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**UNITED NATIONS
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HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandate of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes

REFERENCE: UA Toxic waste (1995-14)
IND 10/2011

15 June 2011

Excellency,

I have the honour to address you in my capacity as the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, pursuant to Human Rights Council resolution 9/1.

In this connection, I wish to bring to the attention of your Excellency's Government information I received regarding **the potential adverse impact that a leak at the aluminium refinery facility in Lanjigarh, Orissa state, may have on the enjoyment of human rights of countless individuals living close to the facilities.**

According to the information received:

The company Vedanta Aluminium Limited, a subsidiary of the UK-based Vedanta sources plc, operates a facility to refine bauxite into aluminium in Lanjigarh, Orissa State. The red sludge, which is formed during the refinery process, is collected in ponds, including a main 28-hectare pond, containing an estimate of 92 billion litres of toxic residues. Allegedly, these include heavy metals such as chromium, arsenic, cadmium and mercury. The sludge might also be slightly radioactive if the original bauxite contained radioactive minerals.

The red sludge is highly alkaline, with a ph value of 11 or above. It may cause serious chemical burns, skin rashes and respiratory irritations to human beings and might be lethal to animals and plants.

The refinery is situated only one kilometre from the river Vamsadhara, the region's main water source. A spill of toxic substances from the pond could potentially affect 12 villages in this area, including four villages situated close to the refinery and other eight communities downstream of Vamsadhara river.

In September 2005, the Central Empowered Committee of the Supreme Court of India underlined that “(...) the location of the pond for the red mud, which is a mix of highly toxic alkaline chemicals and contains a cocktail of heavy metals including radioactive elements and the Ash pond on the Vamsadhara river may cause serious water pollution. The breach of the red mud and the ash pond may cause severe damages downstream. The potential of such an occurrence has not been properly assessed (...)”. The Orissa State Pollution Control Board has also expressed concerns about the pond's design and its level of maintenance.

In October 2010, the Ministry of Environment and Forests did not grant a permit for a five-fold expansion of the refinery's facilities due to non-compliance with national environmental legislation, such as the Forest Conservation Act (1980), the Environmental Protection Act (1986) and the Scheduled Tribes and Traditional Forest Dwellers Act (2006). The issue is currently pending before the Orissa High Court.

On 5 April and 16 May 2011, following heavy rains, local communities in Orissa state reported leakages from the pond, which allegedly polluted local streams and agricultural soils. On both occasions, Vedanta employees reportedly repaired the breaches and washed down the leak. The company officially denied any overflow from the pond, and claimed that the rain had caused loose earth to flow from the pond's 30 metre wall. On 11 May 2011, the Orissa State Pollution Control Board visited Lanjigarh to assess the conditions of the pond, but it has not made its findings public yet.

It has been also reported that levels in the pond have considerably risen recently, due to ongoing refinery activities and heavy rains. Considering the upcoming beginning of the monsoon season in June, it is unclear how the operating company intends to prevent potential leaking of alkaline red sludge from the pond. Any leaks, overflows or dam erosions caused by the heavy rains which usually occur during the monsoon period could have a considerable adverse impact on the enjoyment of a number of human rights, including the rights to health, food and water, by an estimated four to five thousand families which rely heavily on agriculture for their subsistence.

At this stage, I do not wish to prejudice the accuracy of the above described allegations. Yet, I wish to draw the attention of your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights, acceded to by your Government on 10 April 1979, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. General Comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights describes the normative content of article 12 and the legal obligations undertaken by the States parties to the Covenant to respect, protect and fulfill the right to health. In paragraph 11 of General Comment No. 14, the Committee interprets the right to health as “an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate

sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information.”

Furthermore, I would like to draw your Excellency’s Government’s attention to article 11 on the right to an adequate standard of living, including adequate food and water. General Comment No. 12 (1999) on the right to adequate food specifies that food should be “free from adverse substances”. The Comment also stresses: “Violations of the right to food can occur through the direct action of States or other entities insufficiently regulated by States. These include: (...) failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others. (...) The State should provide an environment that facilitates implementation of these responsibilities. The private business sector – national and transnational - should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society” (para. 20).

General Comment No. 15 (2002) on the right to water notes that “the water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health” (para. 12). It furthermore underlines that “the obligation to *protect* [the right to water] requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems” (para. 23).

As it is my responsibility to clarify all allegations brought to my attention in accordance with the mandate entrusted to me by the Human Rights Council, I would be most grateful if your Excellency’s Government could provide additional information on the matters referred to and the allegations contained in the present letter, particularly regarding the following issues:

1. To what extent are the facts summarized above accurate?
2. Please provide information on the findings of the Orissa State Pollution Control Board’s visit to the facilities on 11 May 2011. Please also provide detailed information on any other study carried out to assess the level of contamination caused by spills of toxic sludge from the Vedanta refinery facility in Lanjigarh on 5 April and 16 May 2011, respectively.
3. Have specific studies been carried out to collect and analyze data regarding reported health concerns related to environmental pollution by bauxite refinery in this area? If so, please provide me with the conclusions of these studies.

4. Please provide further information on the reasons for the decision of the Ministry of Environment and Forest to reject the enlargement of the Vedanta refinery facilities in Lanjigarh.
5. Does a governmental emergency preparedness plan exist for the mining areas in Orissa? Has such a plan been elaborated by Vedanta Limited?
6. Please also provide information on the measures that your Excellency's Government has adopted, or intends to adopt, to comply with national legislation on the sound management and disposal of toxic wastes and to guarantee the rights to health, food and water of the residents living close to the sludge pond, including during the monsoon season.
7. Has your Excellency's Government considered suspending the refinery activities until the potential adverse affects of toxic sludge are comprehensively assessed and a sound disposal is assured?

I would be most grateful to receive an urgent answer and undertake to ensure that your Government's response to each of these questions is accurately reflected in the report that I will submit to the Human Rights Council for its consideration.

Please accept the assurances of my highest consideration.

Calin Georgescu

Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes