



Lord Davies of Abersoch

Minister for Trade,
Investment and Small Business

UK Trade & Investment
1 Victoria Street
London
SW1H 0ET
Direct Line +44 (0)20 7215 6871
Fax +44 (0)20 7215 5551
Email mpst.davies@bis.gsi.gov.uk

Peter Luff MP
Chair - Business & Enterprise Committee
7 Millbank
London SW1P 3JA

12 October 2009

Dear Peter

I am writing to inform you that the Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises on the complaint against Vedanta Resources plc, a UK registered mining company operating in India, was published on my Department's website on 12 October 2009. The company has been found to have acted inconsistently with the OECD Guidelines and has been asked to update my Department by December 2009 on the implementation of the recommendations contained in the Final Statement.

For your information, I enclose a copy of the Final Statement. My Department will also deposit this document in the Libraries of both Houses of Parliament.

Mervyn

LORD DAVIES OF ABERSOCH

MDpb1210



Foreign &
Commonwealth
Office

BIS

Department for
Business Innovation
& Skills

**Final Statement by the UK National Contact Point for the OECD
Guidelines for Multinational Enterprises**

Complaint from Survival International against Vedanta Resources plc

SUMMARY OF THE CONCLUSIONS

- The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) upholds Survival International's allegation that Vedanta Resources plc (Vedanta) has not complied with Chapter V(2)(b) of the Guidelines. The UK NCP concludes that Vedanta failed to put in place an adequate and timely consultation mechanism fully to engage the Dongria Kondh, an indigenous community who would be directly affected by the environmental and health and safety impact of its plans to construct a bauxite mine in the Niyamgiri Hills, Orissa, India.
- The UK NCP upholds Survival International's allegation that Vedanta has not complied with Chapter II(7) of the Guidelines. It concludes that Vedanta failed to engage the Dongria Kondh in adequate and timely consultations about the construction of the mine, or to use other mechanisms to assess the implications of its activities on the community such as an indigenous or human rights impact assessment. Vedanta therefore failed to develop and apply effective self-regulatory practices to foster a relationship of confidence and mutual trust between the company and an important constituent of the society in which it was operating.
- The UK NCP also upholds Survival International's allegation that Vedanta has not behaved consistently with Chapter II(2) of the Guidelines. The UK NCP concludes that Vedanta failed to engage the Dongria Kondh in adequate and timely consultations on the construction of the bauxite mine; it did not consider the impact of the construction of the mine on the rights and freedoms of the Dongria Kondh, or balance the impact against the need to promote the success of the company. For these reasons, Vedanta did not respect the rights and freedoms of the Dongria Kondh consistent with India's commitments under various international human rights instruments, including the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous People.

BACKGROUND

OECD Guidelines for Multinational Enterprises

1. The Guidelines comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.

2. The Guidelines are not legally binding. However, OECD governments and a number of non OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.
3. The Guidelines are implemented in adhering countries by National Contact Points (NCPs) which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

UK NCP complaint procedure

4. The UK NCP complaint process is broadly divided in three key stages:
 - (1) Initial Assessment - This consists of a desk based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;
 - (2) Conciliation/mediation/examination - If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;
 - (3) Final Statement - If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If the UK NCP has examined the complaint, it will prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and recommendations to the company for future conduct, if necessary.
5. The complaints process, together with the UK NCP's Initial Assessments and Final Statements, is published on the UK NCP's website <http://www.berr.gov.uk/nationalcontactpoint>

DETAILS OF THE PARTIES INVOLVED

6. **The complainant.** Survival International is a UK based NGO which seeks to support tribal peoples worldwide through educational programmes, advocacy and campaigns to protect their rights. One of its stated objects is to promote for the public benefit the human rights of indigenous peoples established by United Nations covenants and declarations.
7. **The company.** Vedanta is a UK registered mining company operating directly or through subsidiaries in India, Zambia and Australia. Vedanta's activities focus on aluminium, copper, zinc, lead and iron

mining. The company is listed in the FTSE 100. Vedanta has a controlling stake in a number of subsidiaries¹ but only two are relevant to the complaint: Sterlite Industries (India) Limited (Sterlite Industries), based in Mumbai (Maharashtra) 59.9% of which is controlled by Vedanta; and Vedanta Aluminium Limited, based in Lanjigarh (Orissa), 70.5% of which is owned directly by Vedanta, and 29.5% of which is owned by Sterlite Industries.

8. Survival International's complaint focuses on the construction of a bauxite mine near Lanjigarh (Kalahandi and Rayagada Districts - Orissa - India). This project was originally proposed by Sterlite Industries on the basis of an existing agreement between Vedanta Aluminium Limited and Orissa Mining Corporation Limited, a company owned by the State of Orissa. Vedanta Aluminium Limited applied to the Supreme Court of India for clearance on the project. Following the Supreme Court of India's Order of 23 November 2007, Vedanta Aluminium Limited's application was dismissed but Sterlite Industries (and only Sterlite Industries) was granted leave to re-apply. In August 2008, the Supreme Court granted Sterlite Industries clearance for the use of forest land for bauxite mining subject to final approval from the Indian Ministry of Environment and Forests. Sterlite Industries therefore formally retains the lead on the Lanjigarh project. Neither Vedanta nor the complainant dispute that overall responsibility for the Lanjigarh project rests with Vedanta.

COMPLAINT FROM SURVIVAL INTERNATIONAL

9. On 19 December 2008, Survival International brought a complaint to the UK NCP in relation to the operations of Vedanta in the Niyamgiri Hills, situated in the State of Orissa (India).
10. Survival International made the following allegations in respect of Vedanta's planned construction of an open pit bauxite mine in the Niyamgiri Hills:
 - (a) Vedanta has failed to consult with an indigenous group affected by its operations, the Dongria Kondh², who live within 4 to 5 Km from the mine but revere as sacred the area on which the mine is being built, and depend for their livelihood on the area affected by the mine's operations. Survival International alleges that Vedanta has failed to consider the implications of its activities in respect of the Dongria Kondh. For example, it has not commissioned an indigenous rights impact assessment with the full participation and engagement of the Dongria Kondh, nor does it have a human rights or indigenous people policy. Survival International appears to have brought its complaint on behalf of the Dongria Kondh, as opposed to other local indigenous communities, because they are the

¹ See <http://www.vedantaresources.com/uploads/vedanta-group-structure-lar.jpg>

² Some sources refer to this community as the "Dongria Kondh" or as "Dongria Kandha".

community most vulnerable to the effects of the construction of the mine.

