



Tribal Claims Against the Vedanta Bauxite Mine in Niyamgiri, India

What Role Did the UK OECD National Contact Point Play in Instigating Free, Prior and Informed Consent?

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About this report series

This report is part of a series produced by the Non-Judicial Human Rights Redress Mechanisms Project, which draws on the findings of five years of research. The findings are based on over 587 interviews, with 1,100 individuals, across the countries and case studies covered by the research. Non-judicial redress mechanisms are mandated to receive complaints and mediate grievances, but are not empowered to produce legally binding adjudications. The focus of the project is on analysing the effectiveness of these mechanisms in responding to alleged human rights violations associated with transnational business activity. The series presents lessons and recommendations regarding ways that:

- non-judicial mechanisms can provide redress and justice to vulnerable communities and workers
- non-government organisations and worker representatives can more effectively utilise the mechanisms to provide support for and represent vulnerable communities and workers
- redress mechanisms can contribute to long-term and sustainable respect and remedy of human rights by businesses throughout their operations, supply chains and other business relationships.

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Acronyms

CEC	Central Empowered Committee
CPI (ML)	Communist Party of India (Marxist–Leninist) New Democracy
CSNR	Centre for Sustainable Use of Natural Resources
EIA	Environmental Impact Assessment
EKL	Ekaterina Ltd
FC Act	Forest (Conservation) Act 1980
LIFE	Legal Initiative for Forest and Environment
MMDR Act	Mines and Minerals Development and Regulation Act 1957
MMP	Mines, Minerals and People
MoEF	Ministry of Environment and Forests
MoTA	Ministry of Tribal Affairs
MoU	Memorandum of Understanding
NEAA	National Environmental Appellate Authority
NGO	Non-government organisation
OECD	Organisation for Economic Co-operation and Development
OMC	Orissa Mining Corporation
OSPCB	Odisha/Orissa State Pollution Control Board
PESA	Panchayats (Extension to Scheduled Areas) Act 1996
PML	Proposed mining lease
PUCL	People’s Union for Civil Liberties
ToR	Terms of Reference
UK NCP	UK National Contact Point
VAL	Vedanta Aluminium Ltd
WII	Wildlife Institute of India

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Executive Summary

Aim of this report

- 1 Drawing primarily on field work conducted from 2012 to 2013, the report examines the role that the UK National Contact Point (UK NCP) played in providing redress to tribal communities affected by a proposed mine in the Niyamgiri Hills, in the district of Kalahandi, located in the eastern Indian state of Odisha. The UK NCP is a non-judicial human rights mechanism created in accordance with the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. The case was filed by Survival International, a UK based non-government organisation on 19 December 2008. The case was able to be brought before the UK NCP because Vedanta, the transnational resource company in this case, was listed on the UK stock exchange.

The proposed mine and its impact

- 2 The mine was proposed as part Vedanta's aluminium production complex. A greenfield aluminium refinery at Lanjigarh, at the foothills of the Niyamgiri hills, became operational in 2008. The mine would supply bauxite to the refinery.
- 3 The proposed mine and aluminium complex are located within a region of great ecological importance, around 450km away from Bhubaneswar, the capital of Odisha. The Niyamgiri Hills are home to tigers, leopards, elephants, sloth bears, pangolins, palm civets, giant squirrels, mouse deer and sambar deer, most of which are on the International Union for Conservation of Nature red list of endangered species. It is also a part of migration corridor of elephants between the forests of Kondhmals and of Kalahandi/Koraput. The region is home to tribal communities who have inhabited the area as long as documentation exists. This report concerns the human rights grievances of the Dongria Kondh who inhabit the Niyamgiri Hills.
- 4 The Niyamgiri Hills are not only the home of the Dongria Kondh, they constitute a sacred cultural and religious site for them. Vedanta's mining operations in the Niyamgiri Hills raised significant human rights concerns, including the failure to acquire free, prior and informed consent for land acquisition, indigenous rights, environmental rights and subsequent damages to human health.

The campaign to gain redress for the Dongria Kondh

- 5 This report examines the complex and sustained campaign against the bauxite mine. Since the Memorandum of Understanding between the state of Odisha and Vedanta for the mine was signed in 2003, Vedanta has been embroiled in a spate of complex of legal disputes, spanning multiple jurisdictions and involving access to a variety of political, judicial and non-judicial redress mechanisms.
- 6 A kind of pincer movement extended between a broad range of actors involved in local and international campaigns. International and domestic pressure was simultaneously placed on Vedanta in respect of the project. On one hand, an international advocacy campaign was launched by a number of non-governmental organisations (NGOs), including Amnesty International, ActionAid and Survival International, with strategies including the lodging of the UK NCP complaint and a lobbying of shareholders. At the same time,

a complex train of administrative reviews and court cases were being lodged and heard in India, backed by an exceptionally committed network of local supporters. The report describes the large range of redress strategies pursued by different stakeholders, and analyses the efficacy of these strategies, both individually and in their cumulative effect.

Outcome of the UK NCP decision

- 7 The UK NCP made a determination on 25 September 2009 that Vedanta had breached the OECD Guidelines for Multinational Enterprises.
- 8 Strong and compelling evidence exists that the UK NCP determination against Vedanta was a major reputational blow for the company, which led to well publicised disinvestment by a small number of Vedanta's shareholders. This was primarily due to campaigning conducted by high profile UK NGOs to highlight the NCP's final statement (determination) and convince shareholders to disinvest on ethical grounds.
- 9 The report finds that, although this was in some ways influential, the effectiveness of the NCP's decision would have been much stronger if further steps to harness the leverage of the NCP and the UK Government, more broadly, had been taken. At the very least, coordination, or some communication ought to have occurred between the UK NCP or the UK government and relevant Indian departments and the decision ought to have been more widely communicated to stakeholders in Odisha.
- 10 The NCP's decision, combined with lending to Vedanta by Equator Principle Banks being conditional on evidence of reform, led to a number of internal policy changes within Vedanta, with a view to becoming more sustainable and respectful of human rights in the future.
- 11 These reforms within Vedanta did not lead the company to desist from pushing for full access to bauxite from the Niyamgiri Hills by pressuring the Odisha state government via legal means. Nor has it resulted in Vedanta desisting from pursuing bauxite from other sources which will also likely negatively impact tribal communities. A fact-finding mission to Odisha conducted by Survival International, lodged with the UK NCP on 23 December 2009, concluded that Vedanta had done nothing to implement the recommendations contained in the Final Statement by the UK NCP.¹
- 12 There is little evidence that the NCP determination influenced administrative and judicial decisions in India, though some interviews for this study indicate that Environment Minister at the time, Jairam Ramesh, was aware of the determination and it bolstered his resolve to block the mine.

A precedent for Free, Prior and Informed Consent is set through Indian courts

- 13 International law concerning indigenous people requires that indigenous people have consent, as opposed to consultation, enabling them to veto a project.² This is known as free, prior and informed consent (FPIC).

¹ OECD Watch, *Survival International vs Vedanta Resources plc* (19 December 2008), oecdwatch.org/cases/Case_165

² James Anaya, 'Indigenous peoples' participatory rights in relation to decisions about natural resource extraction: the more fundamental issue of what rights indigenous peoples have in lands and resources' (2005) 22(1) *Arizona Journal of International and Comparative Law* 7; Joji Carino, 'Indigenous Peoples' Right to Free, Prior, Informed Consent: Re-

- 14 Ultimately, the mine was stopped by a Supreme Court of India judgment to send the decision about the mine back to the lowest level of government in India — the Gram Sabha or village council. A Gram Sabha consists of every adult of the village over 18. Though a Gram Sabha had already been held on 26 June 2002, it was marred in controversy with allegations of corruption and intimidation and convened under weaker laws. Voting on the transfer of land for the mine occurred a second time in 2013 through secret ballot under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 ('Forest Rights Act'). The 12 villages voted unanimously against the mine.
- 15 It was the first time that the Forest Rights Act had been invoked to address issues of collective, community claims, affirming a determinacy and a jurisdiction for tribal rights (or indigeneity).³ It was also the first time that a provision of 'community consent' extended beyond the provisional 'duty of consultation' to include a power of veto and exclusion.
- 16 India's newly empowered Gram Sabhas could serve as a model for best practice in free, prior and informed consent. The process represents a useful model to ensure that such decisions are made as close to the citizen as possible — vesting the community with the power to decide its own fate with respect to mineral extraction and the transfer of land.

Barriers to seeking redress for remote communities

- 17 Regardless of the positive nature of the outcome in this case, breaches of human rights continue both in Lanjigarh, in the area of the refinery and the Niyamgiri Hills. A marked corrosion of living conditions has been documented since 2004, when the refinery was built and the mine was first approved. An environment of conflict and intimidation prevails. Yet to date, the Dongria Kondh have succeeded in defending their land.
- 18 The Odisha state government persists in attempting to gain access to the bauxite in the Niyamgiri Hills through judicial avenues. On 6 May 2016, the Supreme Court rejected a petition by the Odisha Mining Corporation seeking the reconvening of Gram Sabhas in the Niyamgiri Hills to consider the mining proposal that the Sabhas had rejected in 2013.⁴ On the one hand, this demonstrates the determination of the Odisha state government to mine the Dongria Kondh's land. On the other hand, the 2016 Supreme Court decision reinforces the legitimacy of the Gram Sabhas as an institution of democracy and the authority of its earlier decision.

flections on Concepts and Practice,' (2005) 22 *Arizona Journal of International and Comparative Law* 19; Marcus Colchester and Maurizio Farhan Ferrari, *Making FPIC Work: Challenges and Prospects for Indigenous Peoples*, Forest Peoples' Programme No (2007); Marcus Colchester and Fergus MacKay, 'In Search of Middle Ground: Indigenous Peoples, Collective Representation and the Right to Free, Prior and Informed Consent' (Paper presented at the 10th Conference of the International Association for the Study of Common Property, Oaxaca, Mexico); Brant McGee, 'The Community Referendum: Participatory Democracy and the Right to Free, Prior and Informed Consent to Development' (2009) 27(570) *Berkeley Journal of International Law*.

³ Rajshree Chandra, 'Understanding change with(in) law: The Niyamgiri case' (2016) 50(2) *Contributions to Indian Sociology* 137.

⁴ Ashish Kothari, 'Decisions of the People, by the People, for the People', *The Hindu* (Chennai), 18 May 2016.

- 19 The case study points to the immense barriers that stand in the way of remote and vulnerable communities gaining redress and having the law enforced against powerful multinational business. It took over a decade of determined local and international efforts by some of the most authoritative and experienced human rights NGOs within India and globally to achieve the outcome of stopping the mine. Almost every court, administrative body and non-judicial body that the matter came before found in favour of the Dongria Kondh and remarked upon the failure of Vedanta and the Odisha Mining Corporation to adhere to state and national laws and international human rights norms. It is remarkable then that it nevertheless required a campaign on an international scale and extraordinary efforts on behalf of one of India's best-known human rights legal teams to revoke permission for the mine.

Important lessons for non-judicial mechanisms and business

- 20 A key aim of non-judicial mechanisms ought to be to promote learning by business about how to respect human rights across all their business activities.
- 21 The Vedanta case study offers important lessons for business. It shows that when consent for business activity that will impact communities is not gained properly and in keeping with the law, this leaves the business open to sustained disputes in various forums and significant business uncertainty. In this case, because Vedanta invested significant funds building a refinery on the basis that it would have a secure supply of bauxite, the company was locked into a strategy of pursuing the mine or alternative sources of bauxite. This was an aggressive and risky strategy on behalf of the company. The company would have lost far less money if it had first gained genuine consent from local communities in accordance with the law, and then made decisions about the wisdom of investing in building a refinery.
- 22 Further lessons for communities, NGOs, non-judicial mechanisms and business are discussed at the conclusion of this report.



Community meeting against Vedanta.

Source: Countercurrents

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Table 1: Summary of Case

Mechanisms/Claim Making Strategies	<ul style="list-style-type: none"> • UK OECD National Contact Point • Multiple local legal and non-judicial mechanisms
Human rights issues	<ul style="list-style-type: none"> • Failure to acquire free, prior and informed consent for land acquisition for an indigenous group • Intimidation and violence, sponsored by state and company • Environmental and subsequent health damages
Companies	<ul style="list-style-type: none"> • Vedanta Resources and subsidiaries • Odisha Mining Corporation
Affected people	<ul style="list-style-type: none"> • The Dongria Kondh tribal people of the Niyamgiri Hills and the inhabitants of the Lanjigarh Valley, Odisha, India.
Business project	<ul style="list-style-type: none"> • Vedanta Aluminium Complex project — an integrated aluminium complex proposed (and partly initiated) by subsidiaries of Vedanta Resources Ltd, a UK-listed company.⁵ The complex involves a proposal to establish a bauxite mine at the top of Niyamgiri Hills in Kalahandi and Rayagada districts, an alumina refinery in Lanjigarh at the bottom of the Niyamgiri Hills and by one of Odisha's most important rivers, and a smelter in Northern Odisha. The refinery has been operational, and Vedanta has applied for clearance for its sixfold expansion. Particularly the mine, but also the refinery have become the subjects of widespread protest in and outside of India.
Connections to the United Kingdom (UK) and Australia	<ul style="list-style-type: none"> • Vedanta are listed on the London Stock Exchange.

⁵ More specifically, the project is being conducted by a number of ever-changing subsidiaries of Vedanta Resources Ltd, including Sterlite Industries India Limited (Vedanta Resources is a 59.9 per cent shareholder); Vedanta Aluminium Limited (70.5 per cent of shares owned by Vedanta Resources and the remaining 29.5 per cent of shares owned by Sterlite Industries India Ltd); and South-West Odisha Bauxite Mining Company (Sterlite Industries India Limited owns 74 per cent of shares, and the Odisha Mining Corporation — wholly owned by the state government of Odisha — owns the remaining 26 per cent). See Amnesty International, *Don't Mine Us out of Existence: Bauxite Mine and Refinery Devastates Lives in India*, Amnesty International No ASA 20/004/2010 (2010):6. For simplicity's sake we refer to 'Vedanta' throughout the summary to refer to these companies, unless it is necessary to be more specific.

