under the PESA Act in any of the three affected villages on the mine expansion. No consultation has been held on the upcoming power plant either (see box).

Nalini Sa, an Adivasi woman who is the head of the Sumra village council, which covers Sardega village, told Amnesty International India that there had been no gram sabhas on the expansion. An examination of the Sumra village council register confirmed this.

The Divisional Land Acquisition Officer of the Sadar division of Sundargarh told Amnesty International India that the PESA act was not applicable to land acquisition under the Coal Bearing Areas Act.²⁴³ The Sub-Divisional Panchayat Officer of the Sadar division asked, "If Odisha has not even drafted the rules for the PESA Act, how are we supposed to monitor its implementation?"

Umashankar, a local Right to Information activist, said, "The PESA Act was drafted by the government, the Fifth Schedule was drafted by the government, Coal India was created by the government. Then why doesn't the government follow its own laws?"²⁴⁴

235. Odisha State Pollution Control Board, "Proceedings of the Public Hearing of Basundhara (W) OCP, MCL for the expansion of coal production at Basundhara, Garjanbahal area from 2.4 to 8 MTPA on 30 May 2009", available on file with Amnesty International India.

236. Odisha State Pollution Control Board, "Public intended to give their views in the Public Hearing of M/s. Basundhara (West) OCP, MCL, for expansion of coal production", 30 May 2009, available on file with Amnesty International India.

237. Odisha State Pollution Control Board, "Statement of the public that participated in the deliberation during public hearing", 30 May 2009, available on file with Amnesty International India.

238. Ministry of Environment and Forests, Letter granting environment clearance for expansion of Basundhara (W) Open-Cast mine from 2.4 mtpa to 8 mtpa, No. J-11015/205/2008-IA.II(M), 25 February 2013, at http://environmentclearance.nic.in/writereaddata/Form-1A/EC/1704020438_EC_Basundhara.pdf

239. Interview with Senior Manager (Mining), Mahanadi Coalfields Ltd., 31 October 2015, Basundhara Garjanbahal Area.

240. Interview with the Land Acquisition Officer, MCL, 31 October 2015, Basundhara Garjanbahal area.

241. Section 6(b) of the Act states: "In scheduled areas, no acquisition of land for development projects and for resettlement and rehabilitating persons affected by such projects shall be made under any law without prior consultation with the Zila Parishad." See Enviro Legal Defence Firm, "PESA Implementation – some essential prerequisites and suggestions for the state of Orissa", March 2011, p.18, at <http://www.panchayat.gov.in/documents/10198/348968/PESA%20report%20Orissa%20-%20ELDF.pdf>

242. See for example Planning Commission of India, "Report of the Task Force on Panchayati Raj Institutions", December 2001, at http://planningcommission.nic.in/aboutus/taskforce/tsk_pri.pdf

243. Interview with Land Acquisition Officer, Sadar Division, 10 September 2014, Sundargarh.

244. Interview with Umashankar Prasad, 6 September 2014, Gopalpur village.

FRA CLAIMS



The Basundhara West Opencast mine, as seen from its overburden dump in Sardega village, September 2014. © Amnesty International India

About a third of the Basundhara-West mine area is forest land abutting the villages of Sardega, Tiklipara and Kulhapara.²⁴⁵

62-year old Dhani Mahakul, from a village near Sardega, said, "We live on forest land, we herd our livestock here, we get our food from here - both by hunting and food from the forest- we worship the forest mother too."

49-year old Sukuta S from the village of Balinga, said: "We used to get mahua, mangoes, firewood and water from the forest." Hemanto Samrat from Gopalpur village told Amnesty International India: "We worshipped the forest god. We got all our firewood from here. This place was green, now it is black with dust...When agricultural land is lost, what are we supposed to eat? Coal?"²⁴⁶

The Forest Rights Act of 2006 requires state governments settle all claims of individual and community rights under the Act. However there has been little action on the ground. Forest land is classified as government land and those without titles as 'anabadi' (encroachers).

Many villagers who Amnesty International spoke to were not aware that they could file community claims over their common resources. In Sardega village, only 20 persons have been granted individual forest rights titles. In Tiklipara, of 40 forest rights claims filed, 24 were rejected and 16 were still pending.

"We filed for forest titles three years ago, but we still haven't got it," said Sundar, a Dhanwar Adivasi man who lives in Sardega. So far, there have been no community claims granted over common forest lands.²⁴⁷

245. Out of the total project area of 459 hectares, 149.50 hectares is forest land. Ministry of Environment and Forests, Letter granting environment clearance for expansion of Basundhara (W) Open-Cast mine from 2.4 mtpa to 8 mtpa, No. J-11015/205/2008-IA.II(M), 25 February 2013, at http://environmentclearance.nic.in/writereaddata/Form-1A/EC/1704020438_EC_Basundhara.pdf

246. Interviews on 12 February 2014, Balinga village.

247. Sundargarh district has the worst record in the country of distributing community forest rights titles. Official records accessed by Amnesty International India indicate that not a single community forest rights title has been granted in the entire district since 2006, when the FRA was passed. There have been only 22 claims of community forest rights titles, stemming from a single block, which are still pending. Amnesty International India researchers visited the district welfare office, where thousands of community rights claims which were yet to be processed filled two different offices. District authorities said that they were still in the process of verifying pending individual claims and would get to community rights claims after.

THE MAHANADI BASIN POWER LTD THERMAL POWER PLANT

The villages surrounding the Basundhara (West) mine site are also where Coal India is making its first foray into thermal power generation. MCL, through its subsidiary Mahanadi Basin Power Limited (MBPL), aims to set up a 2x800 MW (megawatt) coal based 'super critical' thermal power plant on 860 hectares of land in the villages of Sardega, Tiklipara and Kulapara, which were acquired under the Coal-bearing Areas Act in 1989 and 1990 for coal mining.