- (b) As a result of the allegations summarised in paragraph 10(a), Vedanta has failed to respect India's international commitments under the United Nations (UN) International Covenant on Civil and Political Rights (Articles 2(1), 18, 27), the UN Convention on the Elimination of All Forms of Racial Discrimination (Articles 5(c), 5(d)(v), 5(e)), the Convention on Biological Diversity (Article 8(j)), and the UN Declaration on the Rights of Indigenous People (Articles 12, 18, 19 and 32).
 - (c) As a result of the allegations summarised in paragraph 10(a), Vedanta has breached India's domestic law, namely the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.
11. Survival International alleged that Vedanta's conduct is contrary to the following provisions of the Guidelines:

"Chapter II. General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

[...]

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

[...]

II(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.

Chapter V. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

[...]

V(2) Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:

[...]

(b) 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”.

RESPONSE FROM VEDANTA RESOURCES PLC

12. Vedanta set out its response in respect of the complaint from Survival International in two letters addressed to the UK NCP (dated 20 January and 13 February 2009). In these letters, Vedanta denied that it has breached the Guidelines and asked the UK NCP not to accept Survival International's complaint on the basis of the following assertions:
- a) Survival International has not provided evidence that it has the backing of the local community to bring this complaint. According to Vedanta, most of the local community supports the mine project.
 - b) The mine project has already been approved by the Supreme Court of India and by the State of Orissa (which is in joint venture with Sterlite Industries on this project). The Supreme Court of India already considered the impact of the project on the local community, including the consultation process, and also identified significant benefits for the local community as a result of the project.
 - c) Vedanta already ensures that its operations comply with corporate social responsibility standards and annually publishes a “Sustainable Development Report” to reflect its progress in this area. In respect of the mine project, Vedanta commissioned a comprehensive Environmental Impact Assessment from Tata AIG Risk Management Services Limited which concluded that the project will have a positive impact on the local community. Vedanta also stated that the Wildlife Institute of India confirmed that the Dongria Kondh do not inhabit the area of the future mine.
 - d) Vedanta consulted the local communities under the supervision of the local District Magistrates in June 2002 (in the district of Kalahandi) and February-March 2003 (in the two districts of Kalahandi and Rayagada). The company also explained that the State of Orissa conducted a separate consultation process with the local communities. Vedanta stated that the Supreme Court of India “*was satisfied that the local communities (of which the Dongria Kondh are a part) had been consulted appropriately*”. Vedanta also supported the re-settlement of those families displaced by its operations in the area, and is committed to its Integrated Village Development Programme.

UK NCP PROCESS

13. The UK NCP received the complaint from Survival International on 19 December 2008. On the same day, the UK NCP sent the complaint to Vedanta which responded on 20 January and on 13 February 2009.

14. The UK NCP met with Survival International on 27 January 2009 to discuss the complaint against Vedanta and explain the UK NCP's complaint process. Vedanta was unable to meet the UK NCP within the allocated timeframe before the publication of the Initial Assessment on the complaint. Therefore, the UK NCP and Vedanta communicated by an exchange of e-mails and letters.
15. The UK NCP published its Initial Assessment of the complaint on 27 March 2009. The assessment is downloadable from the UK NCP's website <http://www.berr.gov.uk/nationalcontactpoint>.
16. On 6 April 2009, Vedanta declined the UK NCP's offer of conciliation/mediation. As a result, the UK NCP informed both parties on 9 April 2009 that it would move to an examination of the complaint. The UK NCP asked both parties to provide evidence to support their position in respect of the complaint by 8 May 2009. This deadline was extended at Vedanta's request. 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 of 20 January and 13 February 2009, save for a copy of its 2008 Sustainable Development Report.
17. The UK NCP was disappointed by Vedanta's decision not to engage fully with the UK NCP's complaint process. The UK NCP was particularly disappointed with Vedanta's refusal to take up its offer of sponsored professional conciliation/mediation, and Vedanta's failure to provide any evidence during the examination stage to support its position in respect of the complaint.
18. The UK NCP invited evidence from other relevant UK Government Departments, business and trade union's organisations, and civil society, however none was provided.

UK NCP ANALYSIS

19. Most of the evidence in this case comes from the complainant. The UK NCP considered all the evidence submitted by Survival International and decided that it was appropriate to give greater weight to the independent sources in that evidence because they were more likely to provide an impartial view or account of events. The UK NCP considers that the evidence provided by Survival International together with evidence it collected through its own research was sufficient to make a determination on whether Vedanta breached the Guidelines.

Standing of Survival International as the complainant

20. The UK NCP's Initial Assessment of 27 March 2009³ sets out its reasons for deciding that Survival International is an appropriate body to bring the complaint. It considers that there is no need to address this issue again in this Final Statement.

The Lanjigarh Project

21. Sterlite Industries commissioned Tata AIG Risk Management Services Ltd to carry out a Rapid Environmental Impact Assessment on the construction of the mine⁴. According to the environmental impact assessment report, the Lanjigarh project includes the construction of an aluminium refinery, supported by a power plant, and of a nearby bauxite⁵ mine (situated approximately 5 km south of Lanjigarh) having approximately 73-75 million tons of mining reserve to ensure supply of raw material to the refinery at a competitive price for about 23-25 years of life of the project. According to Vedanta's preliminary results of 7 May 2009⁶, the refinery has been completed and is being operated at near rated capacity. The refinery's raw material is currently being sourced from Bharat Aluminium Company Ltd (BALCO)⁷, based in Korba (Chhattisgarh – India). Vedanta owns 51% of the shares in BALCO. The UK NCP understands that work on the construction of the bauxite mine has not yet started but that Vedanta expects to have the mine operational by mid 2010⁸. A bauxite mine's conveyor (to transport the bauxite from the Lanjigarh mine to the refinery) is also expected to be operational by mid 2010.

Do the Dongria Kondh inhabit the land affected by the mine and will the mine have an impact upon them?