Introduction

This case describes a dispute over a proposed bauxite mine in India. Bauxite is used to produce aluminium. The use of aluminium continues to grow. Steve Jobs recognised both the beauty and strength of aluminium, creating a thin, light product line of laptops, iPads and iPhones. Future demand in OECD countries and developing countries is likely to remain strong, with increasing use of aluminium — air batteries, nanotechnology, advanced alloys for space vehicles. It is for this reason that the metal has been called ‘white gold’.⁶

At the same time, bauxite mining (as with mining activities more broadly) is shifting away from the developed countries of Europe, the US, Australia,⁷ Canada and Japan — primarily because of human rights and environmental concerns.⁸ As mining moves to the economic South, a significant question is how workers and communities negatively impacted by mines can gain redress from the resource companies responsible that are domiciled elsewhere.

The Vedanta case reported here explores how one remote community attempted to gain redress for human rights grievances in India against a company listed on the UK stock exchange. The Vedanta case study is rare in our multi-country and multi-year study for the fact that affected communities received some form of redress. It provides an opportunity, therefore, to examine what worked. How were a isolated tribal community in India able to gain a positive determination from a non-judicial human rights mechanisms in the UK? How was it that so many cases were brought on their behalf to administrative bodies, courts and tribunals: cases that ultimately resulted in a Supreme Court decision that set an important precedent for tribal communities across India regarding procedures for obtaining community consent before major projects can go ahead?

This case provides a study of the interaction between international and local judicial and non-judicial mechanisms. A kind of pincer movement extended between a broad range of actors involved in local and international campaigns. International and domestic pressure was simultaneously placed on Vedanta in respect of the project. On one hand, an international advocacy campaign was launched by a number of non-governmental organisations (NGOs), and a complaint was made to the UK-based National Contact Point (UK NCP), a non-judicial business and human rights redress mechanism. At the same time, a complex train of administrative reviews and court cases were being lodged and heard in India, backed by an incredibly committed network of local supporters. The determination against Vedanta by the UK NCP lead to the disinvestment of a number of shareholders, and reputational damage for Vedanta on the international stage.

In India, the pursuit of legal means of redress resulted in a process of self-determination for tribal people through ‘Gram Sabhas’ or village councils which is underwritten by Indian constitutional law, rather than soft international norms. This process may serve as an international model for a democratic means of obtaining free, prior and informed consent. Bhakta Charan Das, a member of Indian Parliament representing the Kalahandi constituency in which the grievance

⁶ Geoffrey Blainey, *White Gold: The Story of Alcoa of Australia* (Allen & Unwin, 1997).

⁷ Michael Green, ‘Alcoa’s Point Henry Aluminium Smelter in Geelong Prepares to Close’, *The Age* (Melbourne), 31 July 2014.

⁸ Chandra, above n 3.

occurred, calls the Vedanta case a prime example of a ‘voiceless people’ being given a voice. For Das, the case is ‘a great lesson that can be drawn from, in any part of the world this can happen.’⁹

Though in many ways this case is a success story, it can also be considered a cautionary tale. It took over a decade of local and international efforts to achieve the outcome of stopping the mine. This struggle is not yet over. Today, the Dongria Kondh and other affected communities are still experiencing harassment and are defending their land. The paramilitary forces have reportedly been particularly active in harassing affected communities. Government officials cite rising Maoist activity as the reason for the security build-up. But among the tribal Kondhs, the increased paramilitary presence has led to fears that the government is trying to force them off their land. On 20 September 2016, Dongria Kondh communities were reported to have torched a temporary camp of the paramilitary forces that were involved in building a road in the Niyamgiri Hills that members of the Dongria Kondh believe will facilitate future mining.¹⁰

In September 2016, the Odisha state government made bauxite available to Vedanta from an alternate mine in Kodingamali, Koraput district. This mine is also inhabited by tribal communities. ‘The issues that we fought for at Niyamgiri are also relevant for Kodingamali, a forested hill range saddled by tribal inhabitations’, said Prafulla Samantray, head of Lok Shakti Abhiyan, one of the key organisations involved in the campaign against the Vedanta mine in the Niyamgiri Hills.¹¹ This, and other evidence presented in this report, suggest that Vedanta has learned little from the conflict over the Niyamgiri Hills.

There are continuing challenges to the precedent that the Vedanta case set that requires that a process of consent occur through Gram Sabhas. In September 2016, the Congress Government of Himachal Pradesh filed a petition before the Supreme Court challenging the consent powers of tribals under the Forest Rights Act.¹² If successful, the case will overturn the important ruling that was perhaps the greatest success of the Vedanta case, that tribal communities have the right to decide whether mines and other disruptive developments go ahead through democratic vote. This would mark to the demise of this important model for free, prior and informed consent.

Methodology

This report is part of a series based on the findings of a five-year Australian Research Council Linkage Project analysing the effectiveness of non-judicial redress mechanisms in responding to human rights concerns in which transnational business activity is involved. We adopt a broad definition of non-judicial grievance mechanisms, namely, those that are mandated to receive complaints, but are not empowered to produce legally binding adjudications.

⁹ Interview with Bhakta Charan Das (Delhi, 16 December 2012).

¹⁰ ‘Dongria Kondhs Set Police Camp on Fire in Odisha’s Niyamgiri’. *Odisha Sun Times* (Kalyansinghpur), 20 September 2016.

¹¹ Dillip Satapathy, ‘Vedanta Sees Niyamgiri Ghost over Alternate Bauxite Mine’, *Business Standard* (New Delhi), 27 August 2016

¹² Nitin Sethi, ‘Congress Govt in Himachal Challenges Tribal Rights in SC’, *Business Standard* (New Delhi), 4 September 2016.

Research has sought to shed light on the range of factors that contribute to greater or lesser effectiveness and legitimacy in the functioning of transnational grievance-handling systems. A key objective of the project is to develop recommendations regarding how non-judicial forms of redress can better support communities who are adversely impacted by business operations to access justice and have their human rights respected. These recommendations are primarily aimed at those who participate in these mechanisms, including businesses, affected communities and civil society organisations, as well as staff and other members or stakeholders of grievance-handling mechanisms themselves.

Field research for the project as a whole has focused on human rights grievances in the garment and footwear, agribusiness and extractives sectors, with case studies for each sector drawn from two jurisdictions: India and Indonesia. 10 case study reports examine specific human rights grievances experienced by communities and workers and the strategies employed in their attempts to gain redress in the context of these specific sectors and regulatory environments. Five mechanism reports in this series have been developed to provide a better understanding of the effectiveness of individual non-judicial human rights mechanisms governing transnational business. In addition to these individual case-study and mechanism reports, the project's overall findings are presented in four cross-cutting reports which provide broader comparative analyses across the various case studies we examined.

This case study is the companion to another report in this series, *The National Contact Point Report*, which compares the POSCO case with the complaints made to the UK NCP about UK mining company Vedanta. The POSCO case study report will also be relevant companion reading, as it details a similar struggle, on the part of the Dongria Kondh *adivasi* or 'tribal' peoples of Niyamgiri, also in Odisha. All are available at www.corporateaccountabilityresearch.org.

This case study was selected because it provided us with a case of a complaint to the UK NCP that had recently been lodged when our research began. This enabled us to access all stakeholders and draw on their recent memory of the case, as well as to evaluate its early effects on the human rights grievances.

This report's findings are based on extensive primary and secondary source research gathered through in-country research in Odisha and elsewhere in India and the UK, as well as on-going engagement with human rights and environmental advocates, and others knowledgeable about the project and its impacts. It adopts a mixed methods approach to triangulate data. Extensive semi-structured interviews with more than 50 people were conducted over two visits to Odisha (in December 2012 and December 2013) and the UK in 2013. These interviews were with company officials, community members, activists, civil society organisations in India and beyond and other relevant experts, such as journalists. In addition, researchers conducted extensive documentary analysis of as many private and publicly available documents as could be acquired, including newspaper articles, company magazines, the assessments of legal and quasi-legal bodies, and so on.

The scope of our research in this case is limited in several ways. Firstly, we were unable to travel to the site of conflict. Both times we attempted to reach Niyamgiri and Lanjigarh, violent conflict had broken out over the refinery that is part of Vedanta's mining complex and we were warned that we would not be safe. In particular, concern was voiced that we would place strain on the limited resources of the NGOs who were providing us with assistance, drawing resources away from providing support for the communities that were under attack from pro-mine and

refinery thugs who were instigating violence. We were only able to conduct limited interviews with community members in other settings. This limitation was made up for by extensive interviews conducted by other valid sources which are on the public record.

Secondly, the field research for this report was primarily conducted between 2012 and 2013, and the analysis applies primarily to this period, though we do comment on events since then where possible and appropriate.

Summary of Events

In 2003, Vedanta Aluminium Ltd (hereafter Vedanta) signed a Memorandum of Understanding (MoU) with the Odisha (formerly Orissa, as of November 2011) state government regarding the construction of a refinery for alumina production, a coal-based power plant, and a mining development at Lanjigarh in the district of Kalahandi.¹³ The Kalahandi district is a district in the state of Odisha on India's eastern coast. The Proposed Mining Lease (PML) included plans to extract bauxite from the Niyamgiri Hills.

The Niyamgiri Hills constitute the only traditional home to the Dongria Kondh and the Kutia Kondh. The land allocated to Vedanta in Odisha is part of a 'Schedule V' area. This means that land cannot be transferred to private companies without the consent of the affected tribal peoples. Most human rights reports in response to Vedanta's operations have focused on the cultural survival of the tribe if a mining operation was undertaken in the area.

Resistance to the Vedanta operation first emerged in 2002, when the company began acquiring land for their aluminium refinery project in Lanjigarh. The 1 million ton per year alumina refinery (producing also 2 million tons of red mud waste), displaced some villages in Lanjigarh. The Lanjigarh refinery worked mostly with costly and polluting bauxite coming by train and truck from distant places.

Due to the systematic lack of information and exclusion from any public hearings conducted by Vedanta and the local authorities,¹⁴ many Dongria Kondh were not aware of the mining plans until quite late in the approval process, and were oblivious to the connection between the refinery and a later mine, as well as the potential impacts of a mine on their lives. Resistance among the Dongria grew rapidly as soon as they faced the first impacts of Vedanta's mining plans in the form of road building and other construction activity on their ancestral lands. Through the mediation of state-based activists, Dongria Kondh leaders officially joined the anti-Vedanta organisation in the plains.

¹³ 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*, Supreme Court of India No (2005). The agreement states, 'The agreement signed between the Odisha Mining Corporation (OMC) and M/s Vedanta for establishment of a joint venture company for bauxite mining from Niyamgiri Hills, Lanjigarh and another mine provides that though the mining lease will be in the name of the OMC and it will be responsible for securing and complying with all the statutory approvals and legal requirements, M/s Vedanta will be de facto managing the mines and will be the principal beneficiary on payment of development charges, royalty and other statutory dues'.

¹⁴ Amnesty International, above n 5.

Starting in 2004, Odisha based activists not only locally mobilised people but also filed a number of petitions with the government that ultimately reached the Supreme Court of India. Public awareness of the Niyamgiri case increased within India and several government and civil society research teams visited the remote Niyamgiri Mountains to conduct social and environmental impact assessments and fact-finding missions regarding allegations about Vedanta's activities, such as illegal test blasts and the construction of roads and facilities.¹⁵

Meanwhile, officials from Sterlite (Vedanta's subsidiary) attempted to persuade Dongria Kondh villagers to vacate the villages in return for compensation and 'development' (jobs, tractors, education, money, bank accounts and homes in a plush new colony). 'They are flooding us with money', said Dai Singh Majhi, leader of the 'Niyamgiri Suraksha Samiti' group in Belemba village.¹⁶

The process by which Vedanta initially obtained licenses and clearance for the mine was fraught with alleged corruption and inadequacy. According to the Central Empowered Committee (CEC), a subcommittee of the Supreme Court charged with inquisitorial functions, the land allocated to Vedanta is part of a Schedule V area — inhabited by tribal communities.¹⁷ This means that land cannot be transferred to private companies without the consent of the affected tribal peoples.

Box 1 : Gram Sabha

According to the law, a Gram Sabha¹⁸ must be held, including all villages that will be affected by the mining project, in this case 12 villages and around 5000 inhabitants.¹⁹ A Gram Sabha is a village-level meeting of all citizens over the age of 18, where each individual is given a right to vote on a particular issue. The approval from the Gram Sabha through a 'No Objection Certificate' is necessary in order to validate the transfer of land.²⁰

¹⁵ Ibid; Felix Padel and Samarendra Das, *Out of This Earth: East India Adivasis and the Aluminium Cartel*. (Orient Black Swan, 2010).

¹⁶ Padel and Das, above n 15, 148.

¹⁷ The *Constitution of India* grants certain rights to tribal peoples who live within specified geographical areas in India. The so-called 'Fifth Schedule' of the *Constitution* contains provisions regarding the administration and control of these areas (scheduled areas and scheduled tribes), and is designed to protect the *adivasi*, tribal peoples, who live in these areas.

¹⁸ Article 243(B) of the *Constitution of India* (contained in amend 73) defines the Gram Sabha as an official organ at village level consisting of persons included in the electoral rolls of the villages in a district (Panchyat). According to art 243(A), the Gram Sabha may 'exercise such powers and perform such functions of the village level as the Legislature of a State may, by law, provide'.

¹⁹ Samata, *A Study on Process of Acquisition of Land for Development of Mining Industry in Schedule V Areas with a Focus on Violations of PESA in Light of the Mining and the Industrialisation Process in the Schedule-V Areas* (2003), p. 90. The 12 villages affected by the mining project are: Kinnari, Kopaguda, Bellamba, Boringpoddar, Turiguda, Bundel, Borohota, Ottadwar, Bondoguda, Sindbahal, Basantpoda and Jaganathpur.