The MBPL power project will be supplied coal from MCL mines in the vicinity, cutting down the cost of transport. Communities in the affected villages oppose the setting up of the power plant, and many say they are still in the dark about its impact on local land and water resources.

According to a draft EIA for the power plant prepared in May 2013, "the land for the plant facilities is already acquired by MCL". However, "additional land will also be acquired for the coal conveyor corridor, approach road and water pipeline outside the plant area."²⁴⁸

MCL applied for environmental clearance for the power plant in 2011.²⁴⁹ As part of the clearance process, the Orissa Pollution Control Board sent a notice to the village councils of Sardega and Tiklipara on 16 March 2013, stating that a public hearing would be held on 22 May 2013.

The village gram sabhas wrote back, objecting to the proposal.²⁵⁰ In their letter, villagers said that MCL could not begin proceedings for the transfer of their land for the power plant until the Supreme Court orders pertaining to compensation, rehabilitation and resettlement had been followed. The letter also stated that the land was originally acquired for coal mining and not thermal power generation, and that the pollution risks from power generation would be significantly higher. It said: "There will be serious air pollution and water pollution which has not been taken care of in the (EIA) executive summary. The entire environment will be adversely affected if the thermal power project is established on the mines."

The pollution control board went ahead and conducted the hearing in Tiklipara village on 22 May 2013, but the hearing was cancelled after wide-spread protests from communities.

Rabiratra Patel, an activist from Siarmal village, said, "At the meeting, we said we won't sit until our demands are met. We told them we did not want the power plant, it is not our choice."²⁵¹ Over 100 villagers signed a letter asking for permission to be denied to the power plant. The minutes of the public hearing state that it was cancelled because of a potential "law and order situation".²⁵²

On 27 November 2013²⁵³, the state pollution control board conducted a second public hearing.²⁵⁴ The minutes of the meeting state that about 120 people attended the hearing, but only 47 signed the attendance sheet, many of them from villages other than those primarily affected by the power plant.

At the public hearing, concerns were raised that the impact of the power plants had not been adequately explained. Villagers

also asked authorities to conduct gram sabhas in affected villages before public hearings to inform communities about the project. Nalini Sa, the head of the village council of Sumra village, pointed out that even she had not been informed about the establishment of the project.²⁵⁵

An MBPL official committed to carrying out more developmental activities in the region, but not to facilitating consultations.²⁵⁶ At the time of writing, the full Environment Impact Assessment report of the power plant has not yet been made available on the MoEF's website.

"Until now, they haven't explained the impacts to us. They decide to hold public meetings over night, take photographs of them and say that this has been done," said M Bhui, an Adivasi man from Sardega.²⁵⁷

The MBPL power plant will also involve the diversion of 143 hectares of forest land. The Divisional Forest Officer for the Sadar sub-division in Sundergarh, under which the affected villages fall, told Amnesty International India that the forest land affected would be within the villages of Sardega and Tiklipara,²⁵⁸ which could further adversely impact the livelihoods of Adivasi communities in these villages.

In August 2014, the Block Development Officer for Hemgir proposed that gram sabhas be conducted in Sardega and Tiklipara on 11 and 12 September 2014 on the issue of diversion of forest land in Sardega and Tiklipara for the power plant.²⁵⁹

However neither hearing took place. Amnesty International India was present in both villages on these dates. Local communities refused to conduct the gram sabhas, and instead wrote to district authorities that communities had not yet been fully compensated, and that the power plant was likely to further contaminate their air and water resources.

"We object to the letter sent by the BDO for the gram sabha of the power plant, just as we have objected to the power plant, as lots of poor people will suffer," said Chakradhan Naik of Tiklipara village as he read out the letter in a meeting of over 60 people from Tiklipara and Sardega.²⁶⁰ "The Claims Commission must look into issues of legacy compensation and displaced families must be given what is due to them. Our land was acquired for a mine without our will, it cannot just be taken for a power plant."

In September 2015, a 'High-Level Clearance Committee' chaired by the Odisha Chief Minister formally approved the project.²⁶¹ Coal India authorities have stated that land acquisition for the project is in an advanced stage and that the project was in an advanced stage of seeking environmental clearances.



Binjhar Adivasi women skirt the forests on the edge of Sardega village to access two ponds where the Mahanadi Basin Power Plant is to be constructed. MCL has not obtained the consent of communities to divert forestland, September 2014. © Amnesty International India