22. The UK NCP focused its analysis exclusively on the Dongria Kondh because Survival International's complaint centres on this indigenous group. The complainant mentions other indigenous groups, such as the Kutia Kondh and the Desia Kondh, which may have been consulted about the construction of the refinery but focuses on the issue of whether the Dongria Kondh have ever been consulted about the construction of the bauxite mine.
23. There is substantial evidence from the Census of India 2001, academic research, the Wildlife Institute of India and the Central Empowered Committee indicating that the Dongria Kondh do inhabit the Niyamgiri Hills. Evidence from the Central Empowered Committee and Sterlite Industries' own environmental impact assessment suggests that the

³ See <http://www.berr.gov.uk/nationalcontactpoint>

⁴ Tata AIG Risk Management Services Ltd, *Rapid environmental impact assessment report for bauxite mine proposed by Sterlite Industries Ltd near Lanjigarh, Orissa*, August 2002, page 1-3 of the executive summary.

⁵ A type of rock from which aluminium is produced.

⁶ See slide 12 of

http://www.vedantaresources.com/uploads/vedantafy2009preliminaryresults_print.pdf.

⁷ Vedanta Resources plc, *Annual Report 2009*, 23 June 2009, page 13.

⁸ Ibid, page 12.

environment in which the Dongria Kondh live, and their traditional way of life, are going to be affected by the Lanjigarh mining project, and that the construction of the mine may involve displacement of local tribal people, of which the Dongria Kondh are a part.

24. According to the Census of India 2001, carried out by India's Office of the Registrar General and Census Commissioner (under India's Ministry of Home Affairs), the Kondh are one of the Scheduled Tribes of the State of Orissa⁹. The Census of India 2001 also confirms that the Kondh (without specifying how many of them are Dongria) are the largest Scheduled Tribe in both the Districts of Kalahandi¹⁰ and Rayagada¹¹ which are the districts mainly affected by the Lanjigarh project. The "Scheduled tribe atlas of India", published as part of the 2001 census, does state that the Dongria Kondh's population in Orissa, combined with the population of Primitive Tribal Groups¹² in Orissa, is 1,140,374¹³, and that most Kondh across India are located in Orissa, particularly the former 1991 administrative divisions of Koraput (now split into Rayagada, Koraput, Malkangiri and Nabarangapur), and Kalahandi¹⁴. However, these figures are drawn from the 1991 census and may not reflect the current populations of Dongria Kondh in the region.
25. An extensive study on the Dongria Kondh conducted in 2002 by a group of academics mainly based in Bhubaneswar (Orissa)¹⁵ also confirms that the Dongria Kondh inhabit the District of Rayagada, at the border with the Kalahandi District in an area roughly comprised within Muniguda (to the east) and Chatikona (to the south). According to a map included in the study, entitled "Project area Dongaria Kondh Development Agency", Dongria Kondh villages exist close to the border with the District of Kalahandi (towards Lanjigarh) within 6 miles (or less) of the proposed mine site¹⁶.
26. According to the 2002 study, *"Dongaria Kondh say that the environment of Niyamgiri Hill range dragged them to settle there"*¹⁷. The same study also states that the Dongria Kondh *"never moved to the peaks of the mountains as such places are regarded as the abodes of Niyamraja's kin"*¹⁸ and that *"each village in the Dongaria habitat is*

⁹ http://censusindia.gov.in/Tables_Published/SCST/ST%20Lists.pdf

¹⁰ http://www.censusindia.gov.in/Dist_File/datasheet-2126.pdf

¹¹ http://www.censusindia.gov.in/Dist_File/datasheet-2127.pdf

¹² According to the Census of India 2001, Primitive Tribal Groups are indigenous groups not formally listed as Scheduled Tribes but effectively constituting part of a Scheduled Tribe.

¹³ Census of India 2001, *Scheduled tribe atlas of India*, Government of India, 2004, page 95.

¹⁴ Ibid, page 84.

¹⁵ Mihir K. Jena, Padmini Pathi, Jagganath Dash, Kamala K. Patnaik, Klaus Seeland, *Forest tribes of Orissa – lifestyle and social condition of selected Orissan tribes – volume 1, the Dongaria Kondh*, D.K. Printworld (P) Ltd, New Delhi, 2002.

¹⁶ Ibid, page 13.

¹⁷ Ibid, page 12.

¹⁸ Ibid, page 12.

located at the foot of a hill and named after an important hill"¹⁹. The 2002 study also states that Niyamraja is regarded by the Dongria Kondh as God and ruler of the Niyamgiri Hills and the Dongria Kondh's first ancestor. These observations suggest that the Dongria Kondh do revere the Niyamgiri Hills, including the mine's proposed site, as sacred. They also suggest that Dongria Kondh villages are likely to have been built at the foot, rather than the top of the hills, which in turn suggests that, because of its high altitude, parts of the actual mine's site may not be inhabited by the Dongria Kondh but that Dongria Kondh villages may be located at lower altitudes nearby.

27. The Wildlife Institute of India is an independent body based at Dehradun (India) since 1982 with a mandate to train government and non-government personnel, carry out research, and advise on matters of conservation and management of wildlife resources²⁰. The UK NCP received a copy of the Wildlife Institute of India's study on the proposed Lanjigarh mine from the complainant²¹. The version of the study examined by the UK NCP is the version reproduced by the Environmental Protection Group (EPG) Orissa²². In the version of the study examined by the UK NCP, the Wildlife Institute of India acknowledges that the Dongria Kondh inhabit the Niyamgiri Hills, that their economy is forest-based (as well as reliant on agriculture, labour, and animal husbandry), and that they are a "*primitive and schedule tribe of the state*"²³.
28. The Central Empowered Committee was established by the Supreme Court of India in 2002 with a broad task to monitor and ensure the compliance of the orders of the Supreme Court concerning the subject matter of forests and wildlife and other issues arising out of said orders²⁴. In its "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" of 21 September 2005, the Central Empowered Committee states that "[It is seen that] Dongria Kandha tribe resides in Niyamgiri Hills. As per the applicants, they have unique culture, they worship Niyamgiri Hills, are dependent on it for their survival and that undertaking of mining at Niyamgiri Hills will result in extinction of the tribe"²⁵ and that "The project is based on and is totally dependent on mining of bauxite from Niyamgiri Hills, Lanjigarh, which is an important wildlife habitat, part of elephant corridor, a proposed

¹⁹ Ibid, page 286.

²⁰ <http://wii.gov.in>

²¹ S. Chowdhary, B. Pandav, *Studies on impact of proposed Lanjigarh bauxite mining on biodiversity including wildlife and its habitat*, Wildlife Institute of India, 2006.

²² The UK NCP has asked the Wildlife Institute of India for a copy of the report but has not yet received one.

²³ S. Chowdhary, B. Pandav, *Studies on impact of proposed Lanjigarh bauxite mining on biodiversity including wildlife and its habitat*, Wildlife Institute of India, 2006, page 16.