²⁰ To stimulate a greater degree of participation, enhancing tribal peoples' self-government in the development of their lands, the so-called *Panchayats (Extension to Scheduled Areas) Act 1996* was passed. Among other provisions, the law gives the Gram Sabha authority to administrate and control its own resources, including land, water, forests and minerals, as well as functional powers and responsibility to ensure tribal peoples' participation in the development of their areas in accordance with their own culture and traditional rights to natural resources.



20th Gram Sabha.

Source: *The Hindu*

A Gram Sabha was held on 26 June 2002. According to the Indian human rights organisation Samata, not one of the 12 villages gave written consent to the transfer of land to Vedanta. Despite this, approval was lodged as if the Gram Sabhas had voted in favour of the transfer of land. The precise nature of the corruption and intimidation at play here is unclear. One report recalls that ‘local contacts told us that the land acquisition for the refinery, carried out by the government, had been strongly opposed by the local people’, and documents the ‘arrest of local activists by the administration, and the beating up of protesting villagers by goons.’²¹

The companies proceeded through the administrative steps required to gain environmental clearance for the mine, including conducting an Environmental Impact Assessment (EIA). There were substantial concerns raised about the quality and availability of the EIA relating to the mine commissioned in 2002 by Vedanta and in 2005 by the Odisha Mining Company. India’s National Environmental Appellate Authority later found that the 2005 EIA, for example, had never been shared with the affected people, which is one of the requirements for environmental clearance:

[It] is clear that the Vimta Lab EIA of 2005 on the basis of which the EC [environmental clearance] was granted, was never in public domain for people to express their views/concerns during the two Public Hearings held in Raiguda and Kalahandi during 2003, leading to non-compliance of Ministry’s Notification. Further a perusal of rapid EIA by Vimta Labs reveals that it lacks analysis in respect of human miseries which the project is likely to inflict.²²

²¹ Kundan Kumar, ‘The sacred mountain: Confronting global capital at Niyamgiri’ (2014) 54 *Geoforum* 196., p.198.

²² Appeal No 18 [2009] NEAA (15 September 2010) [14] (Hon J C Kala).

Box 2: Abridged Timeline of Mine Clearance & Claims Against It

April 1997: Sterlite Industries and the government of Odisha sign a Memorandum of Understanding to create an integrated mining and refining project in Kalahandi.

February–March 2003: Public hearings are held to gain local consent under relevant laws for the alumina refinery and bauxite mining project. Grave concerns later arise that this consent may have been forged.

21 September 2005: The Central Empowered Committee, a committee of the Supreme recommends that the mining operations should not be granted forest clearance since there had been a violation of the *Forest (Conservation) Act 1980* ('FC Act'); the project proponent misled the Forest Advisory Committee about the involvement of forest land in the project.

23 November 2007: The Supreme Court, as a result of findings of the CEC investigation, puts a halt to mining project and proposes the establishment of a special purpose vehicle (SPV) to administer development through consultation and develop a rehabilitation package for the Niyamgiri mine project.

December 2007: Company lodges an appeal of Supreme Court of India decision.

8 August 2008: The Supreme Court grants forest clearance with certain conditions related to the sustainable development of local communities, the protection of the environment and conservation.

19 December 2008: Survival International, a tribal rights NGO, files a complaint with the United Kingdom's National Contact Point (UK NCP), a business and human

rights mechanism which hears complaints regarding breaches of the OECD Guidelines for Multinational Corporations.

September 2009: The UK NCP publishes a final statement upholding Survival International's allegations that Vedanta acted in violation of the OECD Guidelines. Vedanta respond by stating 'Vedanta refutes the conclusions [of the report] and has complied in all respects with Indian regulations including consultations with the local community'.

2009–10: A number of significant UK investors divest from Vedanta based on the UK government's findings.

26 February 2010: Due to violations of the *FC Act*, two Ministry of Environment and Forest Committees are formed to investigate. These committees find violation of forestry, environmental and tribal rights.

11 July 2011: The Ministry of Environment and Forests withdraws the environmental clearance for the mine. This decision is appealed by the company to the Supreme Court.

18 April 2013: The Supreme Court sends the decision regarding the mine clearance to the Gram Sabha (the local tribal councils).

July–August 2013 12 Gram Sabhas vote unanimously against the mine.

8 January 2014: The Ministry of Environment and Forests reiterated its decision to reject Stage II approval under the *FC Act* for diversion of 660 749 hectares of forest land to Orissa Mining Corporation for mining of bauxite ore in Lanjigarh Bauxite Reserve in Kalahandi and Rayagada districts.

The mine then became fixed in a state of uncertainty, delayed by multiple administrative and judicial claims (see Box 2 for an abridged list of claims and Appendix 1 for a more comprehensive list). In 2004, three individuals filed petitions in the Supreme Court requesting the cancellation of the environmental clearance for the alumina refinery. These individuals were drawn from local environmental, wilderness and human rights groups. One of these individuals was Wildlife Society's Biswajit Monhanty. Biswajit Monhanty explained in an interview how difficult it had been to ensure that the CEC's findings were untainted by political influence.

The State government was not happy with the report so an officer was sent to that organization to change that report the report was changed. There were two scientists who had authored that report — one scientist refused to sign the changed version, the other one signed it.²³

In 2005, the CEC recommended against mining Niyamgiri on environmental grounds.²⁴ Despite the report, the Supreme Court quashed the petition.

A 2006 Act of Parliament of India tipped the legal balance in favour of the Dongria Kondh, strengthening their cause. After many years of campaigning by *advisasi* (tribal) groups across India, the *Forest Rights Act* was enacted. For the first time in India, the Act recognised the right to hold and live in the land under individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest-dwelling forest tribe or other traditional forest dwellers. The Act reversed, on paper, the colonial forest regime. As well as offering protection for forest dwellers, the Act attempted to distribute power between communities and bureaucracy. Remarkably, it set out a new democratic system of forest governance.²⁵

Outside India, also, the international campaign began to yield significant impact. In November 2007, the Norwegian Pension Fund sold its entire stock in Vedanta, worth approximately USD13 million, after its Council on Ethics found that continuing to invest in the company posed 'an unacceptable risk of contributing to grossly unethical activities'.²⁶ Although the Norwegian Pension Fund's stake in the company was only 0.16 per cent of the total shareholdings, the high-profile divestment of international investment was heralded as a symbolic victory, providing legitimacy to the narratives being used by activist networks, both within India and internationally. Global media agencies widely reported that Vedanta was beginning to lose face as a result of their poor human rights and environmental practices. Following Norway's lead, a number of other shareholders divested from Vedanta over the following years, such as BP's pension fund, the Church of England and the Joseph Rowntree Charitable Trust. Bratindi Jena of ActionAid explained the symbolic effect of the divestment:

²³ Interview with Biswajit Mohanty (Bhubaneswar, 1–7 December 2013).

²⁴ Central Empowered Committee, Supreme Court of India No (2005).

²⁵ Sahu Geetanjoy, 'Mining in the Niyamgiri Hills' in Yamini Mishra, Ranjan Panda Gyana and Colin Gonsalves (eds), *Human Rights and Budgets in India* (Human Rights Law NetworkL: Centre for Budget and Governance Accountability, 2009).

²⁶ Council on Ethics, Government Pension Fund, Government of Norway, 'To the Ministry of Finance: Recommendation of 15 May 2007' (15 May 2007) <https://www.regjeringen.no/globalassets/upload/fin/statens-pensjonsfond/recommendation_vedanta.pdf>.

When the Norwegian Pension Fund withdrew, Dongria Kondh people took a photo of Niyamgiri to the High Commission in Delhi to say ‘thank you’, you have helped when our government doesn’t.²⁷

After taking instructions from representatives from the Dongria Kondh, in 2008–09, the NGO Survival International lodged a complaint against Vedanta to the UK NCP. The forum provides a mechanism under which individuals and communities may complain that a business has breached the Organisation for Economic Co-operation and Development’s (OECD) Guidelines for Multi-national Enterprises. In this case, the UK NCP upheld Survival’s allegation that Vedanta failed to acquire free, prior and informed consent from the Dongria Kondh for the acquisition of their traditional land for a bauxite mine. According to the NCP’s determination, Vedanta’s conduct constituted a human rights violation, and was therefore in breach of the OECD Guidelines.

UK-based human rights and indigenous-rights groups energetically publicised the determination, meeting with investors and encouraging them to disinvest from the company. The NCP decision, combined with pressure from international NGOs, brought the Niyamgiri mine to international attention. Bhakta Charan Das, an Odisha-based journalist, explained the importance of this from the perspective of Odisha based activists and concerned media to us in an interview:

It is an issue that the whole world is concerned with, and that is the understanding and the Government of India understood that.²⁸

A number of high profile disinvestments resulted in further reputational damage for Vedanta, giving activists in India a boost in confidence and opening discursive space for dissent against the model of development that Vedanta represented.

As a company with a strong balance sheet, Vedanta was nevertheless able to raise a large amount of money borrowing from banks and investors during this controversial period, including Barclays. When Vedanta applied for finance through banks in 2010 lending was granted, conditional upon meeting various criteria under the Equator Principles,²⁹ a credit risk management framework for determining, assessing and managing environmental and social risk in project finance transactions.³⁰ Vedanta was then subject to a process of monitoring, reporting and reviews under what has been known as the ‘Scott Wilson Process’.³¹ This process has been criticised for lacking rigour. However, it has resulted in the adoption of human rights and

²⁷ Interview with Bratindi Jena (Bhubaneswar, 3 December 2012).

²⁸ Interview with Bhakta Charan Das (Delhi, 16 December 2013).

²⁹ For a comprehensive summary of the lending practices of international financial institutions with respect to Vedanta Resources and the Niyamgiri Hills controversy, see Mary; Dowell-Jones, ‘Financial Institutions and Human Rights’ (2013) 13(4) *Human Rights Law Review* 423. For example, Dowell-Jones notes that in 2009 JP Morgan launched a USD1.25 billion convertible bond offering for the company. In 2010, JP Morgan, Goldman Sachs, Morgan Stanley and UBS coordinated the launch of another USD900 million convertible bond offering. In 2011, Barclays, Citi, Credit Suisse, RBS and Standard Chartered co-ordinated the launch of USD1.65 billion worth of bonds, with Goldman Sachs, JP Morgan and Morgan Stanley joining as bookrunners. Dowell-Jones notes, ‘[g]iven the frequent lack of “joined up” institutional thinking across enormous global financial institutions, it is likely that people working in the bond origination and syndicated loan teams at these banks were only barely aware, if at all, of the human rights controversy surrounding Vedanta’ (*ibid* 462).

³⁰ Equator Principles, The Equator Principles, <equator-principles.com/resources/equator_principles_III.pdf>

sustainability policies across the business, with reporting against sustainability benchmarks which marks a significant change for the company.

Meanwhile, administrative clearance continued to stall in India. The Saxena Committee was formed in response to a report published in early 2010 by sociologist Usha Ramanathan, who first reported that the *Forest Rights Act* was not being implemented in relation to the Vedanta's proposed mine project in the Niyamgiri Hills.³² The Committee was chaired by Dr N C Saxena, a popular Indian bureaucrat. Dr Saxena told us that the Committee was formed because the State government of Odisha was not giving a full picture of the situation, and their reports were 'tainted in favour of industry'.³³ Many actors who were interviewed by our team from civil society in India credited the Saxena Report as being directly responsible for the government's subsequent decision to stop the Niyamgiri mine. Dharendra Panda, from the Centre for Sustainable Use of Natural and Social Resources (CSNR) explained the vital role of Dr Saxena as a personality:

Because of his personality and his previous commitments, he gave a neutral observation on Vedanta. He did not act as a pawn in the hands of the government. Other members of the committee also acted positively.³⁴

The Saxena Committee found that the company had engaged in 'several deliberate attempts ... to conceal information and falsify it in order to get the project approved'.³⁵ The Saxena Committee was particularly concerned about the erosion of traditional ways of life:

Mining, if permitted, will directly affect a substantial section (almost 20 per cent of their entire population in this world!) of the Dongaria Kondh community. An impact on such a significant fraction of the population of the community will have repercussions on the community's very survival, the overall viability of this group and its biological and social reproduction.

All the 104 Dongaria Kondh villages are linked by marriage, since the member of a clan must seek a spouse from another clan. The circulation of women and bride-price between villages is essential for maintaining the social and economic integrity of the community.³⁶

Based on the Saxena Committee's findings, in August 2010, the Ministry of Environment and Forests (MoEF) decided not to allow mining in Niyamgiri, citing violations under the *Forest Rights Act*. It also ordered that the expansion of the refinery be halted. This decision of the MoEF was then appealed in the Supreme Court by the Odisha Mining Corporation.

In May 2013, the Supreme Court passed an order which asked the MoEF to obtain the views of the local Gram Sabhas of Dongria Kondhs,³⁷ basing its decisions on the *Forest Rights Act* and

³¹ An archive of the Scott Wilson Reports can be found on Vedanta's website: Vedanta Resources, *Scott Wilson Report Archive* 19 July 2014.

³² 'Vedanta Flouted Forest Conservation Norms, Says Report', *The Hindu* (Chennai), 13 March 2010. See especially http://moef.nic.in/downloads/public-information/rpt_usha.pdf

³³ Interview with N C Saxena (Delhi, 12 December 2013).

³⁴ Interview with Dharendra Panda (Bhubanshwar, 5 December 2012).

³⁵ N. C. Saxena et al, *Report of the Four Member Committee for Investigation into the Proposal Submitted by the Orissa Mining Company for Bauxite Mining in Niyamgiri*, Ministry of Environment & Forests No (2010).

³⁶ *Ibid* 2.

³⁷ *Orissa Mining Corporation v Ministry of Environment and Forest & Others* (2013) 6 SCC 476 (Supreme Court of India).



Gram Sabha.

