

## Ore & building materials extraction

### Keywords

- > Vedanta Case
- > Dongria Kondh
- > Sterlite Industries
- > Bauxite mine
- > Niyamgiri Hills

## 1. Synthesis of the main facts

The Vedanta Case concerns a proposal to develop an open cast bauxite mine on the upper reaches of the Niyamgiri hills in Orissa, India. According to the Indian Ministry of Environment and Forests (MoEF), the project would have a huge impact on the environment and the livelihood of the local communities, destroying an important wild life habitat, and threatening the traditional way of life of the Dongria Kondh tribe's communities, for whom these mountains are sacred.

Vedanta Resources is a UK registered mining company, operating directly or through subsidiaries in India, Zambia and Australia. There are two main subsidiaries: Sterlite Industries India Limited (SIIL), based in Mumbai Maharashtra, and of which Vedanta owns 59.9%; and Vedanta Aluminium Limited (VAL), based in Lanjigarh (Orissa), with 70.5% owned directly by Vedanta, and 29.5% owned by SIIL.<sup>1</sup> Because it is the majority shareholder, Vedanta Resources' responsibility in this conflict has never been questioned.

The project to open the mine was prepared by Sterlite Industries on the basis of an agreement of 5 October 2004 between VAL (subsequently succeeded by SIIL), and the Orissa Mining Corporation Limited (OMC), a company owned by the State of Orissa. On 8 August 2008 the Indian Supreme Court granted SIIL the authorization for the project, only subject to final approval by the Indian Ministry of Environment and Forests (MoEF). For its part, the Ministry commissioned a panel to investigate the project's impact on the local tribes and the wildlife. On August 2010, a negative report was rendered. According to the panel, the Ministry considered the project to be in non-compliance with several forest conservation and environmental protection regulations and denied its approval. In April 2011, OMC formally challenged this latter decision before the Supreme Court of India, where the case is still pending judgment.



This case has had considerable impact on international public opinion, as there has been significant involvement of international celebrities and NGOs concerned with the protection of the environment and the rights of indigenous peoples. In this context, it should be pointed out that the organization *Survivor* successfully sued Vedanta before the UK OECD National Contact Point (NCP), and obtained an unprecedented resolution by the UK Government.

## 2. International legal framework

Even though no instruments of international law were applied in the "Vedanta Case", some may have been appropriate. This was remarked on by the UK NCP in point 67 of its final statement, which referred to the inobservance of such international treaties as The United Nations International covenant on Civil and Political Rights (1966), The United Nations Convention on the Elimination of All Forms of Racial Discrimination (1965), The Convention on Biological Diversity (1992), and The United Nations Declaration on the Rights of Indigenous People (2007). All of these instruments are part of the Indian legal framework.

- *The UN International Covenant on Civil and Political Rights and the UN International Covenant on Economic, Social and Cultural Rights (1966):* Article 1 of these treaties, which is identical to both of them, establishes that "all peoples have the right of self-determination" in order to satisfy their economic, social and cultural needs. In the context of the Vedanta case the second paragraph of this provision is



<sup>1</sup>UK National Contact Point for the OECD Guidelines for Multinational Enterprises. URN: 09/1373. 25 September 2009.



Location of the State of Orissa, India.



Source: [indiatravelbuddy.com](http://indiatravelbuddy.com) - A view of the Niyamgiri hills.

particularly relevant, as it recognizes the right of all people to “freely dispose of their natural wealth and resources.” As a party to both covenants, (using the phrase from article 2 of the ICCPR<sup>2</sup>) India has undertaken to respect and to ensure all individuals within its territory and subject to its jurisdiction the rights recognized therein, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

- *The United Nations Convention on the Elimination of All Forms of Racial Discrimination (1965)*: The main objective of this treaty, as its name suggests, is to prevent all sorts of discrimination. The term “racial discrimination” stands for “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” (article 1.1)

In conflicts such as the Vedanta case, in which groups such as the Donghria Konds are involved, a situation of discrimination could be generated, for example, by inefficient public consultations, and procedures that make it difficult for interested communities to have any real possibilities of being heard.