²⁴ <http://cecindia.org/aboutcec.html>

²⁵ 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, page 43.

wildlife sanctuary, having dense and virgin forest, residence of an endangered Dongria Kandha tribe, a source of many rivers/rivulets²⁶.

29. Sterlite Industries' own rapid environmental impact assessment acknowledges that Scheduled Castes and Tribes inhabit the study area (that is, an area within 10 Km from the mine)²⁷ but it does not specify whether the Dongria Kondh are amongst these tribes. The assessment states that: *"Kalahandi District has 17% SCs [Scheduled Castes] and 29% STs [Scheduled Tribes] against the State [of Orissa] average of 16% SCs and 22% STs. In case of Rayagada District, percentage of ST population is as high as 56% which indicates the complete domination of tribal population"*²⁸.
30. The environmental impact assessment also acknowledges that the project would entail the displacement of some people and states that the *"exact number [of displaced people] will be available after detailed enumeration"*²⁹ and that *"Tribal localities are scattered in the hills in one to six-seven houses at place"*³⁰. The assessment also acknowledges that tribes form about 47.9% of the total population of the area affected by the project (that is, an area within 10 Km of the project's site)³¹ and equally states the need for a "Resettlement and Rehabilitation Plan" to address any population displacement³² in compliance with Orissa's Resettlement and Rehabilitation Policy³³.
31. In its submission to the Central Empowered Committee before the Committee's September 2005 report referred above, the State of Orissa claims that the Dongria Kondh do reside in the Niyamgiri Hills but approximately 10 km away (in the District of Rayagada) from the Lanjigarh project' site and that, for this reason, the Dongria Kondh's traditional livelihood will not be affected by the mining activities. In a submission to the Supreme Court of India in response to the Central Empowered Committee's report of 21 September 2005, the State of Orissa again denies that the Dongria Kondh inhabit the Lanjigarh project' site in the District of Kalahandi because the Dongria Kondh live in other parts of the Niyamgiri Hills.
32. The UK NCP is unclear as to whether the State of Orissa' submissions are only focusing on the construction of the aluminium refinery but, in respect of the proposed site of the bauxite mine, there is no doubt that the project's affected area covers both the Districts of Kalahandi and Rayagada thus well within the Dongria Kondh's living space. The UK

²⁶ Ibid, page 44.

²⁷ Tata AIG Risk Management Services Ltd, *Rapid environmental impact assessment report for bauxite mine proposed by Sterlite Industries Ltd near Lanjigarh, Orissa*, August 2002, p. 7 of the executive summary, and page 2.7-1.

²⁸ Ibid, page 2.7-1.

²⁹ Ibid, page 2.7-3.

³⁰ Ibid, page 2.5-1.

³¹ Ibid, page 7 of the executive summary.

³² Ibid, page 9 of the executive summary.

³³ http://www.orissa.gov.in/revenue/R_R_Policies/Relief_and_Rehabilitation.htm

NCP also considers it unrealistic to regard the project's affected area as confined to the site of the mine or even to an area within 10 km from the mine, as if the mine could be built and exploited with no impact beyond this radius. The mere building of the mine and connecting roads for a venture of this magnitude would, by themselves, affect the communities living in the Niyamgiri Hills, including the Dongria Kondh, for several more miles around the mine. In addition, the UK NCP is concerned that the views of the State of Orissa may be influenced by the fact that the Orissa Mining Corporation Limited, a State of Orissa owned company, is in joint venture with Sterlite Industries on the construction of the bauxite mine in the Niyamgiri Hills. For these reasons, the UK NCP decided to give greater weight to the evidence from the Central Empowered Committee.

33. Vedanta itself appears to overlook or contradict itself on the issue of whether the Dongria Kondh inhabit the project affected area. In its response to the UK NCP dated 20 January 2009 the company states that *"It should also be noted that the Wildlife Institute of India, at the direction of the MoEF [Ministry of Environment and Forests of India], independently ascertained and specifically confirmed that the Dongria Kondh do not inhabit the proposed mining site"*³⁴. It then states in the same response that *"As previously mentioned, the Court [Supreme Court of India] also examined the Public Consultation process carried out by the State Government officials and was satisfied that the local communities (of which the Dongria Kondh are a part) had been consulted appropriately"*³⁵.
34. The UK NCP is unable to verify beyond doubt whether the area covered by the bauxite mine itself is permanently inhabited or only revered as a religious place by the Dongria Kondh although the 2002 study conducted by academics suggests that it is revered and may not be wholly inhabited and that the Dongria Kondh tend to live in the foot hills. The UK NCP also cannot make a determination on the exact distance of each Dongria Kondh's village from the bauxite mine (which is disputed by the parties). However, based on the evidence from the Census of India 2001, academic research, the Wildlife Institute of India and the Central Empowered Committee, the UK NCP believes it is tenable to conclude that the Dongria Kondh inhabit the Niyamgiri Hills and land affected by the Lanjigarh mine project.

Were the Dongria Kondh consulted?

35. The decision about the construction of a bauxite mine in the Niyamgiri Hills appears to have been taken by the company without adequate and timely consultation with the Dongria Kondh.

³⁴ Paragraph 6.10 of Vedanta's letter to the UK NCP dated 20 January 2009. The version of the Wildlife Institute of India' study examined by the UK NCP does not contain this statement but actually confirms that the Dongria Kondh inhabit the Niyamgiri Hills.

³⁵ Paragraph 7.2 of Vedanta's letter to the UK NCP dated 20 January 2009.

36. Sterlite Industries' August 2002 environmental impact assessment³⁶ indicates that the decision to build the mine was taken purely on economic grounds, that is: the economic development of the region, the presence of large quantities of good quality bauxite, and an existing bauxite mining lease agreement between Sterlite Industries and Orissa Mining Corporation Limited. The report does not indicate that the views of any of the affected local communities have been considered as a factor in determining the location of the mine and adjacent structures, nor do alternative locations seem to have been considered in any detail.
37. Vedanta states in its letter to the UK NCP of 20 January 2009 that local communities were consulted in June 2002 and February-March 2003. There is evidence that these consultations have taken place. However, the first consultation in June 2002 only covers the construction of the refinery. In the letter of 6 June 2002 from the Office of the District Collector of the District of Kalahandi to affected land owners of the proposed Lanjigarh aluminium refinery project, the District Collector gives notice of the land acquisition for the construction of the refinery in the Kalahandi District and also explains that displaced families would be compensated and resettled. The letter asks for any complaint to be sent in writing to the Office of the Revenue Inspector in Lanjigarh by 22 June 2002. The letter also informs the recipients that a public consultation would take place on 26 June 2002. It is unclear from the letter who the affected land owners are and whether the Dongria Kondh are amongst them.
38. The UK NCP also received evidence of a consultation with the local community in April 2009 on the expansion of the aluminium refinery. According to the proceedings of the public hearing³⁷, the meeting was attended by 400 people but only 117 signed the attendance sheet and 27 actually spoke. It is unclear how many representatives or members of the Dongria Kondh actually attended (or were aware of the meeting). According to Survival International, a member of the Dongria Kondh, Lodu Sikaka (identified as "Lada Majhi" in the meeting's minutes) did attend and spoke against the Lanjigarh project as a whole. Lada Majhi's statement is recorded in the minutes:
- "Saluting the people present, he said about the Niyamgiri Hills. He said that the hill is their mother as they are depending on the hill for the livelihood. He questioned the authorities whether they can afford to pay 5 lakh rupees for each tree of lemon, turmeric, etc. He further claimed that the government should not compromise with the foreign company. Even if all accepts the Niyamgiri project but the villagers will never*

³⁶ Tata AIG Risk Management Services Ltd, *Rapid environmental impact assessment report for bauxite mine proposed by Sterlite Industries Ltd near Lanjigarh, Orissa, August 2002*, pages 1-2, and 14 of the executive summary.

³⁷ *Proceedings of the public hearing of M/S Vedanta Aluminium Limited for its expansion of alumina refinery from 1.0 MPTA to 6.0 MPTA on 25.04.2009 at 10AM at: Village Belemba (opposite VAL SWITCH YARD), Lanjigarh, District Kalahandi.*

agree on that and they will never allow to operate "Niyam giri danagar (mine)".

39. There is no evidence to suggest that the consultation on the construction of the refinery included consultation on the construction of the bauxite mine. As explained above, the Lanjigarh project includes the building of a power plant, a refinery and a bauxite mine. The UK NCP understands that the refinery and power plant are already operational. The refinery is currently using raw material brought in from other mines. Whilst the use of locally mined material may be more efficient and economical (because, for example, it may require less journeys by truck and shorter distances to cover), the UK NCP considers it reasonable to conclude that the operation of the refinery is not dependent on the construction of the bauxite mine in the Niyamgiri Hills, therefore consultation on one does not imply consultation on the other.
40. The consultations of February and March 2003 did cover the construction of the bauxite mine in the two Districts of Kalahandi and Rayagada. According to the proceedings of the public hearing in February 2003³⁸, the meeting concluded, amongst other issues, that *"The public in general supported the setting up of the industries and operation of mines"* and that *"Local people should be adequately trained and employment opportunity should be generated"* but only 10 people, including the meeting's chair, signed the attendance sheet for this meeting and only 6 people actually commented during the meeting. According to the proceedings of the public hearing in March³⁹, the meeting concluded, amongst other issues, that the *"local people in general supported the setting up of the mines except two nos NGOs"* and that *"the project proponent should take all preventive measures, so that surrounding environment should not be affected and should contact vigorously with local people as well as local elected body"*. Notice of the March meeting was published in a local newspaper and about 30 people signed the "oral deliberators" sheet.
41. The February-March 2003 consultations covered the construction of the bauxite mine but appear, on the basis of the available evidence, to have been poorly attended. In addition, there is no evidence that the Dongria Kondh were aware or attended the public hearings. The poor attendance of these meetings may have been due to the fact that notice of the meetings was, on the available evidence, only given in writing, in local newspapers and in English.

³⁸ Proceedings of the public hearing conducted in respect of M/S Sterlite Industries (India) Limited for its proposed alumina refinery captive power plant and bauxite mine held at the Office of Special Officer, Kutia Kandha Development Agency, Lanjigarh, Kalahandi on 07.02.2003.

³⁹ Proceedings of the public hearing of M/S Sterlite Industries (India) Limited for its bauxite mines on 17.03.2003 at P.W.D. Inspection Bunglow, Muniguda, Dist. Rayagada.

42. The UK NCP did not receive or find any evidence that shows that Vedanta had attempted to engage any of the local indigenous communities affected by the refinery or by the mine by, for example, taking into account that some members of the affected communities may have been illiterate and therefore unable to either read the notice or send written complaints. Vedanta's own 2002 environmental impact assessment states that literacy levels in Orissa are generally low (49.1%) and are even lower (19.7%) in the study area (that is, an area within 10 km from the proposed mine)⁴⁰. The "Scheduled tribe atlas of India"⁴¹ states that the literacy rate amongst Scheduled Tribes is: 37.37% in Orissa, between 30.01 and 45.00% in the District of Kalahandi, and between 12.91 and 30.00% in the District of Rayagada. The rural literacy rate (that is, the percentage of rural literates among Scheduled Tribes) is even lower: 36.13% in Orissa, between 30.01 and 40.00% in the District of Kalahandi, and between 12.63 and 30.00% in the District of Rayagada.
43. Taking into consideration the Dongria Kondh's traditional way of life and livelihood, Vedanta's own data and the Census of India 2001 data, it is reasonable to assume that many members of the Dongria Kondh, may not be able to read and write and that more accessible means of communication should have been used in order to engage them effectively.
44. The Guidelines state that enterprises should "*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*" (Chapter V(2)(b)). The UK NCP considers that Article 10 of the "Akwe: Kon Guidelines", produced by the Secretariat of the Convention on Biological Diversity in 2004⁴², provides a good indication of what constitutes an "adequate and timely" consultation with indigenous groups because it takes into account the specific needs of indigenous people like the Dongria Kondh and enables companies practically to take these needs into account when consulting indigenous groups.
45. Article 10 of the "Akwe: Kon Guidelines" states that:
"The proponent of a development proposal or the responsible government authority should engage in a process of notification and public consultation of intention to carry out a development. Such notification should use all normal public means of notification (print, electronic and personal media, including newspapers, radio, television, mailings, village/town meetings, etc.), take into account the situation of remote or isolated and largely nonliterate communities, and ensure that

⁴⁰ Tata AIG Risk Management Services Ltd, *Rapid environmental impact assessment report for bauxite mine proposed by Sterlite Industries Ltd near Lanjigarh, Orissa, August 2002*, page 2.7-1.