248. PFC Consulting Limited, Executive Summary: Draft Rapid EIA Report of 2x800 MW Coal-based Super- critical Thermal Power Project, Sundargarh District, Odisha, at http://www.ercindia.org/files/eiadocuments/eiareports/22.05.2013_Mahanadi%20Basin%20Power%20Ltd%20-%20English.pdf
249. Ministry of Environment and Forests, Letter granting terms of reference for the 2x800 MW Super Critical Coal Based Thermal Power Plant at villages Sardega, Tiklipara and Gopalpur, in Hemgir, Sundargarh, J-13012/127/2011 - IA. II (T), 16 February 2012, at <http://environmentclearance.nic.in/Auth/openletter.aspx?TOR=912>
250. Notice published by the OSPCB in the *Sambad* daily newspaper. Copy on file with Amnesty International India.
251. Interview with Rabiratna Patel, 6 September 2014, Siarmal village.
252. Odisha State Pollution Control Board, "Proceedings of the Public Hearing of M/s. Mahanadi Basin Power Limited for 2X800 MW super critical coal based thermal power plant", 22 May 2009, available on file with Amnesty International India.
253. Odisha State Pollution Control Board, Notice for the conduct of a public hearing, *The New Indian Express*, 23 October 2013, at <http://epaper.newindianexpress.com/c/8408113>
254. Odisha State Pollution Control Board, "Proceedings of the Public Hearing of M/s. Mahanadi Basin Power Limited for 2X800 MW super critical coal based thermal power plant", 27 November 2013, at <http://ospcbboard.org/Admin/EnglishDocument/130-Mahanadi%20Basin%20Power%20Ltd.pdf>
255. Odisha State Pollution Control Board, "Proceedings of the Public Hearing of M/s. Mahanadi Basin Power Limited for 2X800 MW super critical coal based thermal power plant", 27 November 2013, at <http://ospcbboard.org/Admin/EnglishDocument/130-Mahanadi%20Basin%20Power%20Ltd.pdf>
256. Interviews with Sundargarh sub-collector, Sumra village panchayat officials, 10 September 2014, Sundargarh.
257. Focus group discussion, 9 September 2014, Sardega.
258. Interview with Divisional Forest Officer (Sadar division), 10 September 2014, Sundargarh.
259. Block Development Officer, Hemgir, Letter to head of village council of Sumra panchayat on conduct of pallisabha, 25 August 2014, available on file with Amnesty International India.
260. Interview with focus group, 9 September 2014, Tiklipara village.
261. Press Trust of India, "Odisha approves 41,900 crore investment proposals", *Economic Times*, 29 September 2015, at http://articles.economictimes.indiatimes.com/2015-09-29/news/66987755_1_iron-ore-pelletisation-plant-hlca-power-projects

4. INDIA'S INTERNATIONAL LEGAL OBLIGATIONS

India is a state party to several core UN human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

India has also ratified the ILO Indigenous and Tribal Populations Convention which recognizes the right of Indigenous peoples to lands they traditionally occupy. India also supported the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

RIGHTS OF INDIGENOUS PEOPLES TO LAND, CONSULTATION AND FREE PRIOR AND INFORMED CONSENT

The Adivasi communities affected by the mines discussed in this report identify themselves as Indigenous Peoples. They have unique cultural and spiritual practices, have been historically in a position of economic and political marginalisation with regard to both state and federal governments, and enjoy a spiritual relationship with their land, based on a relationship with that land going back many generations.

Indian law does not formally recognize any communities as being indigenous. However the Indian Constitution provides special status to several Adivasi communities (identified as "Scheduled Tribes"), acknowledging their historic disadvantages and their unique cultures and relationship with their lands.²⁶² It is important to note that the status of being a minority or Indigenous People in international law does not depend on that status being recognised in national law.²⁶³

The Fifth Schedule of the Constitution lists certain districts and territories in nine states where Adivasi communities live as protected 'Scheduled Areas', where these communities have special customary rights over their land.²⁶⁴ The Constitution states that in these areas, state governments can make laws regulating the transfer of land by or among Adivasis.²⁶⁵

In 1997, the Supreme Court ruled in the case of *Samatha v. State of Andhra Pradesh*²⁶⁶ that the provisions of the Fifth Schedule also applied to the transfer of private or government land in Scheduled Areas to non-Adivasis.

62-year old Dhani Mahakul, from a village near Sardega, said, "We live on forest land, we herd our livestock here, we get our food from here - both by hunting and food from the forest - we worship the forest mother too."

49-year old Sukuta S from the village of Balinga, said: "We used to get mahua, mangoes, firewood and water from the forest." Ramadhar Shrivastava from Pali village told Amnesty International India: "Our gods were intertwined with the jungle. All of this changed after they found coal here and started to mine. They take the name of development, but with development comes destruction."²⁶⁷ Interviewees in communities affected by the mines studied in this report confirmed that they depend on their lands for livelihoods and spiritual, cultural and medicinal practices.

The right of Indigenous peoples to lands they traditionally occupy is recognised in ILO Indigenous and Tribal Populations Convention 107²⁶⁸, which India has ratified. India also supported the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)²⁶⁹, which further outlines the obligations of the State to recognize Indigenous Peoples' land rights, develop a mechanism for their demarcation and titling, and provide compensation for lands taken without their consent. Indigenous Peoples enjoy the right to lands they have traditionally occupied, regardless of whether their title is recognised under domestic law.²⁷⁰

The right of Indigenous Peoples to free, prior and informed consent is recognised under UNDRIP, and also by UN treaty monitoring bodies interpreting the CERD²⁷¹, the ICESCR²⁷² and the ICCPR.²⁷³

The UNDRIP states that states are obligated to consult and cooperate in good faith with indigenous peoples concerned to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.²⁷⁴ It also states that no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned.²⁷⁵

Where land has been taken without consent, Indigenous peoples have the right to restitution, and where that is not possible, compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.²⁷⁶

As the UN Special Rapporteur on the rights of indigenous peoples – the UN's lead expert on the issue – has noted, natural resource extraction can affect a range of rights of indigenous peoples, including their rights to health, physical well-being, a clean and healthy environment, rights to culture and religion, and to set priorities for development. By their very nature, these rights "entail autonomy of decision-making in their exercise ... the consultation and consent standard ... is a means of effectuating these rights, and is further justified by the generally marginalized character of indigenous peoples in the political sphere".²⁷⁷

The Special Rapporteur has said that, given the invasive nature of industrial-scale extraction of natural resources, as a general rule, Indigenous peoples' consent is required for extractive activities within their territories.²⁷⁸

Free, prior and informed consent has certain core requirements²⁷⁹:

Free implies that there is no coercion, intimidation or manipulation, and that there is equality of bargaining power – this is likely to mean that an Indigenous People should have access to independent legal and technical advice in order to fully understand the proposals before them, especially in cases of natural resource extraction projects.