Source: Survival International

the *Panchayats (Extension to Scheduled Areas) Act 1996* ('PESA').³⁸ Thus, a round of voting by the Gram Sabhas was undertaken in July and August of 2013, during which all 12 Gram Sabhas in the area unanimously rejected the proposed mine. It was emphasised by the Supreme Court that the conditions of these Gram Sabhas would rectify the inadequacies that attended the first round of Gram Sabha voting that occurred in 2002. The Supreme Court appointed a judge of the District Court as observer to the 2013 Gram Sabhas to ensure they were conducted in a fair and impartial manner.

After the referendum verdict at the 10th Gram Sabha in Lakhpadar (7 August 2013), an ecstatic Dongria leader, Lodu Sikaka, told the panel overseeing the referendum: 'Our God lives in open space, you keep your God locked up with a key. We won't leave Niyamgiri. If the government and politicians ask for it we will fight'.³⁹

On 11 January 2014, the MoEF confirmed its decision to reject the mine.

³⁸ Under the provisions of s 4(K) of the *Panchayats (Extension to Scheduled Areas) Act 1996* the recommendation of the Gram Sabha or the *panchayat* at the appropriate levels shall be made mandatory prior to grant of Prospecting License (PL) or Mining Lease (ML) for mining minerals in the schedule areas.

³⁹ 'Niyamgiri-10, Vedanta-0' on *Foil Vedanta* (9 August 2013) <<http://www.foilvedanta.org/news/niyamgiri-10-vedanta-0/>>. See also KumKum Dasgupta, 'Vedanta's Mining Scheme Thwarted by Local Objections', *Global Development and Poverty Matters Blog* (21 August 2013) <<http://www.theguardian.com/global-development/poverty-matters/2013/aug/21/india-dongria-kondh-vedanta-resources-mining>>.

For a number of years, the alumina refinery in Lanjigarh operated at partial capacity due to the unavailability of bauxite. In March 2014, Vedanta intimated that the Lanjigarh refinery would continue to process bauxite from other sources in Odisha, but there were no immediate options available. In September 2016, the Odisha state government made bauxite available to Vedanta from an alternate mine in Kodingamali, Koraput district.⁴⁰ Activists continued to demand the decommissioning of the Lanjigarh refinery.

As of late 2016 when this report was finalised, despite having been victorious in the courts, the Dongria Kondh continue to be harassed by police, military and private individuals thought to be associated with the mining companies. Their lives and culture have been irreversibly changed by constant incursions and the long years of campaigning against the mine, and they continue to pay a high price for resisting the mine. The area around the Lanjigarh refinery has suffered considerable environmental damage, causing harm to the health of local inhabitants and diminishing their livelihoods, as farming land is less productive.

Parties To The Grievance

Businesses

Vedanta Resources plc

Vedanta Resources plc is a transnational mining company with operations in India, Zambia, South Africa, Namibia, Ireland, Liberia, Australia and Sri Lanka.⁴¹ The Vedanta group was founded by Anil Agarwal in 1976. Vedanta Resources PLC is registered under the *Companies Act 2006* (UK) and was listed on the London Stock Exchange in December 2003. Vedanta Resources has a workforce of 30 000, and in the year 2013 reported revenue of USD15 billion and USD46 billion total assets.⁴² The company has offices in London, and its headquarters are in Mumbai.

The company has six direct subsidiaries and around 90 indirect subsidiaries globally. The parent company and its subsidiaries have controversial human rights records in a number of countries.

Vedanta Aluminium Ltd

As of 2014, the Aluminium Complex was operated by Vedanta Aluminium Ltd, an indirect subsidiary company of Vedanta Resources. Vedanta Aluminium Ltd was listed in India and held by Ekaterina Ltd (EKTL), an investment company which is listed in Mauritius. EKTL is 100 per cent owned by Twin Star Holdings Ltd, which is 100 per cent held by Vedanta Resources plc. Vedanta Aluminium Ltd (VAL) was 100 per cent consolidated into Sesa Sterlite in 2013, a Vedanta Group company.⁴³

⁴⁰ Satapathay, above n 11.

⁴¹ Vedanta Resources, *Vedanta Resources Annual Report & Accounts 2013* (2013).

⁴² Ibid.

⁴³ Sesa Sterlite, *Key Facts* <<http://www.sesasterlite.com/know-us/key-facts.aspx>>.

Sterlite Industries (India) Ltd

The original Memorandum of Understanding granting permission for the integrated mining and refining project was signed in April 1997 between Sterlite Industries (India) Ltd and the Government of Odisha.⁴⁴ Sterlite Industries was a subsidiary of Vedanta Resources plc.

In September 2013, SESA Goa, Sterlite Industries and Vedanta Aluminium merged to form Sesa Sterlite Ltd. The merger created India's largest natural resources company and the seventh largest global diversified natural resources company, according to some measures.⁴⁵

Orissa Mining Corporation (OMC)

Under the MoU, up to 150 million tons of bauxite for the plant was to be supplied by the OMC, a Government of Odisha-owned enterprise. The mining of the Niyamgiri Hills was to be conducted by the OMC with 100 per cent of extracted Bauxite supplied to Vedanta Aluminium (subsequently renamed Sesa Sterlite).

Communities

The area which would be encompassed by the mining operation is home to 8000 members of the Dongria Kondh tribe (living in around 90 settlements scattered across the whole area) and 2000 members of the Majhi Kondh community (living in around 10 villages, mainly at the foot of the hills).⁴⁶ The Dongria Kondh are one of the most isolated tribes in India. They call themselves the Jharnia, meaning 'protectors of streams', because they safeguard their sacred mountain, Niyam Dongar, and the rivers that rise within its forests. It has been claimed in various sources that the culture, identity and livelihood of the Dongria Kondh are all dependent on the Niyamgiri Hills and they cannot live anywhere else.⁴⁷ The Dongria Kondh cultivate various crops which they sell through intermediaries in local markets.⁴⁸

The Kutia Kondh and Desia Kondh in the foothills and on the plains around Lanjigarh have been evicted to make way for the refinery. They have also been affected by the pollution brought about by Vedanta's repeated failure — confirmed by the State Pollution Control Board — to comply with basic safeguards.⁴⁹ The Kutia Kondh in Similibhata village and Kendubardi⁵⁰ use the foothills to cultivate cereals such as *mandia* (*ragi*, finger millet), *kosla* (foxtail millet), *kango* and *kedjana*, pulses such as *kandlo* (*tuvar*, pigeon pea), *biri* (*urad*, black gram), *kulath* (horse gram) and *jhudungo*, as well as oilseeds like castor and linseed (*alsi*). Two women, Malladi Majhi and Balo Majhi, while showing researchers their millet stores said, 'this is why we need the

⁴⁴ Vedanta Resources, *The Lanjigarh Development Story: Vedanta's Perspective* (2012), p. 6.

⁴⁵ Sesa Sterlite, above n 44.

⁴⁶ These numbers are based on field surveys in the area conducted in November 2006.

⁴⁷ 'If one claims to be a Dongria Kondh, he must reside in the Niyamgiri hills and possess land of his own and pass [it] on. This procedure is being continued for centuries': P.S. Daspatnaik, 'Ownership Pattern, Land Survey and Settlement and its Impact on the Dongria Kondhs of Odisha' (1984) XXIII(4) *Adibasi Journal*: 26.

⁴⁸ Interview with Amita Baviskar (Delhi, 9 December 2012).

⁴⁹ ActionAid, *Vedanta Cares? Busting the myths about Vedanta's operation in Lanjigarh, India*, ActionAid No (2007).

⁵⁰ A hamlet of Jagannathpur village, with 86 Kutia Kondh households.

forest. All these things come only from the forest. We can buy rice [at ₹2 per kilo], but these [millets] are tastier and more filling⁵¹

The Saxena Committee noted that all the Dongria Kondh that were consulted by the Committee expressed their strong attachment to the Niyamgiri Hills, their stewardship of the land and the legitimacy of their rights arising from their longstanding presence in these hills. They strongly voiced their contentment with life and their opposition to any destructive change of the ecology that would threaten their culture. Sikoka Budhga explained: We can never leave Niyamgiri. If the mountains are mined, the water will dry up. The crops won't ripen. The medicinal plants will disappear. The air will turn bad. Our gods will be angry. How will we live? We cannot leave Niyamgiri.⁵²

In 2013, as the fourth Gram Sabha meeting took place, Tunguru Majhi, who was appointed as observer to the village council proceedings by the Supreme Court, directed a 20 minute speech at District Judge Pramod Kumar Jena: .

'Jharna, pani, paban, patra ... sob loss haijibo' (streams, water, air, leaves ... everything will be lost). ... Niyamgiri is our medical centre ... our '*jani, bejuni*' (village priest and priestess) collect medicinal plants to treat our children. Do understand before you leave that the government has no right over these hills. ... Like the Brahman and the Kayastha worship lord Jagannath, we worship our Niyamraja. We will die like Birsa Munda and Rindo Majhi (both Munda and Majhi led tribal uprising against the British) if you don't give up now. We are a '*murkhyajati*' (illiterate lot) who will never listen to you.⁵³

Network of Campaigners

The campaign against the Vedanta mine drew many NGOs and activists, both domestically and internationally. These parties formed a complex network of resistance against Vedanta's mining operations in the Niyamgiri Hills. The following sections outline some of the key actors in this campaign, although it is by no means exhaustive.⁵⁴

Niyamgiri Surakshya Samiti (Niyamgiri Protection Society)

Niyamgiri Surakshya Samiti, formed in 2004, is the organising body of the Dongria Kondh. *Adivasi* opposition under the Niyamgiri Surakshya Samiti was at first relatively muted in the face of violent attacks and arrests by police and goons. These culminated in the alleged murder of Sukru Majhi, a Kond leader run down alone in the evening of 27th March 2005, on the newly metalled road to Lanjigarh.⁵⁵ Niyamgiri Surakshya Samiti subsequently became far more organised, persisting in opposition to the mine in the face of great pressure from the Orissa State Government and the mining company to agree to the transfer of their land.

⁵¹ Saxena et al, Ministry of Environment & Forests No (2010).

⁵² Ibid 33–4.

⁵³ Sayantan Bera, 'Kunakadu Invokes Tribal Martyrs at Niyamgiri Palli Sabha', *Down to Earth* (New Delhi), 25 July 2013.

⁵⁴ For a more comprehensive overview of the supporters in this case, see Kumar, above.

⁵⁵ People's Union for Democratic Rights, *Investigation into the Impact on People Due to the Alumina Projects in South Orissa* (May 2005).

Adivasi (tribal) Movement

Odisha has a population of 41.9 million, 25 per cent of whom are tribals (*adivasi*) belonging to 62 different tribal communities. (The term 'tribal' is generally used in India in preference to the word 'indigenous'). The districts in southern Odisha are the poorest, and record the highest concentration of tribes (Kandhamal, Phulbani, Balangir, Koraput, Rayagada, and Malkangiri). Tribal populations constitute the majority of the poor in Odisha and form 43.3 per cent of rural poor households. They are mostly engaged in forest produce collection, hunting and gathering, swidden cultivation, and agricultural (coolie) labour. Some are also engaged as industrial unskilled workers. *Adivasis* are concentrated in regions that are rich in natural resources — namely forests and mineral deposits.

Land Rights Movement

Land rights movements are specifically against displacement. There is a distinction between those living on the land, whose main concern is displacement, and those who are involved in the movement but not living on the land, whose struggle is against the wider forces of neo-liberalisation.

Communist Party of India (Marxist–Leninist) New Democracy

The Communist Party of India (Marxist–Leninist) New Democracy (CPI (ML)) have played a critical role in Niyamgiri. Since 1994, the CPI (ML) have conducted a militant, democratic land-rights campaign in the foothill villages of Niyamgiri. This movement, which is still in full swing, has so far reclaimed hundreds of acres of land usurped by landlords and distributed them among the native *adivasis* and Dalits.⁵⁶ The emergence of this new organisation marked a change in mobilisation methods in Niyamgiri and the power dynamics between key actors.

Sachetan Nagarika Mancha (Conscious Citizen's Forum)

Sachetan Nagarika Mancha was formed in 2005 when the activists of Niyamgiri Surakshya Samiti were imprisoned on false charges of setting fire to Vedanta vehicles and attacking company workers. Consisting of lawyers, activists, journalists and academics, the group was based in Bhawanipatna.

Unaffiliated Odisha based activists

A number of Odisha-based activists emerged shortly after the MoU was signed between the government of Odisha and Vedanta in 2003. These activists came from diverse backgrounds and included young university graduates working as researchers for Indian NGOs, activist film-makers interested in spreading the word about peoples' struggles all over India, lawyers providing pro bono support to grassroots struggles, as well as seasoned community organisers. There are also a number of full-time individual activists who had once worked for national or international NGOs, but left their organisations because they were dissatisfied with the workings of NGO advocacy and wanted to operate as individual activists and researchers. Odisha-based activists started attending local protest events, mobilising villagers and making connections between grassroots activists and other anti-industrialisation struggles across Odisha.⁵⁷

⁵⁶ Subrat Kumar Sahu and Mamata Dash, 'Expropriation of Land and Cultures: The Odisha Story and Beyond' (2011) 41 *Social Change* 251, 266.

⁵⁷ Romy Kraemer, Gail Whiteman and Bobby Banerjee, 'Conflict and Astroturfing in Niyamgiri: The Importance of National Advocacy Networks in Anti-Corporate Social Movements' (2013) 34(5-6) *Organization Studies* 823., p. 834-835.

Citing their experiences with earlier struggles, in interviews we conducted with many of these Odisha-based activists, they argued that the case of Vedanta's refinery and planned mine was only one example of the reckless industrialisation policies of the Indian government.

Through their informal networks, Odisha-based activists disseminated information about the anti-refinery struggle to the wider state-based activist network until it reached a group of activists in Delhi who had formed the 'Delhi Solidarity Group' to support anti-mining and other struggles.

Delhi Solidarity Group

The Delhi Solidarity Group was formed in late 2006 as a collective of individuals and community organisations committed to the larger issues of social justice. The group provides solidarity support in Delhi to the efforts of the social movements opposed to the current development paradigm.