⁴¹ Census of India 2001, *Scheduled tribe atlas of India*, Government of India, 2004, pages 33, 35.

⁴² <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

such notification and consultation take place in the language(s) of the communities and region that will be affected. Such notification should clearly identify the proponent, contain a brief summary of the proposal, the sites and communities likely to be affected, anticipated impacts (if any) on the conservation and sustainable use of biological diversity, as well as possible cultural and social impacts, arrangements for public consultation, contact details, key dates in the life of the project, including those regarding impact assessment procedures, and identify obligations under national and subnational laws as well subregional, regional and international agreements”.

46. From the available evidence, it is tenable to conclude that Vedanta did not employ the Dongria Kondh language or means of communication other than written in the February-March 2003 consultations on the construction of the mine.
47. The Central Empowered Committee provides further indication of the lack of an adequate and timely consultation with the Dongria Kondh. The Committee stated that: *“the alumina refinery project should have been allowed to be constructed only after carrying out in depth study about the effect of the proposed mining from Niyamgiri Hills on water regime, flora and fauna, soil erosion and on the Dongria Kandha tribes residing at Niyamgiri Hills and after careful assessment of the economic gains vis-à-vis environmental considerations [...] In the instant case had a proper study been conducted before embarking on a project of this nature and magnitude involving massive investment, the objections to the project from environmental/ecological/forest angle would have become known in the beginning itself and in all probability the project would have been abandoned at this site”*⁴³.
48. However, in its submission to the Supreme Court of India in response to the Central Empowered Committee's report of 21 September 2005, the State of Orissa rejects the conclusions of the Central Empowered Committee's report. In particular, it states that local communities, through village assemblies (called Gram Sabha) or their representatives (called Gram Panchayat), were consulted about the Lanjigarh refinery project and the consultation meetings were advertised on two leading local newspapers (and individual notices were issued to “land losers”), and captured in video recordings.
49. As explained above, the UK NCP only found evidence of two consultations on the construction of the mine in February and March 2003. However, neither of these consultations can be considered adequate for the reasons also explained above. The UK NCP has not found any evidence, either in documentary form or video recordings, that confirms that the Dongria Kondh were consulted in an adequate

⁴³ 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, page 45.

and timely manner and that their views had been collected and taken into account.

50. In its letter to the UK NCP of 20 January 2009, Vedanta states that it is in constant touch with the "Dongria Kondh Development Agency", a State of Orissa's sponsored body, to "*actively associate itself in the process of development of the resources of the Dongria Kondh*"⁴⁴. The UK NCP was unable to find, nor has it received any evidence from Vedanta, on the company's role in or engagement with this agency and whether the agency was used to consult the Dongria Kondh fully on the construction of the bauxite mine.
51. In the same letter to the UK NCP, Vedanta also suggests that the State of Orissa carried out a separate consultation with the local communities affected by the Lanjigarh project. The UK NCP was unable to find nor has received any evidence on the scope and outcome of this consultation process, other than the consultations carried out in June 2002, February-March 2003 and April 2009 examined above.

Did the Supreme Court of India deal with the issue of consultation with the local communities (of which the Dongria Kondh are part)?

52. Contrary to Vedanta's claims in its response to the UK NCP, the two rulings of the Supreme Court of India of 23 November 2007⁴⁵ and 8 August 2008⁴⁶, referred in Vedanta's letters to the UK NCP, do not appear to have addressed the issue of whether local communities, of which the Dongria Kondh are part, have been adequately consulted on the Lanjigarh project by the company.
53. In the 2007 Order, the Supreme Court of India set out its rationale for dismissing Vedanta Aluminium Limited's application to use forest land for bauxite mining on the Niyamgiri Hills in Lanjigarh and it also suggested the conditions under which Sterlite Industries (and only Sterlite Industries) could re-submit an application to the Court. These conditions refer to Sterlite Industries' acceptance of a comprehensive rehabilitation package which includes: the creation of a "Special Purposes Vehicle" jointly by the State of Orissa, Sterlite Industries and Orissa Mining Corporation Limited, which would report annually to the Central Empowered Committee and would oversee the implementation of the "Rehabilitation Package"; Sterlite Industries' contribution to a Wildlife Management Plan for the conservation and management of wildlife around Lanjigarh's bauxite mine; and Sterlite Industries' submission of a statement to the Central Empowered Committee listing, amongst others, the people who will lose their land as a result of the construction of the mine and who will need to be "*observed on permanent basis*".

⁴⁴ Paragraph 4.3 of Vedanta's letter to the UK NCP dated 20 January 2009.

⁴⁵ Supreme Court of India, Order in I.A. No. 1324 and 1474, 23 November 2007

⁴⁶ Supreme Court of India, Order in I.A. No. 2134 of 2007, 8 August 2008.

54. The Court's Order also reproduces a number of suggestions made by the State of Orissa which include the establishment of a Rehabilitation Project for affected families based on the Orissa Rehabilitation and Resettlement Policy 2006 and the preparation of a comprehensive plan for the *"development of tribals in the project impact area taking into consideration their requirements for health, education, communication, recreation, livelihood and cultural lifestyle"*. Finally, the Court weighs the principle of sustainable development with the need for economic development, and concludes that *"courts are required to balance development needs with the protection of the environment and ecology [...] Mining is an important revenue generating industry. However, we cannot allow our national assets to be placed into the hands of companies without proper mechanism in place and without ascertaining the credibility of the User Agency"*.
55. In the 2008 Order, the Supreme Court of India notes Sterlite Industries' acceptance of the rehabilitation package suggested in the 2007 Order and grants the company clearance for the use of forest land for bauxite mining on the Niyamgiri Hills in Lanjigarh, subject to final approval from India's Ministry of Environment and Forests.
56. Neither Order suggests that the Supreme Court of India ruled (or was asked to rule) specifically on the need to consult local and indigenous communities, of which the Dongria Kondh are part. The UK NCP is not aware of whether consultation with indigenous groups is mandatory under Indian law, however Chapter V(2)(b) of the Guidelines does recommend consultation with communities directly affected by a multinational enterprise's environmental, health and safety policies and their implementation. The UK Government expects UK registered companies operating abroad to abide by the standards set out in the Guidelines as well as to obey the host country's laws.

Did Vedanta make any assessment of the impact the construction of the mine would have on the Dongria Kondh?