- *The Convention on Biological Diversity (1992)*: This convention generally provides for the conservation and sustainable use of the components of biological diversity. Particularly relevant to the Vedanta case is article 14.1.a), requiring that “[e]ach Contracting Party, as far as possible and as appropriate, shall: Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity.”

- *The United Nations Declaration on the Rights of Indigenous People*

(2007): This declaration contains two provisions that might be of relevance to the present case: namely, (I) article 8.2.b), establishing that “States shall provide effective mechanisms for prevention of, and redress for: [...] (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources”; and (II) article 19, declaring that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

### 3. National legal framework

Taking into account the actions brought before the Supreme Court, and the follow-up of the case, we will discuss some Indian legal tools that are of relevance to the case.

- *The Indian Companies Act*: It “contains several provisions that contemplate the criminal liability of companies and/or its relevant officers in various situations.”<sup>3</sup>

- *The Forest Conservation Act*: It was adopted to restrict and regulate the use of forests or forest land. It requires any such use to be previously approved by the Federal Government for it to be lawful.<sup>4</sup> This norm was breached as the company illegally occupied 26,123 ha of village and forest lands within the factory premises, before the expansion project was given the necessary environmental clearance. Likewise, the company illegally occupied the lands it needed to build a road running parallel to the conveyor corridor.

*The Environmental Protection Act (EPA)*: For the purpose of this piece of regulation, the environment encompasses “water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property.”<sup>5</sup>

<sup>2</sup> Very similar language is also used in art. 2.2 ICESCR.

<sup>3</sup> INTERNATIONAL COMMISSION OF JURISTS. *Access to Justice: Human Rights Abuses Involving Corporations, India*. ISBN 978-92-9037-153-6. Geneva, 2011, p.10.

<sup>4</sup> Web MoEF's:

<http://moef.nic.in/modules/rules-and-regulations/forest-conservation/> (Last access: 30 January 2012).

<sup>5</sup> Indian Environmental Protection Act 1986, No. 29 of 1986, [23rd May, 1986.] Section 2(a).



On the basis of this act, the Government can issue directions to regulate any industry or operation, in order to protect the environment.<sup>6</sup> According to the MoEF, the company violated this norm because it proceeded with the construction activity for its expansion project without the corresponding environmental clearance.

- *The Forest Rights Act (FRA)*<sup>7</sup>: In their report to the MoEF of August 2010, the members of the panel commissioned to assess the SIIL/OMC project stated that the FRA has four objectives relevant to the case at hand: In the first place, it “recognized that forest dwellers were treated as encroachers in their own ancestral lands”, reaffirming their pre-existing rights. Consequently, in the second place, it provides the communities and individuals with standing to claim for their natural resources. Thirdly, “the Act recognized that the governance of the eco-systems must be led by local governance structures. In keeping with this principle, the Act constituted local governance structures (*Gram Sabhas*) as authorities to file claims for village forest lands and individuals.”<sup>8</sup> Lastly, in relation to the above, the Act also provides for the right to free, informed, and prior consent of the communities through a clear and transparent administrative process.

The FRA protects the “forest dwelling Scheduled Tribes”. This concept involves the forest land, the members or communities who reside and depend on the forest, and the Scheduled Tribe pastoralist communities. Undoubtedly, the Kondhs belong to this category, and should therefore be previously consulted.

The report accused SIIL of failure to comply with the Panchayats Extension to Scheduled Areas Act, or PESA. This is a federal statute enacted in 1996, the main objective of which is to enhance the efficiency of the participation of the tribes in the acquisition of lands located in *Adivasi* territories listed under

Schedule V. The PML site was one of the listed areas.<sup>9</sup>

## 4. Action taken in the context of national institutions

### 4.1. India

#### 4.1.1. The Supreme Court of India

In March 2003, Vedanta Alumina Ltd. (VAL) applied to the MoEF for the approval of an alumina refinery project in Lanjigarh Tehsil, Kalahandi District, in the east Indian state of Orissa. It also submitted a separate application for a bauxite mining project in the nearby Niyamgiri Hills. Despite having been applied for separately, both projects were portions of a broader one that was to be exploited through a joint venture between OMC and VAL. This broader project planned to use 723,343 ha of land, of which 58,943 ha were a reserve of forest land.

Clearance for the alumina refinery project was granted by the MoEF on 22 September 2004. However, before clearance was given for the mining part of the Project, the Central Empowered Committee (CEC) of the MoEF received several petitions against both, claiming that they would destroy the traditional way of life of the Dongria Kondh people, who are spiritually and culturally attached to the Niyamgiri Hills. Moreover, complaints were made about work on both projects having started before all mandatory clearances had been obtained, with many people having been forcibly moved from their homes.

On 21 September 2005, the CEC addressed a recommendation to the Supreme Court of India for the revocation of the clearance for the alumina refinery.<sup>10</sup> By order of 23

<sup>6</sup> Ibid, section 5.

<sup>7</sup> Saxena, N.C., S. Parasuraman, P. Kant, and A. 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 (submitted to the Ministry of Environment and Forests, Government of India, New Delhi), at 44.

<sup>8</sup> idem.

<sup>9</sup> Ibid, 63.

<sup>10</sup> Central Empowered Committee, *Report in IA No. 1324 regarding the alumina refinery plant being set up by M/s Vedanta Alumina Limited at Lanjigarh in Kalahandi District, Orissa, 21 September, 2005*. Available at <http://www.indiaresource.org/issues/globalization/2005/CECSep2005cancellinse.html> (accessed: 19 February 2012).



© Lewis Davids/Survival - Dongria Kondh boy Kalia stands in front of the Niyamgiri hill range.

<sup>11</sup> T.N. Godavaraman Thirumulpad vs. Union Of India And Ors, (Case No. Writ Petition 202/1995), Order of 23 November, 2007.

<sup>12</sup> The Supreme Court took into consideration the news that had recently appeared in the media, according to which Norway's Government Pension Fund withdrew its investments from Vedanta Resources, following a recommendation from its ethics council. The aforementioned fund invests Norway's revenues from petroleum in foreign stocks and bonds to preserve the country's wealth for the future. As reflected in the Supreme Court's order of 23 November 2007, the fund's ethics council had considered that in maintaining the investment in Vedanta, the fund would bear an unacceptable risk of complicity in severe present and future environmental damage and systematic human rights violations. See Chesterman, S., 'The Turn to Ethics: Disinvestment from Multinational Corporations for Human Rights Violations-The Case of Norway's Sovereign Wealth Fund', *American University International Law Review*, Vol.23, 2008, pp. 577-615; Richardson, B.J., 'Sovereign Wealth Funds and the Quest for Sustainability: Insights from Norway and New Zealand', *Nordic Journal of Commercial Law*, issue 2011, #2, pp. 1-27.

<sup>13</sup> It is true that Sterlite Industries had also been withdrawn from the Norwegian sovereign fund altogether with Vedanta Resources (see: <[www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/companies-excluded-from-the-investment-u.html?id=447122](http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/companies-excluded-from-the-investment-u.html?id=447122)>; accessed on 24 February 2012).

However, the Supreme Court took the view that, in contrast to the other subsidiary (VAL), SIIL had financial assets located in India in order to cope with possible liabilities (supra n 11).

<sup>14</sup> T.N. Godavaraman Thirumulpad vs. Union Of India And Ors, (Case No. Writ Petition 202/1995), Order of 8 August, 2008.

November 2007,<sup>11</sup> the Supreme Court denied all clearances to the VAL/OMC joint venture. The Court based its decision inter alia on factors such as Vedanta's bad international reputation<sup>12</sup> and the lack of transparency in the company's financial involvement in the joint venture, coming to the conclusion that it was not sufficiently satisfied with Vedanta's credibility as to give the corresponding clearances. Nevertheless, the clearances would be granted if formally applied for by its India-based subsidiary Sterlite Industries (India) Ltd. (SIIL) –and not by VAL– as long as it agreed with the terms of a 'rehabilitation package' as set out in the order, so as to reconcile it with the principle of sustainable development<sup>13</sup>. With this purpose, it indicated that various important conditions had to be observed. The most noteworthy were the following:

- M/s. SIIL shall deposit, every year commencing from 1 April 2007, 5% of its annual profits from the Lanjigarh Project for Scheduled Area Development.

- The mining company shall pay a Wildlife Management Plan for Conservation around the Lanjigarh bauxite mine.

- The user agency shall undertake the rehabilitation of Project-affected families.

- A plan for the development of tribes must be implemented.

- A statement shall be filed in which affected persons belonging to the local tribal communities, and in particular land-losers, are offered employment by SIIL or contractors of the company.

- M/s. SIIL shall also bear the expenses of compensatory afforestation.

After Sterlite had resubmitted the proposal according to the conditions set out in the 2007 order, the Supreme Court granted all necessary permits by order of 8 August 2008. With respect to the bauxite mining project, it granted the clearance "to the forest diversion proposal for diversion of 660.749 ha of forest land to undertake bauxite mining on the Niyamgiri Hills in Lanjigarh". Furthermore, the Court declared that "the next step would be for MoEF to grant its approval in accordance with law."<sup>14</sup>

#### 4.1.2. Further developments

Notwithstanding the Supreme Court's order of 8 August 2008, the MoEF – based on the legal advice of the Attorney General– considered not to be bound to give automatic clearance to the project. Instead, on 30 June 2010, it commissioned a panel of independent



© Survival - Vedanta's aluminium refinery at Lanjigarh, Odisha, seen from the Niyamgiri Hills



© Toby Nicholas/Survival – Dongria Kondh woman picking millet in Niyamgiri, India

experts to report on the project's impacts on the environment and the local tribal communities. This report was issued on 16 August that year.<sup>15</sup> In their conclusions, the experts stated the following:

“The proposed mining lease (PML) area, located on the upper reaches of the Niyamgiri hills..., is a rich habitat well known for its diverse species of plant and animal life. It plays a critical role of an elephant corridor linking forests of Rayagada and Kalahandi districts which then connect to the Karlapat wildlife sanctuary in the north-west and Kotagarh wildlife sanctuary in the north-east. It thus has a high functional importance in creating an uninterrupted forest tract that is particularly important for the conservation of larger mammals like elephant and tiger. The significance of the PML area for wildlife is particularly high because it provides the valuable ‘edge effect’ to animals with open grasslands as feeding space and the neighboring dense forests for shelter and escape.

The tiny endangered primitive tribal group of the Dongria Kondh (...) live in the upland areas of the Niyamgiri hills and depend on its forests intensely. Their distinctive cultural identity is intrinsically linked to the Niyamgiri hills (...).

The other primitive tribal group that depends upon these forests is the Kutia Kondh who live on the margins of these forests. The PML site is amongst the highest points in the hills and it is considered especially important as a sacred site by both the Kutia and the Dongria Kondh. Their reverence for the hills is rooted in their strong dependence on the natural resources that the mountains provide. The proposed mining lease (PML) area is used by both these communities and is part of their Community Reserved Forests as well as their habitat,

since they depend on it for their livelihoods as well as socio-cultural practices. The age-old access of Kutia and Dongria Kondh to the PML area and the surrounding forests has been recognised in several forest settlement reports and Working Plans.

Besides the Dongria Kondh and the Kutia Kondh Scheduled Tribes, mining is also likely to adversely affect an almost equal number of Dalits living in the Kondh villages who are landless and earn their living by providing various services, including trading in the horticultural produce grown by the Dongria Kondh. The truth of their de facto dependence on the Niyamgiri forests for the past several decades cannot be ignored by a just government aiming at inclusive growth.”<sup>16</sup>

After an accurate assessment of the ecological and human costs of the project, the experts of the panel further claimed that the conduct of the companies involved in the joint venture, as well as the governmental authorities of the State of Orissa and the district administration, had manifestly violated such federal laws and regulations as the Forests Rights Act, the Forest Conservation Act, and the Environmental Protection Act, implicitly signaling corruption.

In particular, the panel found that

“the Orissa government is not likely to implement the [Forests Rights] Act in a fair and impartial manner as far as the PML area is concerned. Since it has gone to the extent of forwarding false certificates and may do so again in the future, the MoEF would well be advised not to accept the contentions of the Orissa government without independent verification.”<sup>17</sup>

In relation thereto, the panel found that the state government had discouraged and denied the legitimate claims of the

<sup>15</sup> Saxena et al. (n 7).

<sup>16</sup> *ibid*, at 84.

<sup>17</sup> *ibid*, 85.



concerned primitive tribal groups without the due process of law, as the prior informed consent of the Kondh Primitive Tribe Groups had not been requested as required under the Forests Rights Act. Therefore, the experts recommended that all clearances that had so far been granted be withdrawn, and any further approvals denied unless:

- “1. The process of recognition of rights under the Forest Rights Act is complete and satisfactory;
2. The consent of the concerned community has been granted; and
3. Both points have been certified by the Gram Sabha of the area concerned (...).”<sup>18</sup>

Moreover, the panel found that the company, with the total contempt and complicity of the responsible governmental officials of the state of Orissa, violated both the Forest Conservation Act and the Environmental Protection Act, as it had illegally occupied 26,123 ha of village forest lands enclosed within the factory premises, and had already proceeded with construction activities for its expansion project without obtaining environmental clearance. In addition, the occupation of forest lands was found to be in violation of the conditions of clearance initially granted to the company for the refinery project.<sup>19</sup> Therefore, the report concludes that

“In view of the above, this Committee is of the firm view that allowing mining in the proposed mining lease area by depriving two Primitive Tribal Groups of their rights over the proposed mining site in order to benefit a private company would shake the faith of tribal people in the laws of the land. Since the company in question has repeatedly violated the law, allowing it further access to the proposed mining lease area at the cost of the rights of the Kutia and Dongaria Kondh will have serious consequences for

the security and well-being of the entire country.”<sup>20</sup>

Subsequently, on 24 August 2010, the Minister of the Environment, Mr. Jairam Ramesh, rejected the clearance applications submitted by OMC and SIIL for the mining project in the Niyamgiri Hills, based *inter alia* on the conclusions of the aforementioned report. Given the evidence about the *prima facie* violations of several pieces of legislation, especially the Forest Conservation Act, the Environmental Protection Act, and the Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act,<sup>21</sup> the Stage II forest clearance for the OMC and Sterlite project of mining in the Niyamgiri Hills, “cannot be granted ... [and] therefore stands rejected.”<sup>22</sup> Moreover, in view of the implicit accusations of corruption that had been made in the *Report of the four member committee*, the MoEF advised that criminal actions should be initiated against the project proponents (SIIL and VAL).

After MoEF’s decision, VAL challenged it before the High Court of Orissa. This law suit was dismissed in July 2011. The High Court based its decision on the evidence that the project was expanded before environmental clearance had been obtained (as the EIA notifications 2006 require),<sup>23</sup> and other illegalities in the process. As a result, the environmental clearance of VAL’s expansion project had to start *ex novo*.

In April 2012 a renewed appeal of OMC against the MoEF’s decision denying clearance for the bauxite mine was adjourned by the Indian Supreme Court. However, after reports on exploding exploitation costs of the alumina refinery, due to its dependence on bauxite sourced from distant mines,<sup>24</sup> the company announced in early September 2012 its intention to shut down the Lanjigarh refinery by the end of the year.<sup>25</sup>

<sup>18</sup> *ibid*, 86.

<sup>19</sup> *ibid*, 86-7.

<sup>20</sup> *ibid*, 87.

<sup>21</sup> Decision on Grant of Forest Clearance in Kalahandi and Rayagada District of Orissa for the Proposal submitted by the Orissa Mining Corporation Ltd. (OMC) for Bauxite mining in the Lanjigarh Bauxite Mines. MoEF, Government of India. 24 August 2010.

<sup>22</sup> *ibid*, 19.

<sup>23</sup> High Court of Orissa. W.P.(C) No.19605 of 2010. Judgment of 19 July 2011, at 24.

<sup>24</sup> ‘Vedanta may temporarily shut down Odisha refinery’, *Business Standard*, 22 August 2012. Available at <<http://www.business-standard.com/india/news/vedanta-refineryvergetransient-shutdown-amid-zero-bauxite-stock/483954/>> accessed 1 October 2012.

<sup>25</sup> ‘Vedanta to close Lanjigarh refinery on Dec 5’, *The Times of India*, 7 September 2012. Available at

<[articles.timesofindia.indiatimes.com/2012-09-07/bhubaneswar/33676601\\_1\\_lanjigarh-refinery-bauxite-alumina-refinery](http://articles.timesofindia.indiatimes.com/2012-09-07/bhubaneswar/33676601_1_lanjigarh-refinery-bauxite-alumina-refinery)> accessed 1 October 2012.



<sup>26</sup> The Guidelines represent supplementary principles and standards of behavior of a non-legal character. (For more information: [http://www.oecd.org/topic/0,3699,en\\_2649\\_34889\\_1\\_1\\_1\\_1\\_37439,00.html](http://www.oecd.org/topic/0,3699,en_2649_34889_1_1_1_1_37439,00.html) – last access 24/01/12, 10hs.)

<sup>27</sup> UK NCP for the OECD Guidelines for Multinational Enterprises. *Initial Assessment by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Survival International and Vedanta Resources plc.* 27<sup>th</sup> of March 2009. URN: 09/806. <sup>1</sup>Survival Web, 12 Oct. 2009: 'GUILTY': UK government blasts Vedanta in unprecedented attack. (<http://www.survivalinternational.org/news/4980> - visited on 24/01/12, 11hs.)

<sup>28</sup>Survival Web, 12 Oct. 2009: 'GUILTY': UK government blasts Vedanta in unprecedented attack. (<http://www.survivalinternational.org/news/4980> - visited on 24/01/12, 11hs.)

<sup>29</sup> UK NCP for the OECD Guidelines for Multinational Enterprises. *Initial Assessment by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Survival International and Vedanta Resources plc.* Point 6. 27<sup>th</sup> of March 2009. URN: 09/806.

<sup>30</sup> UK NCP for the OECD Guidelines for Multinational Enterprises. *Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Complaint from Survival International against Vedanta Resources plc.* 25 September 2009. URN: 09/1373, para. 16. Available at: <<http://www.berr.gov.uk/files/file53117.doc>> (accessed: 19 February 2012).

<sup>31</sup> *ibid.*, para. 12.

Indeed, this decision is a victory for the local tribes and the supporting NGO community. Nevertheless, as the appeal against the denial of the clearance for the bauxite mine is still pending before the Indian Supreme Court, it remains to be seen whether the end of Vedanta's operations in the area is definitive, of just transitory.

## 4.2. United Kingdom

Complementary to the steps taken before Indian authorities and courts, another significant strand of action has taken place in the United Kingdom. On 19 December 2008 the NGO *Survival*, brought the case to the attention of the OECD National Contact Point (NCP) in the UK, claiming that Sterlite's operations did not comply with the OECD Guidelines for Multinational Enterprises.<sup>26</sup> The complaint was based on the alleged non-compliance with the following OECD guidelines:

"II.2 Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

I.7 Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.