With regard to Vedanta, the Delhi Solidarity Group has worked to provide information for activists on the progress of the mining operations. In 2007, the Delhi Solidarity Group pledged their support for the *adivasis* of Niyamgiri, who 'will use all possible platforms and routes, including the judiciary, to save the sacred Niyamgiri Mountains'.⁵⁸

Wildlife Society of Odisha

The Wildlife Society of Odisha was formed in August 1994. Its primary objective is the conservation of forest and wildlife in the state of Odisha, as well as pollution control activities. The Society works in cooperation with the state Forest Department. The Society engages in a number of advocacy programs, including legal action for various matters of public interest concerning conservation issues related to the violation of forest, wildlife and environmental laws.⁵⁹

Biswajit Mohanty, a Bhubaneswar-based conservationist, member and secretary of the Wildlife Society of Odisha, filed a complaint against the Vedanta alumina refinery and the proposed mining with the Central Empowered Committee (CEC) of the Supreme Court, on the grounds of violations of forest and environmental laws. The CEC is a specialised body set up by the Supreme Court to inquire into cases where there are alleged violations of forest laws. The complaint was made with respect to the *FC Act* and the *Orissa Forest Act 1972* ('*Orissa Forest Act*').

Mines, Minerals and People (MMP)

Mines, Minerals and People is an alliance of individuals, institutions and communities who are concerned and affected by mining aimed at 'combating the destructive nature of mining'.⁶⁰ MMP operates across 16 states of India. MMP supports human rights defenders and has a strong relationship with Amnesty International. MMP was particularly important in establishing relationships between the Dongria Kondh and legal advocates.

Wildlife Institute of India

The Wildlife Institute of India (WII) is a governmental research organisation established in 1982. WII has an advisory function which reports to the Indian Ministry of Environment and

⁵⁸ Delhi Solidarity Group, 'Niyamgiri in Orissa — A Civilization up for Sale?' on *Delhi Solidarity Group* (19 November 2007) < <https://delhisolidaritygroup.wordpress.com/2007/11/19/niyamgiri-in-orissa-a-civilization-up-for-sale/>>.

⁵⁹ Wildlife Society of Odisha website <http://www.wildlifeOdisha.org/> accessed 20 March 2014.

⁶⁰ <http://www.mmpindia.in/indexmm.htm>

Forests (MoEF) on issues related to wildlife and biodiversity. It is wholly funded by the Indian government.

In 2006, the MoEF issued directives to WII to undertake studies related to the impacts of mining on biodiversity including wildlife and its habitat in the proposed bauxite mining project. The directives ordered WII to undertake a rapid appraisal of the area to review the profile of the project and the ecological context. Two experts from WII then visited the area and submitted their report to MoEF.

The resulting appraisal called attention to the danger that the mining operation may cause desiccation and reduce the flow to two of the larger rivers, the Vamsadhara and the Nagavali.⁶¹ WII's report also concluded that the mining project would cause increased erosion and pollution of the water systems, which in turn will deteriorate the water quality and have a negative impact on riverine habitats.⁶² Importantly, the report stated that 'the threats posed by the proposed project to this important ecosystem will lead to irreversible changes in the ecological characteristics of the area.'⁶³

Prafulla Samantara

Prafulla Samantara, a Gandhian environmentalist, is the convenor of the National Alliance of People's Movements, also known as Lok Shakti Abhijan. He is the President of Lok Shakti Abhijan's Odisha chapter. In his work for NAPM, Prafulla acts as a coordinator, to unite various peoples' organisations which supports movements struggling to protect natural resources from destruction.

Prafulla Samantara was one of the individuals who lodged a petition with the Supreme Court CEC in 2004.

Lok Shakti Abhijan lodged simultaneous complaints at the South Korean, Dutch and Norwegian NCPs in December 2012 against POSCO, regarding POSCO's failure to prevent human rights abuses and carry out comprehensive human rights and environmental studies for its proposed iron mine, steel plant and associated infrastructure, also in the State of Odisha.

LIFE Lawyers

The Legal Initiative for Forest and Environment (LIFE) was founded by Ritwick Dutta and Rahul Choundhary in 2005. The aim of the initiative is the establishment of environmental democracy through the use of judicial and quasi-judicial forums.

Mr Ritwick Dutta is a Supreme Court advocate and environmental activist based in Delhi. Ritwick appeared before the Supreme Court on behalf of the Dongria Kondh in 2013.

Green Kalahandi

Green Kalahandi is a social organisation which spearheaded the movement to protect the Niyamgiri Hills from the Vedanta's proposed mine. The organisation was formed in 2005 when

⁶¹ Wildlife Institute of India, *Studies on Impact of Proposed Lanjigarh Bauxite Mining on Biodiversity including Wildlife and its Habitat* (2006) 10.

⁶² *Ibid* 22.

⁶³ *Ibid* chapter 5.5.

a number of delegates met in Bhawanipatna to discuss the positive and negative effects of Vedanta's presence in Kalahandi. Green Kalahandi is engaged in promoting and protecting tribal rights, lifestyles, ecosystems and livelihoods. The Founder of Green Kalahandi is Bhakta Charan Das, who is also a member of the Indian Parliament, currently representing the Kalahandi constituency. Green Kalahandi conducted a number of peaceful protests against Vedanta and police brutality relating to the development.

In 2008, Bhakta Charan Das and Green Kalahandi reached out to Rahul Gandhi, who is Vice President of the Indian National Congress Party and the second ranked member of the Indian Congress Working Committee. As Bhakta Charan Das explains:

[Rahul Gandhi] wanted to see the plight of the tribals. He went inside the forest, met the tribals, took food with the tribals and he declared over there 'that I am going to fight for you' he came here and he said that 'I am your soldier, I am in Delhi, nobody can take away this forest from you, this mountain from you' and for two years he motivated the government of India.⁶⁴

People's Union for Civil Liberties (PUCL)

The People's Union for Civil Liberties (PUCL) is India's oldest and largest human rights organisation. PUCL was formed in 1976 by socialist leader Jayaprakash Narayan, a Gandhian leader in India after independence.

With respect to Vedanta, it was the first external organisation to document incidents of repression in 2003.⁶⁵

Maoists

On the sideline of this massive political upheaval on the ground, the armed radical Left—the Communist Party of India (Maoist) — silently and rapidly spread its base to newer areas and people. Jason Miklian and Scott Carney wrote in *Foreign Policy* journal that: 'If you were to lay a map of today's Maoist insurgency over a map of the mining activity powering India's boom, the two would line up almost perfectly'.⁶⁶

The influence of Maoists in Niyamgiri is unclear.

Key international actors

Felix Padel

Felix Padel is a prominent British anthropologist, who has been working with the Dongria Kondh since 1987. Padel was not directly involved with making the UK NCP complaint against Vedanta, although Survival International relied a great deal upon of Padel's work in the forma-

⁶⁴ Interview with Bhakta Charan Das (Delhi, 16 December 2013).

⁶⁵ Public Union For Civil Liberties, *A Fact-Finding Report on Physical Attack on the Villagers Agitating against Their Displacement Due to the Proposed Sterlite Alumina Project in Lanjigarh Block of Kalahandi District* (2006).

⁶⁶ Jason Miklian and Scott Carney, 'Fire in the Hole: How India's Economic Rise Turned an Obscure Communist Revolt into a Raging Resource War', *Foreign Policy* (Washington, DC) 16 August 2010.

tion of its NCP complaint. Dr Jo Woodman from Survival International explained Padel's role in initiating the resistance movement:

Felix Padel has a long history of contact with Survival, in fact I believe he volunteered with Survival when he was in his early 20s. He had been encouraging us and keeping us in touch with the Dongria situation for quite a while before we were able to take the case on.⁶⁷

In 2010, Padel published a book entitled *Out of This Earth: East India Adivasis and the Aluminium Cartel*. Rajesh Shankar, an independent filmmaker, made the following observations about Patel's involvement in the region:

At that time, he had already written the book on the Dongria Kondh. This was the first time in Orissa that a deep study had been done on the Dongria Kondh, associated with the industrialisation and government and corporate invasion. Normally, anthropology doesn't connect with the present context.

Felix is working as a Professor in Gujarat University. He disseminates the latest reports from the Vedanta corporate side and all the recent Supreme Court decisions. The important thing he is doing is that from the UK, he is bringing the international context.

The police always have an eye on him. Sometimes they have restricted his movement. He has to report to the police, sometimes, when he is in Rayagara District, for example.

He has always kept on writing about the situation of how the investors are looking towards Vedanta and what propaganda Vedanta is spreading to investors in the UK. He writes in blogs, newspapers ... Previously he has been there a thousand times. He is very close to the Dongria. He has the quality to get immediately assimilated with that society.⁶⁸

Foil Vedanta

Foil Vedanta is an international solidarity group which is centrally focused on advocacy in disputes concerning Vedanta. Foil Vedanta operates as a network of grassroots activists from a variety of struggles in Britain and worldwide. According to Foil Vedanta's website in 2014, the group works to

hold demonstrations in London, support other like-minded struggles, visit and establish close links with local resisting groups, and carry out cutting edge research into the company's activities and atrocities, publishing articles on our website. We are currently working to get Vedanta de-listed from the London Stock Exchange for their multiple human rights abuses and illegal operations.⁶⁹

ActionAid

ActionAid is an international NGO which has a federated structure. Two of its branches have been particularly active around Vedanta: ActionAid India and ActionAid UK.

ActionAid India has an office in Bhubaneswar, the capital of Odisha and is active in the Kalandi area. According to Bratindi Jena, ActionAid has a mandate to act on behalf of the affected tribes, working for their empowerment and the protection of the environment, explaining:

⁶⁷ Interview with Jo Woodman (Skype interview, 14 June 2012).

⁶⁸ Interview with Rajesh Shankar (Bhubaneswar, 8 December 2012.)

⁶⁹ Foil Vedanta, 'About Foil Vedanta' <<http://www.foilvedanta.org/about/>>.

We are working in the region directly with affected people. We share with them information, amplify their voice on issues that violate their rights and destroy nature. Their cultural and religious rights depend on Niyam Raja as they worship the mountain as living God. Hence, they have the right to protect the mountain and their cultural and religious rights and identity.⁷⁰

In 2006, ActionAid UK launched an international campaign against Vedanta. ActionAid staged a protest at the company's annual general meeting (AGM) in London in the summer of 2006. A number of subsequent AGMs have been attended by ActionAid UK and allies in London. Dongria Kondh community members participated in the Annual General Meeting and raised questions from 2007 to 2009. Such tactics generated international attention and definitely played a role in further disinvestments from Vedanta.

Survival International

Survival International, a global NGO with a focus on the rights of tribal communities, filed a complaint against Vedanta at the UK NCP on 19 December 2008, on the basis that the company's bauxite mine would violate the rights of the Dongria Kondh tribe. Survival International also joined ActionAid in the protests at Vedanta's AGM in London. Survival International has further supported the Dongria Kondh in their struggle against Vedanta, by lobbying the Indian government, as well as the UK government, for the mine to be prohibited. The organisation has also submitted detailed reports to the UN, and produced a film on the Dongria's struggle, entitled *Mine: Story of a Sacred Mountain*.

Amnesty International

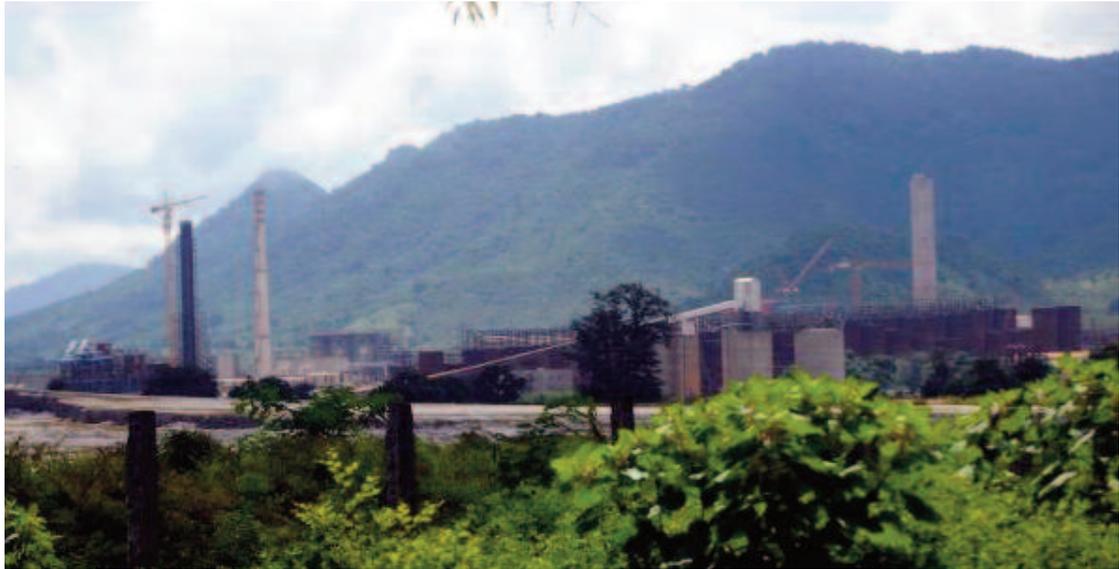
Amnesty International has also been involved in the campaign against the Vedanta mine. A number of influential reports have been issued by Amnesty International with regards to the aluminium complex's impact on human rights. Amnesty International was also particularly involved in lobbying companies to divest from Vedanta. Members of Amnesty International, including Peter Frankental who has been a key figure driving Amnesty International's involvement in the campaign, has attended various Vedanta AGMs in London. Amnesty International was less concerned with the NCP process, and focused more heavily on lobbying at a domestic level to have the mining clearance denied. Bhakta Charan Das explained how such international pressure may have contributed to government action in India: 'We got substantial support from the international community, Amnesty international has contributed a lot'.⁷¹

Bianca Jagger

The campaign has also attracted the support of high profile celebrities such as Bianca Jagger, founder of 'Bianca Jagger Human Rights Foundation', who visited the Niyamgiri Hills and attended Vedanta AGMs. She wrote a number of articles in *The Guardian* newspaper.

⁷⁰ Interview with Bratindi Jena (Bhubaneswar, 3 December 2012).

⁷¹ Interview with Bhakta Charan Das (Delhi, 16 December 2013).



Lanjigarh Alumina Refinery.

Source: *The Hindu*

Government actors

The regulation of mines in India involves both the central government and the governments of constituent states. The proprietary title to onshore minerals vests with the state, although the Constitution of India assigns functions and legislative power over minerals to both the centre and the states.⁷² The central government reserves the power to make laws relating to the ‘regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest’.⁷³

The *Mines and Minerals Development and Regulation Act 1957* (*‘MMDR Act’*) confers the right to states to allow exploitation of minerals by way of granting licenses and leases on the state governments, but in accordance with the provisions of the *MMDR Act*, which require mandatory prior approval of the central government for the grant of such licenses and leases. With respect to 10 major minerals (including bauxite) the states have little powers except possession, receiving royalties and a few other payments. Only with respect to minor minerals, the states can make their own rules and regulations.⁷⁴ In Odisha, the Department of Steel and Mines is vested with managing the state’s mineral resources. The Department of Steel and Mines is the administrative department of the Directorate of Mines, the Directorate of Geology and Odisha Mining Corporation Ltd.

⁷² Shri Nilmadhab Mohanty Institute for Studies in Industrial Development, *Sustainable Development: Emerging Issues in India’s Mineral Sector*, Institute for Studies in Industrial Development No (2012), p.49. See *Constitution of India*, sch VII: Union List (List I), State List (List II), Concurrent List (List III).

⁷³ *Constitution of India*, list I, no 54.

⁷⁴ Institute for Studies in Industrial Development, Institute for Studies in Industrial Development No (2012), p.52.

Barriers To Access To Redress

There are multiple barriers which impede the ability of the tribes and communities inhabiting the project area to obtain redress. The Dongria Kondh and other tribes in the affected area are among the most isolated tribes in India. They are separated from systems of administration and justice by distance, language and resources. Beyond these barriers is perhaps the larger problem of the 'ontological distance' between the involved parties. There are vast differences between the world views of the tribes on the one hand, and the government and companies on the other. When activists first visited the Niyamgiri Hills to warn communities of the proposed mine, they had great difficulty conveying what a mine was or the idea that something could cause environmental devastation beyond anything the communities had previously seen. For the Dongria Kondh, the concept of a mine and its consequent environmental damage was inconceivable. This was a major impediment to seeking early redress.⁷⁵

Inequalities in power between the parties

The inequalities of power between the affected communities and the businesses involved in the aluminium complex are vast. The affected communities are from one of the poorest regions of India and are *adivasi* or tribal.⁷⁶ Although the Kondhs are well regarded as expert horticulturalists and possess a wealth of agroforestry expertise, their capacity to face Vedanta Resources as adversaries in this legal context created significant power differentials which bear mentioning. The Dongria Kondh speak two languages, Kuyi and Kuvi, which have no script. The literacy rate is less than 10 per cent, and female literacy stands at only 3 per cent.⁷⁷ Dongria Kondh children are educated in ashram schools, run by the Odisha Department of Welfare for tribal children, although Dongria Kondh children tend to leave formal schooling early and assist their parents in domestic and agricultural activities.⁷⁸ Only a small number of Kondh children who had attended the school spoke the official state language, Oriya. There was very little knowledge of Hindi in the communities impacted by the planned mine and refinery. Though their formal rights have recently been strengthened through the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act*, their political power is widely acknowledged to be peripheral in India.

In contrast, the head of Vedanta, Anil Agarwal, had a net worth is USD3.4 billion in 2014, owned a multi-million house in London and was on Forbes' list as one of the world's top 500 billionaires.⁷⁹ In 2012 he was named Business Leader of the Year by the influential *Economic Times* of India. He is celebrated within India for having built the company domestically before expanding overseas, and raising USD12.5 billion overseas capital for investment in India over seven years

⁷⁵ Interview with Rajesh Shankar (Bhubaneswar, 8 December 2012).

⁷⁶ Note also the Saxena Committee report makes special note that the Dongria Kondh have remarkable economic well-being and self-sufficiency, as a 'testimony to the prosperity of the upland hill community': Saxena et al, Ministry of Environment & Forests No (2010):30.

⁷⁷ Gandham Bulliyya, 'Ethnographic and health profile of the Dongria Kondhs: A primitive tribal group of Niyamgiri hills in Eastern Ghats of Orissa' (2010) 1(1) *Afro Asian Journal of Anthropology and Social Policy* 11.

⁷⁸ Ibid.

⁷⁹ Forbes, *The World's Billionaires: Anil Agarwal* <<http://www.forbes.com/profile/anil-agarwal/>>.

up until 2012.⁸⁰ To illustrate the family's immense wealth, in 2013, the wedding of Agarwal's daughter in London was a three-day extravaganza, with performances by Elton John and Bollywood stars Shah Rukh Khan and Katrina Kaif.⁸¹ Indeed, Agarwal is regarded within India as enormously influential, wealthy and well-connected. The extent of Agarwal's personal power, as well as the gargantuan corporate might of Vedanta Resources, might have at first seemed an insurmountable force as against the Dongria Kondh and the activists working on their behalf.

The directors of Vedanta Resources have in recent years included people of great influence. They include Sir David Gore-Booth (a board member till 2004) was Britain's High Commissioner to India (1996–98), Jean-Pierre Rodier (a senior executive at Pechiney, France's largest aluminium company, which helped set up Nalco then merged with Alcan), Naresh Chandra (India's Home Secretary in 1990, Cabinet Secretary 1990–92, Senior Adviser to the Prime Minister 1992–95, and India's Ambassador to the US 1996–2001).⁸² Indian Home Minister, P Chidambaram, represented Vedanta Resources in the Mumbai High Court and was on its board until 2003 when he became Finance Minister of India (2004–08).

The project has been supported by a powerful network of government and business actors, including corporate executives, investors and senior figures within the Odisha State government. For example, the refinery site was inaugurated by a foundation stone laid by Odisha's Chief Minister, who arrived by helicopter along with Anil Agarwal, another senior Vedanta executive, representatives of the leading investment bank JP Morgan (which played a crucial role in arranging funding for the Lanjigarh project), and other senior foreign figures.

Support for the mine by the state of Odisha also exacerbated the power differentials between the parties. It has been alleged that in some cases local police refused to register human rights abuses when individual victims approached them; in other cases police and local administration were said to be working together with corporate-hired gangs to intimidate local communities. Amnesty received information alleging that the police beat up seven villagers following protests at Basantpada against land surveys in March 2003.⁸³ Eighteen other protesters, who were demanding the release of an individual arrested on charges of disrupting public order, were also injured while at a protest march. It has been further claimed that in order to smooth the path for the mining project, the state government of Odisha attempted to intimidate the Gram Sabhas when the first decision making occurred regarding local consent for the mine in 2002, with Amnesty similarly documenting an inexplicably 'large police presence' for a community consultation process, which intimidated villagers.

Throughout India, political support for projects such as mines has often been driven by money politics, including both political donations and bribes. This structurally facilitated system of politics, (in addition to the informal and illegal system of bribery) inevitably creates a mutually beneficial relationship between corporations and government, rendering it more difficult for

⁸⁰ The Economic Times, 'ET Awards 2012: Anil Agarwal is the Business Leader of the Year', *The Economic Times* <http://articles.economictimes.indiatimes.com/2012-09-19/news/33952762_1_sesa-sterlite-vedanta-group-vedanta-resources>.

⁸¹ *Forbes*, above n 79.

⁸² Samandra Das and Felix Padel, 'Anthropology of a Genocide: Tribal Movements in Central India against Over-Industrialisation' (Paper presented at the South Asia Anthropology Group, London).

individuals and communities to influence decisions when their rights are at play. Social activist Dharendra Panda, for example, explains the levels on which influential political donations has seemingly occurred:

All the major political parties in India, they get donations and support from corporates ... But these parties don't get money from the people. They are dependent on corporates, and this compels them to support corporates with pro-corporate policy.⁸⁴

Another significant barrier to redress in this case was the pro-business and pro-mining trend in administrative and judicial decisions in India, since the country moved towards a neoliberal model of economic development and opened its doors to foreign direct investment, especially in mining, in the early 1990s. This dynamic is particularly pronounced in Odisha. In 2001, the state announced an industrial policy promising to transform the state into a vibrant industrial state, focusing on the abundance of mineral resources as an incentive for industrial investment.⁸⁵

The project has also received significant support from political and administrative authorities at the local level, intensifying barriers facing communities attempting to protest the project at this level. Communities impacted by the project reportedly approached the District Collector (the head government official in the district) to voice their concerns, but found him to be closely aligned with those promoting the project — working actively to pressure villagers to accept compensation to relocate as demanded by the company.⁸⁶

Features Of The Campaign That Contributed To Redress

Given the extent of the power imbalances in this case, an important question to ask is how the tribal people in a remote and poor part of India succeeded in halting the mining operations of the largest mining company in India. A concerted campaign was run at an international and domestic level in support of the affected communities and against Vedanta's poor human rights practices. This section explores the features of this campaign that appear to have contributed to the attainment of redress in this case, in particular, the halting of the mine.

Densely networked activists groups at local, national and international level with loose coordination

The campaign against the Niyamgiri mine entailed a densely interlinked network between local, national and international actors. The analysis conducted in this study shows that a very large number of groups were involved in the campaign. Dynamically, each actor seems to have had its own interest in supporting the fight against the proposed Niyamgiri mine, whether due to a focus on the environment, fauna or indigenous/tribal rights. These groups were only loosely coordi-

⁸³ Amnesty International, Amnesty International No ASA 20/004/2010 (2010), p.40.

⁸⁴ Interview with Dharendra Panda (Bhubanshwar, 5 December 2012).

⁸⁵ Bhabani Shankar Nayak, 'Silenced Drums and Unquiet Woods: The Myth of Modernization and Development in Orissa' (2007) 23(1) *Journal of Comparative Social Welfare* 89., p.89-98

⁸⁶ Jiwrajka, above n 13.

nated, with no formal means for meeting and deciding the direction of the campaign between Odisha and the UK. At times, the weaknesses in coordination between actors resulted in tensions, as certain groups disagreed with other groups' strategies. For example, a number UK-based activists, such as Survival International and ActionAid UK, likened the Vedanta dispute to the popular blockbuster *Avatar* — a tactic which was criticised by some Odisha-based activists. Biswajit Mohanty of the Wildlife Society explained that the release of *Avatar* was a 'big clincher' which brought to life the international and domestic protests against Vedanta.⁸⁷ However, Mohanty explained that link between *Avatar* and the Dongria Kondh was certainly a 'middle-class' trend:

Interviewer: And was *Avatar* popular here in India?

Biswajit Mohanty: Yeah, it screened in all the halls and we regularly see it on our satellite television regularly they show it.

Interviewer: Because I know even in England they made the link with *Avatar* but also here?

Biswajit Mohanty: Of course *Avatar* came at a time when the agitation was already at its peak. But the local people did not have anything to do with *Avatar*, they can't understand English — they have not seen the film nor is there any hall there, so there is no chance of [the Dongria Kondh community] seeing the film. I mean the middle class, decision-makers in cities like Bhubaneswar, Cuttack and Delhi and all that so they understood the link and they empathised with the tribals, the Dongria Kondh.⁸⁸



Protesters outside Vedanta's AGM in London, 2010.

Source: Reuters⁸⁹

⁸⁷ Interview with Biswajit Mohanty (Bhubaneswar, 1–7 December 2013).

⁸⁸ Ibid.

⁸⁹ Reuters, 'Environment Ministry Rejects Vedanta's Plan on Green Worries [sic]' (24 August 2010) <<http://in.reuters.com/article/2010/08/24/idINIndia-51023120100824>>.

The fact that the groups maintained only loose coordination with each another meant that no group was unduly hampered by disputes over strategy.

The multifaceted approach allowed for a range of strategies to be utilised. Groups targeted campaign objects closest to them which they had strategic strengths in pursuing. Thus, the division of labour (while not deliberately organised) allowed for resources and expertise to be used efficaciously and according to respective strengths. Each group was able to frame the issue in accordance with their own established discourses, and to leverage their constituencies and supporters. One of the ways this manifested was through the large number of complaints that were lodged in various complaint mechanisms.

In the end, the effect of the positive determination by the UK NCP was bolstered by the complementary strategies, taking place within India. Dr Jo Woodman, campaigner at Survival International, explained that it seemed to be a culmination of events which lead to MoEF's disapproval of the Vedanta mine in favour of the Dongria Kondh:

[There] are so many cases that are as awful as Niyamgiri but which have gone ahead and been unstoppable ... I guess the difference with the Niyamgiri case is that there were lots of people and factors adding the pressure until each grain of sand added eventually to a land slide.⁹⁰

Low dependency of local groups on international NGOs

In contrast to campaigns in which international NGOs take the lead on a campaign, supporting local groups financially, this campaign was locally instigated and had significant local momentum. There is no sense that the local campaign depended on or would have ceased if it lost the support of international NGOs. Strategic and financial support for local groups was occasionally provided by international NGOs. Amnesty International supports local groups by conducting thorough investigations and sharing findings to support local litigation. Here, an old friendship founded at university between a key staff member in Amnesty International and the head of Mines, Minerals & People, which coordinated the legal claims in Delhi was of great strategic importance. ActionAid UK worked closely with ActionAid India, which was a key local player in the campaign, providing various forms of support to local communities mobilising in opposition to the Vedanta project.

Although these UK groups visited, consulted and gained some form of mandate to campaign on the issue from the Dongria Kondh, they acted largely independently of the local campaign being conducted in Odisha. ActionAid UK appears to have responded most directly to community concerns, via the intermediation of ActionAid India, which was involved directly in supporting communities at several points in the conflict. However, both Survival and Amnesty became involved largely because British activists suggested that they should, and because the case offered a focal point for certain agendas around indigenous and tribal rights that they were already working on promoting. A UK-based anthropologist who had been involved in Survival for some time had been tracking the plight of the Kondh people for some 15 or so years, and was quite insistent that this was an issue that they should become involved in. Initially, Amnesty

⁹⁰ Interview with Jo Woodman (Skype interview, 14 June 2012).

UK decided not to become involved because the International Secretariat thought that strategically it should remain a national Indian issue. However, after Survival and ActionAid UK became heavily involved, Amnesty saw the usefulness of building on the existing campaign and convinced the International Secretariat to review their decision.

In interviews with local Odisha-based activists, UK groups were criticised for the autonomous nature of their actions. In contrast, Odisha-based activists were highly sensitive to the need to take direction from the Dongria Kondh, framing their actions as ‘solidarity’.

Despite these criticisms, there do not appear to be any detrimental outcomes from the limited extent of consultation and direction sought from the affected communities. Instead, in our analysis, one strength of the various campaigns appears to have been the capacity of groups to target key actors with influence over the mine who were closest to them, or whom they had the most robust capacity to influence. Campaign groups against the Vedanta mine and refinery in Odisha based in different locations throughout the world were able to act quickly and in accordance with their relative strengths.

Clear and unified representation of the affected communities

An immensely important factor in the affected community’s success was the fact that the affected people developed a clear representative structure. The Dongria Kondh have a delineated structure of social control in the village and at muttha (regional) level — there are hereditary religious leaders like the *jani* (religious head), *mondal* (secular head) and *barik* (messenger).⁹¹ This resulted in a transparent method for groups to consult with the affected Kondh tribes regarding matters of strategy. Niyamgiri Suraksha Samiti (Association for the Safeguard of Niyamgiri Hills) appears to have provided strong leadership and representation. The Dongria Kondh did not seem to have been hampered by any deep divisions among the communities themselves. One example of this was when Maoist groups attempted to arrange a boycott of the 2013 Gram Sabha. Kumar observed that the ‘call for complete boycott of the gram sabhas, but this was ignored by the Dongria Kondhs’.⁹²

Perhaps the most crucial factor behind the success of the campaign has been the energy and commitment of the affected communities. While in the beginning of the controversy, there was a systematic lack of information and exclusion of the Dongria Kondh from the consultative process, the network of state-based activists bridged this information gap by making constant visits and ensuring that information was passed onto the Kondh about legal and administrative developments relevant to the mine.

Strong ethic of ‘solidarity’ among Odisha-based activists

Activists in Odisha have a strong ethic of acting in solidarity with tribal and other affected communities in Odisha. Our interviews revealed that the idea of ‘solidarity’ has a long history and is a well-honoured concept amongst these activists. Individuals and groups differentiate them-

⁹¹ Bulliyya, above n, p.18.

⁹² Kundan Kumar, ‘Confronting Extractive Capital: Social and Environmental Movements in Odisha’ (2014) 49(14) *Economic and Political Weekly* 66, 72.

selves on the basis of whether they take direction from the community in relation to strategy or develop strategies independently of the affected community in accordance with external priorities. Self-conceptions of legitimacy are strongly linked with the notion of acting in solidarity with affected communities. In Odisha, this means that international NGOs are primarily criticised because this is not their primary organising characteristic.

The campaign against the Vedanta mine in Odisha benefited greatly from the long history of activism in the state including the *adivasi* movement and the land rights movement.

Listing of Vedanta in UK gave leverage to European-based NGOs

A significant feature of the campaign against the Niyamgiri mine was that groups within the advocacy network targeted objects which they had strategic strengths in pursuing. The listing of Vedanta on the London Stock Exchange provided an opportunity for UK groups to target company investors and to insist on the application of the strong human rights culture which subsists in Europe.

When Vedanta first listed in the UK, it had a small office of only three people, according to interviews with personnel from the company. These staff had no experience in sustainability or human rights. When the campaign against Vedanta in the UK first began, Anil Agrawal denied that 'European' human rights norms were relevant in its Indian operations.

The company was unprepared when, in 2007, the Norwegian Pension Fund sold its entire stock in Vedanta, worth approximately USD13 million, after its Council on Ethics found that continuing to invest in the company posed 'an unacceptable risk of contributing to grossly unethical activities'.⁹³ The high-profile divestment was heralded as a symbolic victory, providing legitimacy to the narratives being used by activist networks, both within India and internationally. Although Vedanta's share price did fall sharply during 2008–09, and subsequently underperformed compared with its peers, the human rights controversy attached to Vedanta did not appear to be the key driver of this fall in value.⁹⁴ Following Norway's lead, a number of other shareholders divested from Vedanta over the following years, such as BP's pension fund, the Joseph Rowntree Charitable Trust and a Dutch asset manager, PGGM.

Our interviews with personnel from within Vedanta suggest that Vedanta misunderstood the seriousness of the NCP process after Survival International lodged its complaint with the UK human rights body. Not only had the company experienced relative success in winning legal cases within India, negative publicity seemingly had no impact on the political support it enjoyed within India by 2008 when the NCP complaint was made, though this later changed at the national level. As a consequence, Vedanta was simply unprepared for the influence of the NCP findings within Europe. Vedanta's primary strategy in relation to the NCP complaint was to refuse to recognise that the UK NCP had standing in the case given that parallel cases were taking place in India.

⁹³ The Government Pension Fund - Global Council on Ethics, Norway,, *Recommendation to the Ministry of Finance of 15 May 2007* (2007).

⁹⁴ Dowell-Jones bases this assertion on, for example, the five-year share price chart for Vedanta and Kazakhmys, another FTSE 100 listed mining company. See Dowell-Jones, above n:463 fn 137

In an interview, a Sustainability Officer for Vedanta explained that when this strategy failed, the company did not have a fallback position, because it had not anticipated that the NCP findings would be seen to be legitimate by shareholders and lenders. The UK NCP was damning in its confirmation that Vedanta had failed to engage the Dongria Kondh in adequate and timely consultation with respect to the mine, and outlined the company's failure to adequately assess the human rights implications of its activities on the Dongria Kondh. The NCP expressed stern disappointment with Vedanta's failure to meaningfully engage with the NCP process.

The favourable decision by the UK NCP provided an impetus for further disinvestment. Following the NCP decision, the Church of England released a statement after selling its £3.8 million stake in Vedanta saying: 'We are not satisfied that Vedanta has shown, or is likely in future to show, the level of respect for human rights and local communities that we expect'. It added that maintaining investments in Vedanta 'would be inconsistent with the church investing bodies' joint ethical investment policy'.⁹⁵ Though organisations like Survival and Action Aid had been communicating with the Church of England for some time, it is thought that it was the perceived legitimacy of the decision by the UK government via the NCP that resulted in this very public disinvestment. The divestment was also facilitated by the visit of a key member of the Church of England to the Niyamgiri Hills in 2009.

Local political support

It might be argued that the conflict has become a battle between competing elite networks. Within India, the issue was used by political parties to distinguish themselves and curry favour with different pockets of the electorate. Congress sided with the tribal people of Niyamgiri, whereas the ruling parties of Odisha sided with business. This dynamic morphed into an administrative battle between the central administration of the Ministry of Tribal Affairs (MoTA) and the state government of Odisha in their interpretation of the Ruling handed down by the Supreme Court in April 2013.⁹⁶ The Court's judgment sent the decision about the mine back to the Gram Sabhas of the affected areas. Local political factors are critically important in understanding how the dynamics of the Vedanta case unfolded, and the conditions that led to Environment Minister Jairam Ramesh's decision to halt the project in 2010 (a decision that was then unsuccessfully appealed in the Supreme Court of India).

Our study suggests that Ramesh could only afford to make such a bold 'anti-business' actions because of the 'iconic' status that the Vedanta case had taken on. The international campaign, leading to the UK NCP decision against the company, and the divestment of a number of companies, played a central role in giving the case that iconic status.

What has produced changes in business behaviour?

Have the various determinations against Vedanta resulted in a change to their business practices more broadly?

⁹⁵ Kathryn Hopkins, 'Church of England sells Vedanta stake over human rights concerns', *The Guardian* (London), 5 February 2010 <<http://www.guardian.co.uk/business/2010/feb/05/vedanta-niyamgiri-orissa-church-of-england>>.

⁹⁶ *Orissa Mining Corporation v Ministry of Environment and Forest & Others* (2013) 6 SCC 476 (Supreme Court of India).

It seems that Vedanta has learned a significant amount from the strategic miscalculations it made in its (lack of) engagement with the NCP process and the broader international campaign against the company. It subsequently employed a Chief Sustainability Officer, whose job was to manage disputes of this kind, with extensive experience in other transnational businesses. It employed a 'repeat player' who had superior knowledge of the international share market and international sensitivities to claims of human rights abuses. The appointment went some way to rectifying the company's earlier ignorance of the importance of human rights to European investors.

Following the appointment of the Chief Sustainability Officer, and in keeping with the Scott Wilson Process, Vedanta underwent a rigorous process of reviewing its internal policies and implementing strategies to ensure that human rights are taken into account in all business operations.

The company's sustainability reporting is now a major aspect of its Annual Report. The 2013 report states:

Our sustainability strategy is supported by an enhanced new sustainability framework which has been rolled out across the Group, and enables us to deliver on the three key pillars of our sustainability strategy: responsible stewardship, building strong relationships and adding and sharing value.⁹⁷

In our analysis, despite statements by the company to the contrary, Vedanta continues to demonstrate more of a policy based approach to corporate responsibility, as opposed to one based on accountability to and thorough consultation with communities affected by its business activities across India and internationally. Vedanta has continued to be embroiled in disputes with communities across India. Nevertheless, there is strong evidence that in relation to the Lanjigarh refinery and Niyamgiri mine, the company is now far more cautious than when it first began exploration and construction in the area.

Demonstrating the importance of the reputational and financial damage created by the Niyamgiri failure, in one of the first statements by Tom Albanese, incoming Chief Executive Officer, on 15 May 2014, he said:

One of the first locations I visited was Lanjigarh, where we have ambitions to ramp-up the refinery to a capacity of 5mt of alumina. However, the bauxite for this is to be supplied by the State Government as per our existing Memorandum of Understanding. On behalf of Vedanta, I reiterate that we will not consider developing any bauxite resources including the Niyamgiri mines, without the consent of the local communities.⁹⁸

This statement indicates a continuing interest in pursuing the mine, though tempered by the need to gain consent. Despite the overwhelming opposition to the Niyamgiri mine, the government of Odisha remains in support of the mine, and local media appear to be sympathetic to Vedanta.

Mine only stopped because clearance was revoked

Non-judicial means of halting the mine or coming to an agreement between Vedanta and the community did not occur in this case. No mediation occurred between the affected community and the company which may have resulted in a mutual understanding being reached. The parties

⁹⁷ Vedanta Resources, *Vedanta Resources Annual Report & Accounts 2013* (2013), p. 4

⁹⁸ Vedanta Resources, *Chief Executive Officer's Review* (2014).

have maintained separate and conflicting interests throughout the dispute. Put simply, Vedanta want the bauxite, the Kondhs want their hills to remain undisturbed and to be left in peace.

The company did not change its behaviour voluntarily in this case. It was only as a result of the various administrative and judicial decisions within India that operations ceased in the Niyamgiri Hills. Since the permission to mine the Niyamgiri Hills was revoked, Vedanta has continued to push for the supply of bauxite by the state of Odisha for its refinery, using various tactics to maintain a supply. Concerted pressure was placed on Chief Minister Naveen Patnaik to supply bauxite.⁹⁹

Lessons For Design And Operation Of Non-Judicial Mechanisms

This section explores what lessons can be drawn from the judicial, administrative and non-judicial processes which suggest useful functions and practices that could be adopted by non-judicial mechanisms elsewhere. Lessons for the interaction of judicial and non-judicial processes can also be drawn from the various cases conducted throughout the company-community disputes considered in this report.

What features of redress mechanisms contributed to redress in this case?

This case study provides a useful contrast of the benefit of local judicial and administrative systems in India with the operation of an international redress mechanisms. While Survival International initiated the NCP process on behalf of the Dongria Kondh, there does not appear to have been any real local ownership of that process. This may never have been possible, considering that the Dongria Kondh are a marginalised and vulnerable community, which previously had very little contact with mainstream Indian society. However, local judicial and administrative processes proved to be far more accessible in practice for a number of reasons discussed in this report. In the following sections we describe the features of each mechanism which made it more accessible to the aggrieved communities in this case.

Features of Indian mechanisms that contributed to redress

Broad Supreme Court standing rules

In India, the standing rules of the Supreme Court were changed to allow amicus curiae standing by interested parties in 1996. It has been ruled that any member of the public having sufficient interest may be allowed to initiate the legal process in order to assert diffused and meta-individual rights. The culture of the court, also, is open to wider interests beyond those of the parties initially involved in a claim.

This paved the way for a broad range of voices in support of the affected people to be heard in court. Because activist lawyers, who were well linked with Odisha-based activists, were prepared to intervene in the Supreme Court cases, this change in the rules of standing proved to be particularly influential in determining the positive outcome for the community in this case.

⁹⁹ Debabrata Mohanti, 'To help Vedanta, Orissa nudges Centre for Karlapat bauxite mines', *The Indian Express* (Bhubaneswar), 18 September 2014.