57. The UK NCP did not find nor has received any evidence from the company that it carried out an assessment of the impact of the construction of the mine on the Dongria Kondh or any other indigenous community which might be affected, even without their participation. Sterlite Industries' environmental impact assessment does include an analysis of the "socio-economic environment" of the study area (a 10 km radius from the proposed mine) but does not address the impact of the mine on the Dongria Kondh.

Vedanta's alleged failure to respect India's international human rights commitments

58. Both India and the UK are parties to the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on Biological

Diversity. Indigenous rights have also been recognised in the UN Declaration on the Rights of Indigenous People adopted by the UN General Assembly on 13 September 2007.

59. Articles 2(1), 18, and 27 of the UN International Covenant on Civil and Political Rights respectively cover: non-discrimination in the enjoyment of civil and political rights, freedom of religion, and the rights of ethnic minorities. Articles 5(c), 5(d)(v), 5(e) of the UN Convention on the Elimination of All Forms of Racial Discrimination respectively cover: non-discrimination in the enjoyment of political rights, non-discrimination in the enjoyment of the right to own property, and non-discrimination in the enjoyment of economic, social and cultural rights. Article 8(j) of the Convention on Biological Diversity covers the protection of indigenous communities. Articles 12, 18, 19 and 32 of the UN Declaration on the Rights of Indigenous People respectively cover: indigenous groups' right to practice their religion and for protection of their religious sites, indigenous groups' right to participate in decision-making affecting their rights, consultation with indigenous groups, and indigenous groups' right to determine their development priorities and to consent to the exploitation of their land.
60. As explained above, Vedanta does not appear to have engaged the Dongria Kondh in adequate and timely consultations about the impact the construction of a bauxite mine in the Niyamgiri Hills would have on their enjoyment of the rights and freedoms described above. In addition, there is no evidence that Vedanta took any other measures to assess, either in its own 2002 environmental impact assessment or through other means, the impact of the proposed mine on the rights and freedoms described above. For these reasons, it is reasonable to conclude that the company did not take adequate steps to respect the rights and freedoms of those affected by its activities consistently with the international instruments of which India is a party, including the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on Biological Diversity.
61. By only considering the project's economic factors, Vedanta appears not to have balanced the need to promote the success of the company with the clear expectation set out in the Guidelines that companies should respect the human rights of the people affected by the company's economic activities consistent with the host government's international obligations and commitments. While the UK NCP acknowledges the difficulty of UK multinational companies, including Vedanta, to keep track of the international human rights obligations both of the UK and of the host countries in which they operate, companies should nonetheless establish a system that helps them assess and keep track of the human rights impact of their economic activities.

62. Vedanta also does not appear to have a concrete human rights policy or to have in place a mechanism for assessing the impact of its operations on human rights (and indigenous rights) in spite of its published commitments: "[Our people and community policies, which are applied across all of our group companies, are to:] *Strive to actively enter into dialogue and engagement with our stakeholders [...] Manage our businesses in a fair and equitable manner, meeting all our social responsibilities as a direct and indirect employer and respect the human rights of all of our stakeholders [...] Align our activities with the principles in the Convention on the Rights of the Child of the United Nations and Convention 138 of the International Labour Organisation*"⁴⁷.

Vedanta's alleged violation of India's domestic law

63. The UK NCP has not examined the alleged breach by Vedanta of India's law and regulations, namely the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006. Although Chapter V(2)(b) of the Guidelines recommends that enterprises should engage in adequate and timely communication and consultation within the framework of laws and regulations in the countries in which they operate, Survival International did not demonstrate that the legislation in question placed any obligations on companies to consult with local communities affected by their activities. It is outside the UK NCP's remit to determine companies' violation of local law and regulations with no reference to the Guidelines.

CONCLUSIONS

64. Having examined the evidence, 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. Evidence from the Census of India 2001, academic research, the Wildlife Institute of India, and the Central Empowered Committee suggests that the Dongria Kondh inhabit and have a direct interest in the land affected by the bauxite mine. The Supreme Court of India did not rule (nor was it asked to rule) on the need to consult local indigenous communities.
65. The UK NCP upholds Survival International's allegation that Vedanta has not complied with Chapter V(2)(b) of the Guidelines. The project has an environmental and health and safety impact on the Dongria Kondh. Evidence from the Central Empowered Committee and Sterlite Industries' environmental impact assessment shows that the Lanjigarh mining project would affect the environment in the Niyamgiri Hills which are home to (and are revered as sacred by) the Dongria Kondh, and may cause the displacement of some local people, of which the Dongria Kondh are a part. The UK NCP concludes that Vedanta has

⁴⁷ <http://www.vedantaresources.com/policies.aspx>

not complied with the Guidelines because it has to date 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.

66. The UK NCP upholds Survival International's allegation that Vedanta failed to act consistently with Chapter II(7) of the Guidelines. It concludes that Vedanta failed to put in place any general human rights or indigenous rights policies or a mechanism, such as an indigenous (or human) rights impact assessment, to assess the impact of the construction of the mine on the Dongria Kondh. It also concludes that Vedanta failed to engage the Dongria Kondh in adequate and timely consultation about the construction of the mine. For these reasons, the company has so far failed to develop and apply an effective self-regulatory practice to foster a relationship of confidence and mutual trust between the company and the Dongria Kondh, a constituent of the society in which it operating.
67. The UK NCP also upholds Survival International's allegation that Vedanta has behaved inconsistently with Chapter II(2) of the Guidelines because: it failed to engage the Dongria Kondh in adequate and timely consultations on the impact that the construction of the bauxite mine would have 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. For these reasons, Vedanta has not respected the rights and freedoms of the Dongria Kondh consistent with India's commitments under various international human rights instruments, including the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous People.

EXAMPLES OF GOOD PRACTICE BY THE COMPANY

68. The company's 2008 and the recently published 2009 Sustainable Development Reports are commendably based on the Global Reporting Initiative's (GRI) G3 Guidelines and on selected GRI indicators addressing economic performance, environmental performance, labour practices and decent work performance, human rights performance, society performance, and product responsibility performance.
69. The UK NCP noted with interest Vedanta's pilot scheme, mentioned in Vedanta's website⁴⁸, to encourage selected suppliers to respect human rights and the company's intention to roll out this scheme to all suppliers by 2012.

⁴⁸ See page 7 of <http://www.vedantaresources.com/uploads/griindex.pdf>.