Prior implies that consent is to be sought sufficiently in advance of any authorization or commencement of activities and respect is shown to time requirements of indigenous consultation/consensus processes.

Informed implies that information is provided allowing a full understanding of the nature of the proposals and their possible impacts, including the nature, size, pace, reversibility and scope of any proposed project or activity; the purpose of the project as well as its duration; locality and areas affected; an assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; monitoring and grievance mechanisms; and procedures for equitable sharing of benefits arising from the project.

This objective of the process must be to achieve agreement on both sides. Consultation and participation are crucial components of a consent process. Where there is significant risk of harm to the rights of the community, the project must not proceed without consent.²⁸⁰



A sign in the village of Jala in Latehar stating that every outsider must obtain the village assembly's prior consent before entering, July 2014 © Amnesty International India

262. Article 342 of the Constitution of India.

263. UN Human Rights Committee, General Comment No. 23: Article 27 (Rights of Minorities), CCPR/C/21/Rev.1/Add.5, para 5.2, at <http://www.refworld.org/docid/453883fc0.html>

264. States in North-East India are covered by the Sixth Schedule of the Constitution of India.

265. Article 5(2) of the Fifth Schedule, Constitution of India.

266. Supreme Court of India, *Samatha v. State of Andhra Pradesh*, decided on 11 July 1997, at <http://indiankanoon.org/doc/1969682/>

267. Interviews, 25 April 2014, Pali village.

268. Article 11 of ILO Indigenous and Tribal Populations Convention, 1957 (No. 107), at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312252

269. Articles 26, 27 and 28 of the UN Declaration on the Rights of Indigenous Peoples, at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

270. See for example Inter-American Court of Human Rights, *Case of the Mayagna (Sumo) Awas Tingni community v. Nicaragua*, Judgment of August 31, 2001, para 151, at http://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf

271. Committee on the Elimination of All Forms of Racial Discrimination (CERD), General Recommendation No. 23 on the rights of Indigenous Peoples, 18 August 1997, para 4 (d), at http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_GEC_7495_E.doc

272. "The Committee notes with regret that the traditional lands of indigenous peoples have been reduced or occupied, without their consent, by timber, mining and oil companies, at the expense of the exercise of their culture and the equilibrium of the ecosystem." Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.74, Concluding Observations on Colombia, para 12. Also see para 33: "The Committee urges the State party to ensure that indigenous peoples participate in decisions affecting their lives. The Committee particularly urges the State party to consult and seek the consent of the indigenous peoples concerned prior to the implementation of timber, soil or subsoil mining projects and on any public policy affecting them, in accordance with ILO Convention No. 169." See also Committee on Economic, Social and Cultural Rights, General Comment No. 21: Right of everyone to take part in cultural life, paras 36, 37 and 55, at <http://www2.ohchr.org/english/bodies/cescr/docs/gc/E-C-12-GC-21.doc>

273. Human Rights Committee, Communication No. 1457/2006, *Poma v. Peru*, Views adopted on 27 March 2009, paras. 7.5, 7.7, at http://www.uio.no/studier/emner/jus/jus/JUS5710/h13/undervisningsmateriale/angela_poma_poma-v-peru.pdf

274. Article 32 (2) of UNDRIP.

275. Article 10 of UNDRIP.

276. Article 28 (1) of UNDRIP.

277. Report of the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, A/HRC/21/47, 6 July 2012, paras 50-51, at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47_en.pdf

278. Report of the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, A/HRC/24/41 July 2013, at <http://unsr.jamesanaya.org/study/report-a-hrc-24-41-extractive-industries-and-indigenous-peoples-report-of-the-special-rapporteur-on-the-rights-of-indigenous-peoples>

279. Indigenous Peoples and Minorities Section, OHCHR Rule of Law, Equality and Non-Discrimination Branch, "Manual on Free, Prior and Informed Consent, 2013", at <http://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>

280. Report of the UN Special Rapporteur on Rights of Indigenous Peoples, James Anaya, Report to the General Assembly on the Rights of indigenous peoples, A/66/288, 10 August 2011, para 84, at http://www.un.org/ga/search/view_doc.asp?symbol=A/66/288

FORCED EVICTIONS

The ICCPR and ICESCR, along with other human rights treaties, require India to refrain from and prevent forced evictions. The UN Committee on Economic, Social and Cultural Rights defines a forced evictions as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."²⁸¹

Forced evictions constitute gross violations of a range of internationally recognised human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement.²⁸¹

Forced evictions may only be carried out as a last resort and only after all feasible alternatives to eviction have been explored in genuine consultation with affected people. Evictions can only be carried out when appropriate procedural protections are in place, including:

- An opportunity for genuine consultation with those affected;
- Adequate and reasonable notice for affected people prior to the eviction;

- Information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- Government officials or their representatives to be present during an eviction;
- Everyone involved in carrying out the eviction to be properly identified;
- Evictions not to take place in particularly bad weather or at night without the consent of the affected people;
- Provision of legal remedies
- Provision, where possible, of legal to people who need it to seek redress from courts;
- Provision of adequate alternative housing to those who cannot provide for themselves; and
- Compensation for all losses.

Protections against forced evictions are not limited to those with property titles. All those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for the loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process.



Nirupabai, a Kavar Adivasi woman, and her sister stand next to their homes that were demolished in February 2014 for the Kusmunda mine. Their belongings, including a year's worth of grain were destroyed in the evictions, April 2014. © Amnesty International India

281. These include the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (art. 11, para. 1), the Convention on the Rights of the Child (art. 27, para. 3), the non-discrimination provisions found in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination.

CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Companies have a responsibility to respect human rights in their operations. The UN Guiding Principles on Business and Human Rights require that companies “do no harm” or, in other words, take pro-active steps to ensure that they do not cause or contribute to human rights abuses within their global operations and respond to any human rights abuses when they do occur. To “know and show” that they comply with their responsibility to respect human rights, companies must carry out human rights due diligence. This is a process “to identify, prevent, mitigate and account for how they address their impacts on human rights.

The UN Guiding Principles on Business and Human Rights states that States should:

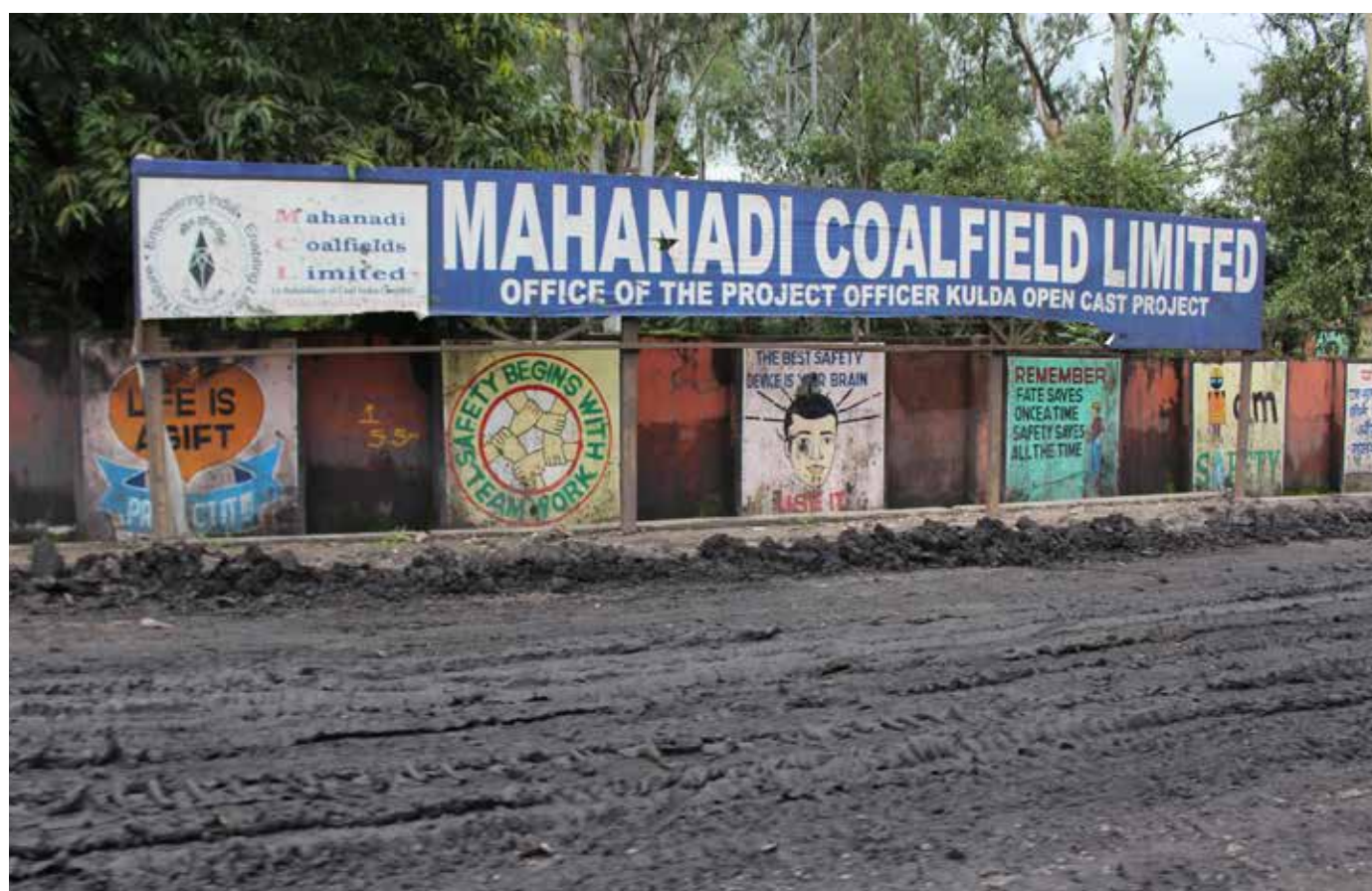
- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;

(c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;

(d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State’s own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State’s policy rationale becomes for ensuring that the enterprise respects human rights.²⁸²

The UN Special Rapporteur on the rights of indigenous peoples has also stated that extractive companies should perform due diligence to ensure that their actions will not violate or be complicit in violating indigenous peoples’ rights, identifying and assessing any actual or potential adverse human rights impacts of a resource extraction project.²⁸³



Signs outside the MCL project office in Sundargarh, Odisha, October 2015. © Amnesty International India

282. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework”, A/HRC/17/31, 21 March 2011, at <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>

283. Report of the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, A/HRC/24/41 July 2013, at <http://unsr.jamesanaya.org/study/report-a-hrc-24-41-extractive-industries-and-indigenous-peoples-report-of-the-special-rapporteur-on-the-rights-of-indigenous-peoples>

IMPACT ON WOMEN

India is a state party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The expert body which oversees implementation of the treaty has expressed grave concern about the displacement of tribal women in India owing to the implementation of major projects and the influence of global economic trends. The Committee stated in 2007: "While the Committee appreciates the need for economic growth, it is concerned that the human rights of vulnerable groups such as tribal populations may be adversely affected by large-scale economic projects."²⁸⁴

The Committee has urged the Indian government to 'study the impact of mega projects on tribal and rural women and to institute safeguards against their displacement and violation of their human rights.'



Kharia Adivasi women collect reeds to make hill brooms to use and sell, Hemgir block, September 2014. © Amnesty International India



A woman whose house lies next to the coal transportation road in Pindarkom, Latehar, July 2014. © Amnesty International India

284. Committee on the Elimination of Discrimination against Women, Concluding Comments on India, CEDAW/C/IND/CO/3, 2 February 2007, para 46, at http://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING_COMMENTS/India/India-CO-3.pdf

5. GOVERNMENT AND CORPORATE FAILURES

FORCED EVICTIONS AND THE COAL BEARING AREAS ACT

India's Supreme Court has said that the right to adequate housing is integral to the constitutionally-protected right to life.²⁸⁵ However the Coal Bearing Areas Act, which has been used in the cases examined in this report, fares poorly when evaluated against human rights protections against forced evictions.

For example, the procedure for notification of acquisition under the Act cannot be considered as adequate notice as set out by international human rights law and standards. Additionally, there is no requirement on the government to consult people who will be evicted from their lands as a result of the acquisition. As noted in the report, land acquisition under the CBA Act is explicitly exempted from the requirements of social impact assessment, consultation and consent required by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

In this context, the requirement for a public hearing in the Environment Protection Act 1986 and the powers assigned to the gram sabhas or village assemblies in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 are among a few limited available avenues for affected people to participate in decisions that affect their lives.

However, as demonstrated in the cases described in this report, these limited requirements for participation have not been complied with by the authorities. In most cases, gram sabhas for the diversion of forest land have not been conducted. Where public hearings have been held, affected people have not adequately informed about the hearings or been provided with complete information in a form and language that is accessible to them.

The UN Basic Principles and Guidelines stipulate:

"Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements:

- (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives;
- (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically

addressing efforts to protect vulnerable groups;

- (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan;
- (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and
- (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities."²⁸⁶

The Basic Principles and Guidelines make clear that, "[s]tates should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate."²⁸⁷

The limited processes for participation provided in law, and their tokenistic implementation as illustrated in the report, do not constitute genuine consultation with affected people as required by international human rights standards.

In the absence of this and other key human rights safeguards against forced evictions, any evictions resulting from acquisition under the Coal Bearing Areas Act is likely to amount to a forced eviction.



Balku Ganju outside his home in Tetariakhar village. The village has since been subsumed into the mine, July 2014. © Amnesty International India

285. See, for example, *Uttar Pradesh Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd.*, decided on 24 April 1995, at <http://judis.nic.in/supremecourt/imgs1.aspx?filename=10786>; *Francis Coralie Mullin v. Union Territory of Delhi*, decided on 13 January 1981, at <http://judis.nic.in/supremecourt/imgs1.aspx?filename=10150>.

286. Principle 37 of the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

287. Principle 38 of the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

COAL INDIA'S LACK OF RESPECT FOR HUMAN RIGHTS

This report has examined three major coal mining projects and scrutinised the impact of these projects on the human rights of local people, including Adivasi communities. While the state and central governmental authorities bear significant responsibility for the violations and abuses documented, CIL and its subsidiaries have clearly breached their responsibility to respect human rights. As the UN Guiding Principles on Business and Human Rights note:

"the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights."²⁸⁸

CIL cannot, therefore, point to the Indian legal framework that has enabled it to acquire land for mining, mine expansion or other purposes, as a defence for their failure to respect the rights of the communities living on that land.

FAILURE TO ENSURE MEANINGFUL CONSULTATION WITH AFFECTED PEOPLE

This report has described the failure of CIL and its subsidiaries to ensure that affected people are properly consulted on activities that will impact their human rights, specifically the acquisition of land which entailed both the loss of their homes and the loss, in some cases, of means of livelihood.

The responsibility to consult affected communities rests, by law with district-level authorities under the Panchayat (Extension to Scheduled Areas) Act and Forest Rights Act, and state pollution control authorities under the Environment Protection Act. However, under international standards on business and human



People from affected communities stare at authorities from behind barricades at a public hearing in Korba, February 2015. © Amnesty International India



Women whose lands were acquired for SECL's Jampali mine, Raigarh, Chhattisgarh, February 2014. © Amnesty International India

rights, it would be incumbent on CIL and its subsidiaries to have carried out due diligence checks to ensure government agencies had conducted proper consultation with regard to land acquisition for coal mining operations.

Based on the testimony of the communities and other evidence gathered by Amnesty International India, it would appear the companies took little or no action to either consult the communities themselves or to ensure that government consultations were adequate and met human rights standards.

Moreover, the evidence gathered by Amnesty International India demonstrates that CIL and its subsidiaries knew, or ought reasonably to have known, that the consultation processes undertaken in each of the cases detailed in this report were seriously limited and fell far short of meaningful consultation, including by failing to adequately explain the risks and impacts that coal mining and processing would have on the land and communities.

In at least seven cases, employees of Coal India subsidiaries were present at consultation meetings, including environmental public hearings for the Basundhara (West), Kusmunda and Tetariakhar mine expansions and the Mahanadi Basin Power Plant, and village assemblies conducted for the forest clearances for the Kusmunda mine.

In the case of indigenous peoples, international standards require the free, prior and informed consent of affected Adivasi communities. This clearly was not given in the cases of the expansions of the Kusmunda, Tetariakhar and Basundhara (West) open cast coal mines.

288. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework", A/HRC/17/31, 21 March 2011, p.13, at <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>

FORCED EVICTIONS AND LOSS OF LIVELIHOOD OPTIONS

The failure to consult people about the acquisition of land was one factor that contributed to forced evictions. In cases documented for this report, the people whose land was acquired were not given adequate information or the chance to consider or put forward alternatives to eviction.

