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Dear VP Taylor,

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Indigenous Peoples' Land mortgaging, impoverishment, social chaos and ecological destruction in IFC support for Lafarge Surma Cement mining in Khasi Territory of Meghalaya.

Dear Madam/Sir,

We have come to CAO expecting some amount of justice for us, the land owners affected by IFC funded Lafarge mining operation (Project no 8035) in our area. International Finance Corporation (IFC) along with Asian Development Bank (ADB), DEG- Deutsche Investitions und Entwicklungsgesellschaft MBH, European Investment Bank (EIB), Arab Bangladesh Bank and Standard Chartered Bank, Bangladesh (the "Offshore Lenders") as well as Calyon (formerly known as Credit Agricole Indosuez) funded the Lafarge mining operations and ferrying of limestone and shale stone from our villages.

We have several complaints against this project and we bring to your notice some of the major issues which we would like CAO to address:

Background:

Lafarge Surma Cement (LSC) Project is a project where the cement plant is based in Chhatak, Sunamganj district of Bangladesh while the raw materials are being sourced from Khasi area of Meghalaya state in North East India. The Mining is done in the Shella Confederacy¹ in East Khasi Hills of Meghalaya, and is being ferried by a conveyor belt to Chhatak.

In what looks like its modus operandi worldwide, the Lafarge Surma Cement Limited was formed for its operation in Bangladesh. The Lafarge Group, France holds more than 51 % of its shares. In a similar way, two more companies were also formed in Meghalaya, India. Lum

¹ Under the traditional administrative set-up, the project area falls within the Shella Confederacy, which is the only Wahadadarship¹ in the Khasi Hills. The Shella Confederacy is a conglomeration of nine village durbars: Shella, Nongtra, Nongwar, Tyngger, Mustoh, Lyngkhom, Dewshaw, Umtlang and Rumnong.



Maushun Minerals Private Ltd. (LMMPL) & Lafarge Umiam Mining Private Ltd. (LUMPL) with their Headquarters in Shillong, Meghalaya. 74 % share of LMMPL is owned by LSC and the rest is by two Khasi Mr. S.G. Lyngdoh and late B. Roy, while LUMPL is 100% subsidiary of LSC.

For this Category A project, IFC approved a loan on July 11 1998, signed in 2001 and invested on May 19 2003. Project no is 8035 has IFC loan of US\$ 45 million and an equity of US\$ 10 million was provided by IFC. The rest of the other banks contributed their share.

Informal complaint was raised where IFC sent a Review Team of 4 people in May 2008. No report of the review was ever shared to the affected people despite of promises made during the review meeting. The affected people have no knowledge of the findings or actions taken on the complaints made.

Projects Impacts :

Impacts of the mining can be clustered under interrelated categories of: a) Land Ownership; b) Land Alienation and Institutional change;

a) Land Ownership

First and foremost frustration which the people of Shella and Tynger Village are facing is Land Ownership and the way their land was transgressed by Lafarge for mining unmindful of the ways of Khasi people. The Lafarge Surma Cement has infringed the land of the Land Owners of the Shella and the Tynger Village illegally and has started mining and also has build the Conveyor Belt through their lands, which operates from Shella village to Bangladesh, without the knowledge and consent of the real Land Owners. This land alienation has long term and very critical impacts on the Khasi Indigenous people.

Furthermore, the LSC has build fencing around the land and the real Land Owners are forbidden to enter their own lands. It has become an agonizing site for the people of Shella and Tynger Village.

b) Land Alienation & Institutional change

Secondly, Lafarge 74 % subsidiary Lum Mawshun Minerals Pvt Ltd. (LMMPL), with controversial permission obtained from the Government of Meghalaya,² took land from several individuals of Tynger and Shella Villages. The mining land was leased while the conveyor belt site was bought.