70. Equally noteworthy is Vedanta's decision to align its 2009 sustainable development report to the 10 principles of the UN Global Compact, and to the International Finance Corporation's Performance Standards on Social and Environmental Sustainability.
71. In its 2009 Preliminary Results, Vedanta confirmed its commitment to sustainable development⁴⁹ focusing in particular on the areas of education, health, livelihood, agriculture and social forestry, and integrated village development.

RECOMMENDATIONS TO THE COMPANY AND FOLLOW UP

72. With the aim of assisting Vedanta in bringing its practices in line with the Guidelines, the UK NCP makes the following recommendations:

Recommendation 1

73. Vedanta should immediately and adequately engage with the Dongria Kondh seeking, in particular, the Dongria Kondh's views on the construction of the bauxite mine, access of the Dongria Kondh to the project affected area, ways to secure the Dongria Kondh's traditional livelihood, and exploring alternative arrangements (other than re-settlement) for the affected Dongria Kondh's families. The company should respect the outcome of the consultation process.
74. As a guide on how to pursue the consultation process, Vedanta should refer to the "Akwe: Kon Guidelines - Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities"⁵⁰, produced by the Secretariat of the Convention on Biological Diversity in 2004. At a minimum, the company is expected to advertise the consultation in a language and form that can be easily understood by the Dongria Kondh therefore ensuring the participation of the maximum number of Dongria Kondh (and their representatives) in the consultation.

Recommendation 2

75. Vedanta should include a human and indigenous rights impact assessment in its project management process. In doing so, Vedanta should pay particular attention to the creation of an adequate consultation process, prior to the finalisation and execution of a project, with indigenous groups potentially affected by the company's activities. This measure would minimise the risk of failure in balancing the host country and the UK international human rights obligations with the duty

⁴⁹ Slide 22 of Vedanta's preliminary results (7 May 2009) available on http://www.vedantaresources.com/uploads/vedantafy2009preliminaryresults_print.pdf.

⁵⁰ <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

to promote the success of the company. It is also essential that the human and indigenous rights impact assessment and consultation procedures do not remain a "paper policy" but are translated into concrete procedures and actions on the ground.

76. John Ruggie is the Special Representative of the Secretary General of the UN on the issue of human rights and transnational corporations and other business enterprises. In this capacity, John Ruggie is widely considered a leading authority on the issue of business and human rights and has provided good practical advice to companies on how to ensure that they respect human rights while engaging in economic activities. In April 2008, John Ruggie reported to the UN that, in order to ascertain whether they are respecting human rights, companies require "*due diligence – a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it. The scope of human rights-related due diligence is determined by the context in which a company is operating, its activities, and the relationships associated with those activities*"⁵¹.
77. In an April 2009 report to the UN, John Ruggie also stated: "*What is the appropriate scope of a company's human rights due diligence process, the range of factors it needs to consider? Three are essential. The first is the country and local context in which the business activity takes place. This might include the country's human rights commitments and practices, the public sector's institutional capacity, ethnic tensions, migration patterns, the scarcity of critical resources like water, and so on. The second factor is what impacts the company's own activities may have within that context, in its capacity as producer, service provider, employer and neighbour, and understanding that its presence inevitably will change many pre-existing conditions. The third factor is whether and how the company might contribute to abuse through the relationships connected to its activities, such as with business partners, entities in its value chain, other non-State actors, and State agents*"⁵².
78. To this effect, Vedanta should consider implementing John Ruggie's suggested key steps for a basic human rights due diligence process⁵³:
- Adopting a human rights policy which is not simply aspirational but practically implemented;

⁵¹ Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, United Nations, 7 April 2008, paragraph 25.

⁵² Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Business and human rights: Towards operationalizing the "protect, respect and remedy" framework*, United Nations, 22 April 2009, paragraph 50.

⁵³ Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, United Nations, 7 April 2008, paragraphs 59-64.

- Considering the human rights implications of projects before they begin and amend the projects accordingly to minimise/eliminate this impact;
 - Mainstreaming the human rights policy throughout the company, its subsidiaries and supply chain;
 - Monitoring and auditing the implementation of the human rights policy and company's overall human rights performance.
79. Further assistance on how to develop a practical human rights policy can be found on the UN website on business and human rights⁵⁴. The Akwe: Kon Guidelines, mentioned above, can be used as a point of reference for carrying out indigenous groups' impact assessments. As benchmarking, Vedanta may also consider the May 2008 "Position statement on mining and indigenous peoples"⁵⁵ of the London based International Council on Mining and Metals which commits the Council's members to:
- "Engaging and consulting with Indigenous Peoples in a fair, timely and culturally appropriate way throughout the project cycle. Engagement will be based on honest and open provision of information, and in a form that is accessible to Indigenous Peoples. Engagement will begin at the earliest possible stage of potential mining activities, prior to substantive on-the-ground exploration. Engagement, wherever possible, will be undertaken through traditional authorities within communities and with respect for traditional decision-making structures and processes.*
- [...]*
- Designing projects to avoid potentially significant adverse impacts of mining and related activities and where this is not practicable, minimising, managing and/or compensating fairly for impacts. Among other things, for example, special arrangements may need to be made to protect cultural property or sites of religious significance for Indigenous People.*
- [...]*
- Through implementation of all of the preceding actions, seek broad community support for new projects or activities. ICMM members recognize that, following consultation with local people and relevant authorities, a decision may sometimes be made not to proceed with developments or exploration even if this is legally permitted".*
80. To repeat, whichever self-regulatory practices Vedanta chooses to adopt in order to minimise the risk of further breaches of the Guidelines in the future, it is essential that these practices, particularly the human and indigenous rights impact assessments and the adequate and timely consultation with all the affected communities of a project, do not remain "paper statements" but are translated into concrete actions on the ground and lead to a change in the company's behaviour.

⁵⁴ <http://www2.ohchr.org/english/issues/globalization/business/list.htm>

⁵⁵ <http://www.icmm.com/page/208/indigenous-peoples>

81. Both parties are asked to provide the UK NCP with an update by 29 December 2009 on the implementation of the UK NCP's recommendations listed in this Final Statement. The update should be sent to the UK NCP in writing to the following address:

UK National Contact Point for the OECD Guidelines for Multinational Enterprises
Department for Business, Innovation and Skills
Bay 4133
1, Victoria Street
London SW1H 0ET
United Kingdom
e-mail: uk.ncp@bis.gsi.gov.uk

82. The UK NCP will publish on its website a further statement reflecting the parties' responses.

25 September 2009

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

**Rowland Bass,
Dal Dio,
Sergio Moreno**