The compensation offered in many cases included relocation to a rehabilitation colony which it was the responsibility of the companies to establish. In these colonies people were not given title to the land, meaning they cannot sell or lease the land.

The compensation and relocation process also failed to consider issues of loss of access to land used for livelihood and subsistence purposes. Because of the serious limitations of the process and the inadequacy of the compensation and rehabilitation, the evictions breached international human rights standards. Although the process was established by government, CIL and its subsidiaries were well aware of the process and had a direct involvement in establishing the rehabilitation colonies.

In addition, in three cases, part of the compensation package included promises of employment in a CIL subsidiary. As noted in the case studies on the Kusmunda, Tetariakhar and Basundhara (West) Mine, as of May 2016, according to members of the community, this has not yet fully happened.

In the cases of families who refused to move from their original homes, CIL subsidiaries were directly involved in evictions. This occurred in the case of Barkuta, where SECL issued a notice to the residents of Barkuta telling them to demolish their homes. This notice referred to previous governmental notices. In this and other cases documented for the report it is clear that the companies and the governmental authorities were working together to remove people from land needed for coal mining.

ABUSE OF THE RIGHTS OF INDIGENOUS PEOPLES

As noted above, the consultation processes did not meet the standards required for free, prior, informed consent of indigenous peoples. The processes used to acquire Adivasi land also breached aspects of India's own legal protections for Scheduled Tribes. Again, Coal India and its subsidiaries knew, or ought reasonably to have known this was the case.



Women displaced by SECL's Chhal mine in Raigarh, Chhattisgarh, climb up coal trucks to cover them with tarpaulin. This, they said, was the only livelihood they could now practise. September 2015. © Amnesty International India

GOVERNMENTAL FAILURES ARE NO DEFENCE

CIL cannot point to the role of the government to defence the fact that it knowingly benefited from land acquisition processes that violated the human rights of thousands of people. The UN Guiding Principles make clear that companies must:

"Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."²⁸⁹

In the context of mining operations this would mean that a mining company granted access to or rights over land as part of its mining operations would have to satisfy itself that no human rights were violated in the process of acquiring the land. However, based on the evidence gathered by Amnesty International India, the human rights of thousands of people were violated by poor consultation and subsequent forced evictions and loss of livelihoods.

Amnesty International India asked South Eastern Coalfields Limited (SECL), Central Coalfields Limited (CCL), and Mahanadi Coalfields Limited what policies and practices they

had in place to identify and prevent human rights abuses related to their operations, including but not limited to consulting and seeking the consent of Adivasi communities during land acquisition, rehabilitation and resettlement, and mining. At the time of writing, none of the companies had provided a response.

CIL and its subsidiaries have failed to respect human rights, thereby breaching well-established international standards on business and human rights. By continuing to acquire land through flawed processes that breach international law, CIL's failure of respect human rights is ongoing.

International standards also make clear that when a company has caused or contributed to human rights violations, it must act to remedy these violations. This action can include working with governmental authorities to rectify problems. Amnesty International India found no evidence that CIL is taking action to address the human rights violations on which its operations as a mining company are based. Land acquisition is fundamental to coal mining operations. Because of the nature of the processes used, CIL's operations have been, in the cases documented in this report, based on a system in which fails to respect human rights.



Children play next to the Tetariakhar mine's overburden dump in Basiya village in Latehar. The mine is slated to undergo further expansion, July 2014. © Amnesty International India

289. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework", A/HRC/17/31, 21 March 2011, p.14, at <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>

6. CONCLUSION AND RECOMMENDATIONS

"Why is the state's perception and vision of development at such great odds with the people it purports to develop? And why are their rights so dispensable?"

Supreme Court of India²⁹⁰

Indian authorities have breached their obligations under international law to protect the rights of Adivasi communities affected by CIL mining projects in Chhattisgarh, Jharkhand and Odisha. The governments of these states have failed to assess human rights impacts, provide adequate information to communities on the expansion of existing mines, meaningfully consult them, and seek their free, prior and informed consent before granting clearance to the projects.

The domestic Indian legal framework does not fully recognize the rights of indigenous peoples. The antiquated Coal Bearing Areas Act does not contain adequate human rights protections to safeguard against forced evictions, and legitimizes land acquisition without consultation, enabling further human rights violations.

Authorities in state governments have failed to enforce the laws that do contain provisions regarding consultation and consent, including the PESA Act, the FRA and the Environment Protection Act as required. By not harmonizing existing laws and repealing or amending laws that do not meet international human rights standards, the central government has contributed to a situation where authorities misuse the patchwork of legislation to ensure that Adivasi communities' rights remain largely on paper.

CIL and its subsidiaries have breached their responsibility to respect the human rights of people affected by their operations. In particular, they have failed to seek to prevent or mitigate adverse human rights impacts directly linked to their operations, and have benefited from the abuses of the rights of Adivasi communities.

While this report has focused on three specific mines, the common issues reported across these regions are indicative of a broader pattern of violations of Adivasi communities' rights to consultation and consent – a pattern which could spread even further, if existing safeguards are further weakened by the MoEF.

The consequences of these failures are felt most keenly by Adivasi communities – some of India's most vulnerable people, who already live in poverty. Without respect for the rights of all people, India's development goals will never truly be met.