V.2b Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation."<sup>27</sup>

After its initial assessment, the UK NCP accepted Survival's complaint for further consideration on 27 March 2009. However, throughout the following proceedings, and "despite repeated

requests from the UK government, the company failed to provide any evidence during the examination. This is the only time a company has refused to participate in an OECD investigation."<sup>28</sup> "Vedanta has not been able to meet the NCP within the allocated timeframe for the initial assessment so communication was undertaken by the exchange of emails and letters...."<sup>29</sup> On April 2009, the Company refused the UK NCP's offer of conciliation/mediation, so the NCP informed both parties that it would move to an examination of the complaint. During its inquiry, "Survival International submitted a great deal of evidence in support of its allegations but Vedanta submitted no evidence in support of the claims made in its responses."<sup>30</sup>

In Vedanta's letters dated 20 January and 13 February 2009, the company contested Survival's accusations, denying that it had breached the Guidelines. In particular, it argued that:

"1. Most of the local community supports the mine project. Survival has not provided the necessary evidence of the opposite.

2. The mine project has been approved by the Supreme Court of India, which considered the environmental impact, and the consultation process.

### More on this case

<http://www.survivalinternational.org/tribes/dongria>

### This document should be cited as:

Cirone, M. (CEDAT, Universitat Rovira i Virgili) 2012. *The Vedanta Case in India*, EJOLT Factsheet No. 46, 8 p.



<sup>32</sup>Ibid. Conclusions, point 64.  
<sup>33</sup>Ibid. Conclusions, point 65

3. It has been evidenced that the Company consulted the local communities under the supervision of the local District Magistrates in June 2002 and February-March 2003.<sup>31</sup> Under normal circumstances, in the Final Statement, the NCP clearly states whether or not the Guidelines have been breached and give recommendations to the company about future conduct, if necessary. In this key third stage of the OECD's complaint process, the NCP concluded:

- "The UK NCP could not find any record of the views of the Dongria Kondh about the construction of the bauxite mine in the Niyamgiri Hills ever having been collected and/or taken into consideration by the company." The consultations made in 2002 and 2003 were only about the project of the Refinery. Moreover, "the Supreme Court of India did not rule (nor was it asked to rule) on the need to consult local indigenous communities."<sup>32</sup>

- Vedanta did not comply with Chapter V(2)(b) of the Guidelines. The environmental impact assessment carried out by the Central Empowered Committee and SILL demonstrated that the mining project would affect the home of the local tribe. It showed that "Vedanta has failed to put in place an adequate and timely consultation mechanism to engage fully the Dongria Kondh about the potential environmental and health and safety impact of the construction of the mine on them."<sup>33</sup>

- The company failed to act consistently with Chapter II(7) of the Guidelines, because it did not develop an effective self-regulatory practice to foster a relationship of confidence and mutual trust between the company and the local tribe (pt. 66). In any case Vedanta did not make an "indigenous (or human) rights impact assessment"

- Vedanta has behaved inconsistently with Chapter II(2) of the Guidelines. "It failed to engage the Dongria Kondh in adequate and timely consultations on the impact ... on their

recognised rights and freedoms ... and it did not take any other measures to consider the impact of the construction of the mine on those rights and freedoms, or to balance the impact against the need to promote the success of the company" (pt. 67). Neither did the company respect various international human rights instruments.

Finally, the UK NCP gave some recommendations to Vedanta Resources to help the Company bring its practices into line with the Guidelines of the OECD. This largely involved engaging with the Dongria Kondh so that they could guarantee their traditional livelihood, and find alternative arrangements for the affected families (recommendation 1). The company was also advised to include human rights impact assessment in its project management, paying particular attention to creating an effective consultation process for the public concerned.

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