This land transfer has raised **three issues**. The *first* is that the land of individuals of Shella and Tynger Village was used by Lafarge instead of using Nongtraï Village land without their consent and knowledge. The *second* involved land of Shella Village sold by some individuals from the village without the villagers' consent. The *third* issue is that the lands that were bought by LMMPL were then transferred to Lafarge Umium Mining Private Ltd. and then eventually mortgaged to the IFIs. All these illegal purchase and leasing have been questioned in the Guwahati High Court, the issue being whether these land transfer is illegal under the MTLRA, 1971 and the Sixth Schedule of the Constitution of India and where Indigenous peoples' land can be transferred to non indigenous people or companies.

i. Land of Shella and Tynger Village used by Lafarge instead of Nongtraï Villageland without its consent and knowledge

The land used by Lafarge actually belongs to people of Shella and Tynger Village. -Nongtraï village leased their land portion to LMMPL for limestone mining; however Lafarge illegally used a different land portion. When this came to light at the time of project constructions, the real land owners of Tynger went to court to question these transactions. IFC must note that, if the claim by Shella and Tynger people is right, mining must stop immediately and be returned to the traditional owners.

ii. Land of Shella Village sold by some individuals from the village without the real land owners' consent

The second issue is that the purchase of land by LMMPL for the conveyor belt is illegal. The issue here is that Mr. K Bidhan Roy, so-called headman of Shella Village, collaborated with the project authorities and granted land ownership certificates to 89 villagers - who many of them are not the real owners of the land - without the authority of Shella Village Court.

Mr. Roy, together with Mr. S. G. Lyngdoh, are the two Khasis who own 26 percent shares of the LMMPL. They have played a key role in acquiring land and mining rights. Moreover, the headman, Mr. K. Bidhan Roy, is not entitled to exercise any right over the land of the village, which was confirmed in letters written by the then-Deputy Commissioner (DC)³, Khasi and

² Government of Meghalaya, Order NO: MG. 41/94/223 dated 29 August 2001 and Govt Letter. No. RDS. 25/99/11 dated 18 January 2002.

³ Deputy Commissioner has myriad roles and associated powers, s/he also is the District Collector who exercise the Powers of Registrar of a District in a state and controls and supervises the work of Registration of deeds.

Jaintia Hills to the Headman, Shillong on 24 June 1938⁴ and 21 February 2006⁵. However, the Notification of 7 June 1978 by the Special Secretary (Revenue Department), Government of Meghalaya prohibits any transfer of tribal land in the East Khasi Hills District. Going by this Notification, the permission by competent authority is null and void.

iii. Land transfer and mortgage

The third issue concerns the land transfer to LUMPL which was then mortgaged to the IFIs. Based on the Notification mentioned above, this is illegal. The transfer and mortgage negated the traditional land transfer norms, based on the Khasi people's traditional land holding system and the Sixth Schedule to the Constitution of India.

After they leased and bought the land for mining as well as for the conveyor belt, LMMPL transferred the legal titles to LUMPL who further mortgaged it to the IFIs for a loan of \$250 Million. ADB loaned LSC \$10M in Equity Investment and another \$40M as Private Sector Loan⁶ while IFC component consist of a Loan of US\$35 million, a B Loan of up to US\$10 million and equity of US\$10 million.

According to LUMPL's Special Resolution of an Extra-Ordinary General Meeting of the Shareholders held on March 29, 2005 it was "Resolved that in order to secure the loan of approximately USD153 million being borrowed by Lafarge Surma Cement Limited (the holding/parent company of the company), from the offshore Lenders, the company to create security over its assets in favor of Asian Development Bank, DEG- Deutsche Investitions und Entwicklungesellschaft MBH, European Investment Bank, International Finance Corporation, Arab Bangladesh Bank and Standard Chartered Bank, Bangladesh (the "Offshore Lenders") as well as Calyon (formerly known as Credit Agricole Indosuez) and Financier Lafarge (collectively with the Offshore Lenders, the "Secured Lenders") in the following manner: (1) *Mortgage (by way of deposit of title deeds) of all of the Company's immovable properties, in favor of the Offshore Lenders; and (2) mortgage and charge over all present and future moveable properties, contracts, investments and Insurance policies of the Company, under a Composite Security Agreement, in favor of the Secured Lenders*".

Further, it has been revealed that the permission to transfer land from the LMMPL⁷ to LUMPL and for mortgage of the same to offshore lenders was granted on 13 March 2006. This controversial permission was granted by the Deputy Commissioner of the East Khasi Hills District, Government of Meghalaya. The resolution by LUMPL was issued even prior to the transfer approval from the Competent Authority.