Oraon children near the coal weigh bridge in Basiya village, Latehar, Jharkhand. © Amnesty International India

290. Supreme Court of India, *Mahanadi Coal Fields v. Mathias Oram*, decided on 19 July 2010, at <http://judis.nic.in/supremecourt/imgs1.aspx?filename=36529>

RECOMMENDATIONS

TO THE STATE GOVERNMENTS OF CHHATTISGARH, JHARKHAND AND ODISHA:

- Clearly indicate the steps that the government will take to assess damage and provide effective remedies to all those forcibly evicted as a result of the expansion of the Kusmunda, Tetariakhar and Basundhara-West coal mines.
- Compensate all communities for the loss of their assets and for impacts on their lives and livelihoods, irrespective of whether they have formal land titles.
- Undertake a comprehensive human rights and environmental impact assessment of the expansion of the Kusmunda, Tetariakhar and Basundhara-West coal mining projects and the Mahanadi Basin Power Plant in genuine and open consultation with Adivasi and other communities.
- Provide communities, including those who are not formally literate, with accessible and adequate information about the environmental and human rights impacts of the expansions of the mines in their own languages.
- Where land is sought to be acquired, ensure that all people who stand to be affected are provided with accessible and adequate information about rehabilitation, resettlement and compensation measures.
- Publicly guarantee, and ensure, that there will be no evictions until genuine consultations have taken place with affected communities and that resettlement and compensation measures have been fully implemented.
- Ensure that Adivasi communities' free, prior and informed consent is sought and obtained prior to any continuation of the expansion projects and respect their decision if they do not provide it.

- Ensure that no expansion of the three coal mines takes place until appropriate action has been taken in light of the human rights impact assessments and consultations with affected communities to protect their rights

TO THE MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE:

- Amend the 2006 EIA circular to ensure that the potential human rights impact of proposed mines, or the expansion of existing mines, is considered as part of the social impact assessment of the Environmental Impact Assessment process.
- Require public hearings to be carried out as part of the Environmental Impact Assessment process for mines of all sizes, including expansion projects.
- Require Expert Appraisal Committees to thoroughly consider the concerns raised during public hearings conducted as part of the environment clearance process, including through site visits.
- Hold to account mining companies who fail to conduct meaningful consultations with affected communities during public hearings.

TO THE MINISTRY OF PANCHAYATI RAJ:

- Work more closely with state governments and the Ministry of Coal to monitor implementation of the Panchayat (Extension to Scheduled Areas) Act by district authorities.
- Ensure that any violation of the requirements of consultation with communities in Scheduled Areas prior to land acquisition, rehabilitation or resettlement, are brought to the attention of relevant authorities in the state government.



Two young boys carrying coal on their cycles for consumption in their homes, Basiya village, July 2014. © Amnesty International India

TO THE MINISTRY OF RURAL DEVELOPMENT:

- Amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act to ensure that the Free, Prior and Informed Consent of Adivasi communities is sought wherever they may live, and not just in Scheduled Areas.
- Introduce a notification in Parliament making all provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act – including those related to social impact assessments and seeking the Free Prior Informed Consent of Adivasi communities prior to land acquisition - are extended to land acquisition under the Coal Bearing Areas Act.

TO THE MINISTRY OF TRIBAL AFFAIRS:

- Work more closely with state governments, the Ministry of Coal and the Ministry of Environment, Forests and Climate Change to monitor the implementation of the Forest Rights Act.
- Ensure that any violation of the requirements of seeking the consent of communities in Scheduled Areas prior to diversion of forest land for industry are brought to the attention of relevant authorities in the state government(?)
- Establish a process to ensure that state governments seek the free, prior, and informed consent of Adivasi communities in relation to all operations related to mining, in line with the Forest Rights Act, the PESA Act and India's international human rights obligations.

TO THE GOVERNMENT OF INDIA:

- Ratify ILO Convention 169 on Indigenous and Tribal Peoples.

TO COAL INDIA LIMITED AND ITS SUBSIDIARIES:

- Urgently address and remedy the existing negative environmental and human rights impacts of the

expansions of the Kusmunda, Tetariakhar and Basundhara (West) mines, in full consultation with project-affected communities.

- Ensure that expansions of Coal India's Kusmunda, Basundhara-West and Tetariakhar mines do not go ahead until existing human rights concerns are resolved.
- Ensure that the free, prior and informed consent of affected Adivasi communities is obtained prior to starting or expanding mining operations, and respect their decision if they do not provide it.
- Amend rehabilitation policies to meet international standards, including seeking the Free Prior and Informed Consent of Adivasi communities, and consulting all affected communities, prior to land acquisition or mining.
- Establish a human rights due diligence process to identify, assess and mitigate human rights risks and abuses in operations across all mines.
- Conduct a comprehensive review of operations in all CIL coal mines across India to identify and assess human rights risks and abuses, and publicly disclose the steps taken identify, assess and mitigate them.

TO COAL INDIA LIMITED'S BANKERS AND INVESTORS

- Express concern to Coal India Limited about the impact of its operations in Chhattisgarh, Jharkhand and Odisha on human rights and call on Coal India Limited to implement the recommendations above.
- Call on Coal India Limited to publicly commit to seek to prevent or mitigate adverse human rights impacts directly linked to its operations. Ask Coal India Limited to report regularly on progress by the company to address the risks and human rights concerns surrounding its operations in Chhattisgarh, Jharkhand and Odisha.
- Call on Coal India Limited to respect all internationally recognised human rights in its operations.



Fields thick with coal dust at the entrance of the Tetariakhar coal mine, February 2014. © Amnesty International India



“The PESA Act was drafted by the government. The Fifth Schedule was drafted by the government.

Coal India was created by the government. Then why doesn't the government follow its own laws?”

*Umashankar, Right to Information activist,
Balinga village, September 2014.*



A Dalit woman outside her home in Pindarkom village, near the Tetariakhar coal mine, July 2014. © Amnesty International India



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