⁴ Letter written by Deputy Commissioner, Khasi and Jaintia Hills to U Jugordhon, Headman, Shillong, 24 June 1938, Misc. Pol. Case - No. 43 of 1938.

⁵ Letter written by Acting Wahadadar, Shella Confederacy to the Office of the Executive Committee, Khasi Hills Autonomous District Council, Shillong on 21 February 2006.

⁶ <http://www.adb.org/Documents/PIDs/31911014.asp>.

⁷ As per the legal deed, the land was bought by LMMPL in September 2003.

As for the IFIs involved in making this project possible through their loans, it is found that the loan disbursement happened even prior to the legal process of land transfer from the government is over. Apart from the issue of illegal land transfer, from the records available, IFC already invested/loaned an amount of 55 Million \$ for a land which is still in possession of local people.

Demographic Impact:

The LSC project has reportedly hired only few indigenous persons for the project. LMMPL has brought outsiders to work in the mining project. As affected people are not hired for the project and with the destruction of their livelihood sources, many have shifted their profession - some migrating to nearby towns and cities. This situation has further added to the marginalization of the Shella people. Workers from outside also have added to the fear and miseries of Shella villages.

Impact on Sustainable Mining :

The people of East Khasi Hills from pre-British days have been carrying out small scale private limestone mining from their land and have traded with neighboring communities. These activities have contributed to the local subsistence economy. However, the LSC pattern of mining is very destructive, not only to the ecology, but also to the sustainable economic practices. Even now, there are small scale mining in other areas in Shella. Some of these local miners complained that heavy blasting and the use of modern technologies in the mining areas will soon exhaust the raw materials.

The worst affected people to the above results of the mining operations of the Company are the Land Owners of Shella and Tynger Village.

IFC's own Policy and Loan Agreement Violations:

- Resettlement policy not triggered for Indian side until 2002
- There has been no monthly internal reports of Resettlement Implementation from Lafarge until March 2008.
- An independent organization was to conduct an annual external monitoring survey a) before land acquisition b) 1.5 years after acquisition of land and assets to coincide with mid-term report c) 3 years after land acquisition. **There are no such report produced or an external independent body commissioned.**
- Loan agreement required company to submit to IFC a social performance annual monitoring report which confirmed compliance; where non-compliant, detailing what actions were being

taken to make it compliant. This was to be done by an independent third party consultant (acceptable to IFC). There are no indication as yet that social performance were covered in these annual monitoring reports.

- Obligations of the loan agreement have not been fulfilled regarding implementation of resettlement action plan related to conveyor belt. It was to be completed by Dec. 31, 2003, however this does not seem to have been fulfilled.
- There is failure to complete RP audit report by Sept 30, 2003 (mandated by loan agreement). Document was still pending as of March 2008.
- Loan agreement mandated confirmation in writing to IFC by Dec 31, 2003 that company has implemented the “corrective action plan” including payment to all affected people. All implementation details should have been included in the RP Audit Report. The payments should have occurred before the confirmation and the confirmation should have been satisfactory to the IFC. **Confirmation is still pending.**
- Company also used/leased/acquired other land not in original loan agreement, such as the Worker’s camp, other structures, a shale mine etc. Lafarge failed to notify the lenders about the use of these lands and neither the IFC has had the chance to review or approve this land acquisition process and evaluate whether it meets IR policies of both Banks. Apparently, the loan agreement obligates Lafarge to notify any such new developments and thus currently, Lafarge is in violation of the loan agreement in addition to violations of RP and IP policies.
- No IP policy triggered until 2002 and then, RP’s 3 pager chapter titled “IPDP” does not satisfy OM 4.20 WB IP Policy for an IPDP. (Meghalaya is an indigenous state).
- IFC took land titles of Indigenous Peoples as Mortgage against the very requirement of Consent of Indigenous people land owners as well as the relevant Indigenous institutions.

THE COMPLAINT

Seeking CAO’s Action:

Given the above background and other longstanding problems faced by the affected people of Shella Confederacy, we are submitting this formal complaint to CAO. We have been denied justice and we invite CAO to investigate and take actions most appropriate and suitable for the worst affected of all by this project.

We know that cement industry, particularly groups like Lafarge, is creating havoc all over the world, including ours. Cement industry is also considered as one of the most notorious for their contribution to climate change. Given the way lands are being grabbed, environmental