The broad democratic functions of the Gram Sabha provide a robust process for free, prior and informed consent

The Supreme Court of India sent the decision concerning the Vedanta bauxite mine back to the lowest level decision making body under the *Constitution of India*, the Gram Sabha. The Gram Sabhas are localised decision making bodies which grant a broad franchise to adult community members. The Gram Sabhas in this case were held in 12 affected villages. Although there was controversy over the number of Gram Sabhas that were constituted by the State of Odisha, the process demonstrates a number of advantages in relation to access to justice for the affected communities. First, all adult members are able to vote. Second, the meetings are held within the villages of the affected communities, in places they can easily reach, which are familiar and where most faces are known to them. Third, the Gram Sabhas are empowered by the laws of India. They are deeply embedded in local institutions, regardless of the fact that they have been underused in many states. Fourth, when constituted properly, they are transparent processes which are open to scrutiny. The meetings of the Gram Sabhas held in 2013 in villages that would be affected by the Vedanta mine were observed by many civil society members and representatives of the District Court, on behalf of Supreme Court orders to ensure their fairness and integrity. In the lead up to the 2013 Gram Sabhas, village leaders were reportedly facing increased harassment by state police and several individuals were arrested in connection with the dispute. The Gram Sabhas were reported to have been held under heavy security cover of state police and central paramilitary forces,¹⁰⁰ although the process did eventually appear to allow villagers to freely voice their opinions without intimidation.

Had they been improperly conducted, the Supreme Court may have been able to insist that votes occur again. All of these qualities of the process made it a robust means of attaining consent, and could act as a model internationally for gaining free, prior and informed consent.

The leading guideline in this area, from the World Commission of Dams, is explicit about what is required in this regard. These guidelines reinforce the notion that consent requires the development of an equal and meaningful, communicative relationship between parties, like that required for consultation. See Box 3 for further details.

Box 3: Key excerpts from the World Commission on Dams Guidelines for Free, Prior and Informed Consent

Free, prior and informed consent is ‘more than a one-time contractual event — it involves a continuous, iterative process of communication and negotiation spanning the entire planning and project cycles’.

‘Effective participation requires an appropriate choice of community representatives and a process of discussion and negotiation within the community that runs parallel to the discussion and negotiation between the community and external actors’.

‘It is inappropriate to set rigid guidelines or frameworks, as these must be negotiated as the process proceeds’.

¹⁰⁰ Arunima Mishra, ‘Rule of Thumb: Tribals in Orissa’s Niyamgiri hills reject Vedanta’s bauxite mining project in a landmark referendum’, *Business Today*, September 15 2013.

The inquisitorial functions of the Committees of the Ministry for Environment and Forest Rights

Committee investigations have been pivotal in informing court and administrative decisions within India in relation to this case. The committees of the Indian MoEF such as the Saxena Committee were given broad powers to investigate infringements of rights in relation to the Vedanta mine. Because the Saxena Committee was comprised of experts in environment and sociology with experience in data collection methods involving local people, they were able to conduct a deep inquiry into the nature of breaches of environmental and forest rights laws. The Committee visited the communities and area surrounding the refinery and planned mine, and used various social science and scientific methods to conduct a thorough collection of data of various sorts. This included a great number of interviews with affected communities. This, in effect, gave a far more significant voice to a wide cross-section of community members than would have been the case if these bodies were restricted to receiving evidence from interested parties.

Features of international mechanisms that contributed to redress

Standing rules of the National Contact Point

The UK NCP has broad standing rules that allowed the international NGO Survival to bring a claim on behalf of the Dongria Kondh. If it were not for Survival's decision to attempt a complaint to the NCP, it is difficult to imagine that such a complaint would otherwise have been made. One reason for this is that Indian advocacy groups may not perceive it to be a legitimate forum for raising grievances. Our research showed that Odisha-based activists, in particular, are very wary of outside intervention or any influence that would reduce the centrality of affected communities in decision making around the campaign.

Although the broad rules of standing and representation at the UK NCP allowed the case to be brought, the NCP at no time required representations by the Dongria Kondh themselves, nor did it conduct an independent inquiry of the type conducted by the Saxena Committee. This is a shortcoming of the UK NCP. Other NCPs, such as the Dutch NCP, conduct more rigorous fact finding in order to ensure that the voices of community members are attained.

In this case the NCP was also willing to pursue the case, despite parallel legal proceedings in India, on the basis that the NCP complaint addressed a different dimension of the case. Many other NCPs may have refused the case on the grounds of parallel proceedings, and lost this opportunity to exert positive influence.

Engagement with broader changes in business practice

The Scott Wilson Process, required by lenders under the Equator Principles, was the only human rights mechanism engaged in this case which required evidence of change across Vedanta's business policies. All the other judicial and non-judicial processes were solely concerned with actions of the business in relation to the Niyamgiri mine and Lanjigarh refinery.

The process initiated under the Equator Principles with Vedanta suggests that there are benefits to be gained from requiring evidence of incremental improvement by companies. This approach serves not only to remedy the issue immediately at hand, but also to improve the human rights practices of the company in the longer term and across its operations more broadly. However, stronger procedures than those required under the Scott Wilson Process are arguably needed to prevent egregious human rights abuses.

Coordination between international and Indian mechanisms

One of the biggest failings of the UK NCP was its lack of coordination with Indian decision-making processes and judicial bodies. The UK NCP has no formal method of coordination with institutions within the country where the complaint originates.

It is difficult to predict what effect the NCP determination may have had within India were it not also for the cumulative effects of the other international and domestic campaigns. We have found limited evidence that the UK NCP determination against Vedanta alone was particularly influential within administrative and judicial channels in India. Certainly, the decision was well known amongst Odisha-based activists, but it was not seen to be one of the more important factors in bringing about a positive impact for affected communities. Other international decisions such as the Norwegian Pension Fund's decision, in November 2007, to sell its entire stock in Vedanta, worth approximately USD13 million were seen to be equally influential — the divestment was specifically mentioned in the 2007 Supreme Court decision in its order dated 23 November 2007. Within India, awareness of the UK NCP's determination stemmed from media reports and the networking activities of NGOs. The determination was not frequently cited as influential by Indian administrative and judicial decision-makers. As noted above, one of the most significant impacts of the NCP appears to have been the reputational damage done to the company within Europe, owing to Vedanta's UK public listing.

The lack of demonstrable and direct impact of the UK NCP determination in India, where the grievance occurred, indicates it has some way to go in extending the reach of its work. For example, the NCP should enhance its visibility in the area of the business activity that was the subject of the complaint. The limitations presented in this case strongly suggest that the NCPs should work more closely with local stakeholders, including government in the 'host country' at all levels, to ensure a wider awareness of their operations, and to facilitate a greater impact. Our research suggests that changes to the structural or formal features of the regulatory design may also be desirable to enhance the capacity of communities to access the NCPs, and for the mechanism to have a sustained impact on business behaviour. Recommendations of this nature are made in the specialist report on OECD National Contact Points.

Lessons For Ngo Strategies

Lessons for international NGOs and supporters

Complaints to non-judicial mechanisms can be successfully employed as part of broader campaign strategies

Positive determinations against companies by non-judicial human rights mechanisms can be used to bring further pressure to bear on the company in question to change their behaviour through lobbying for divestment and publicising the decisions. Determinations by NCP and other similar mechanisms have legitimacy that can be amplified through broader campaigns. This case study shows that investors can be persuaded to divest when presented with evidence of a determination against the company.

Extensive publicity and lobbying are necessary to amplify the impact of determinations

Complaints to non-judicial human rights mechanisms seem to have only been effective in this case in the context of broader campaign strategies. The precise impact of the NCP determination in this case is indeterminate. This is to be expected in a transnational case involving such a multiplicity of interested parties, redress mechanisms and advocacy strategies.

Dr Jo Woodman, campaigner at Survival International, explained that it seemed to be a culmination of events which lead to MoEF's disapproval of the Vedanta mine in favour of the Dongria Kondh:

There have been so many people saying the same things for so many years and so many cases that are as awful as Niyamgiri that have gone ahead and that have been unstoppable and yet there has been I think a grounds well ... I guess it's possibly just the point that if you keep adding enough grains of sand eventually the whole ... you get a land slide and I think that's definitely part of what's happened here.¹⁰¹

Loose coordination between activist groups appears to have been advantageous in this campaign

Transnational mobilisation against mining in the Niyamgiri Hills appears to have been successful in part because of the multifaceted nature of the international and local campaigns. Fortunately, the lack of coordination between the various parties seems to have allowed each organisation to play to its own strengths. As such, the organisations were able to frame the issue in accordance with established discourses known to have leverage with their constituencies and supporters. There are a large number of groups involved in the campaign against Vedanta in the state of Odisha, in addition to strong community-based resistance by the Dongria Kondh themselves. What may have appeared to be a weakness in the advocacy of this case turned out to be one of its strengths. That is, many of the groups had differing and sometimes conflicting opinions about the objectives of the campaign. However, maintaining loose coordination between various parties actually allowed the overall movement not to become hampered by disputes over strategy. The cumulative effect of the overall movement indicates that in this case, the whole was greater than the sum of its parts.

Strong ties with local NGOs and representatives of affected communities is vital

Fostering relations with local groups who are involved in the campaign around human rights grievances is particularly important. The research documented in this report suggests that Survival International lost the respect of some local groups because it did not adhere to principles of 'solidarity' that are strongly valued by local activists. There is some question whether it is possible for an international NGO to strictly apply an ethic of solidarity, given that organisational strategies are determined across many campaigns, not just in response to one campaign.

In this case, greater coordination with local groups would have increased awareness about the NCP determination within Odisha, which may have brought further localised pressure to bear on the company and the government. Many otherwise well-informed groups that were interviewed for this study had no knowledge of the UK NCP determination.

¹⁰¹ Interview with Jo Woodman (Skype interview, 14 June 2012).

More extensive and well-developed relations with local groups may also result in a refinement of campaign objectives. Most local groups aimed to stop the mine rather than demanding better compensation or improved resettlement. It is crucial that the international campaign reinforce these local objectives.

Complaints to non-judicial human rights mechanisms can be a huge amount of work

One outstanding question is whether the successful NCP determination was anything more than a pyrrhic victory for the campaigners who submitted the complaint. Personnel at Survival International spent around 18 months putting together the evidence for the NCP complaint, and hired a lawyer to submit the specific instance complaint. It is possible to lodge a simple letter instead of a lengthy tome of the type prepared by Survival International. Survival wanted to build an irrefutable case against Vedanta and to have the evidence they had collected verified and legitimised by the UK NCP. They felt this would be more powerful than writing another independent report. Groups considering lodging a complaint need to allocate sufficient resources for building a strong body of evidence, responding to the position of the company and potentially engaging in mediation. Ultimately, our interviewees at Survival International tended to show ambivalence as to whether the engagement with the NCP process paid off — noting the NCP was ‘extremely time-intensive and frankly extremely inaccessible to the communities that we work with.’¹⁰² Dr Woodman explained this weakness further:

I don’t think the process is open or accessible to people who need it. It’s fine for cases where there’s an organisation like Survival that is able and willing to put in the kind of time and work necessary. But the process is off-putting to many because there is an assumption that nothing really is going to come out of it, because the system has no teeth. So I think it’s a system that is in absolutely desperate need of very radical reform. It was very encouraging to see that, very soon after that the final statement on Vedanta, the process was discussed in a meeting of the joint commission on human rights in the UK government.¹⁰³

Ritwick Dutta, the lawyer who argued in the Supreme Court hearing that ultimately ended the mine, saw the UK NCP decision as only one small aspect of the overall tactic. For him, the Norwegian investment fund decision seemed to loom larger than the UK NCP decision.¹⁰⁴ However, he was also of the view that any bad publicity about the company was good publicity in terms of how it could be used to further the campaign. He was clear that the NCP decision did not result in any direct influence over political decision making, but there was a process of shaming at work that could be used by campaigners within the country. From this perspective, mediated redress, which is the process that the NCP pursued, was not the desired outcome for the campaign, particularly if it reduced the publicity.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ritwick Dutta, ‘Inspiring India: Challenges for Environmental Democracy in the World’s Largest Democracy’ (Speech delivered at the Sidney Myer Asia Centre, The University of Melbourne, 28 July 2016).

Failure to engage with the company about its broader business practices limited change in business behaviour

The international NGOs engaged in this campaign are, broadly speaking, organisations which do not have an ‘engagement’ strategy with companies about their broader business practices. The campaign has been focused on stopping the mine in Niyamgiri and limiting the scope of the refinery in Lanjigarh. An alternative strategy would have been to use the Niyamgiri-focused campaign as a starting point for a wider conversation about the company’s practices. Vedanta has mines around India and elsewhere in the world which have drawn criticism. Yet, the focus of the international campaign was on Niyamgiri. Our research suggests that the campaign has not resulted in broader behavioural change by Vedanta, except in relation to philanthropy and fulfilling the requirements of the Scott Wilson Process required by Equator Principle lending banks.

Our research suggests that there might usefully have been a role for a player that engaged with Vedanta about how to improve its human rights record more broadly across the business. The NGOs we interviewed were hesitant to do so due to concerns about ‘collaborating’ with the company or losing their independence. This is a clear gap in what was, resultantly, a narrow ‘single issue’ campaign.

Lodging multiple legal claims increases the cost of doing business and results in delays

Appendix 1 to this report provides a near-comprehensive list of all the cases lodged with courts and administrative bodies in relation to the Vedanta mine and refinery. The list near overwhelming. The ongoing lodging of claims was part of a delay tactic used by the supporters of the Dongria Kondh. According to Ritwick Dutta, the lawyer who represented the Dongria Kondh in the Supreme Court hearing which eventually led to the demise of the mine and other claims, the aim was to delay the progress of the mine while political support was being gained and public opinion swayed.¹⁰⁵

Such a tactic demands the support of a committed legal team. Happily, the Dongria Kondh have enjoyed such support from Legal Initiative for Forest and Environment (LIFE) Lawyers. Dutta in particular has devoted years towards advocating on behalf of the Dongria Kondh.

Lessons for local NGOs and supporters

Although determinations by non-judicial human rights bodies are not legally binding, they can be used as evidence in courts and in submission to government to demonstrate that expert opinion, associated with the governments of other countries, considers the company to be in breach of human rights standards.

In certain circumstances, it may be useful to increase awareness surrounding the decisions of non-judicial human rights mechanisms in the local media and communicating them to national and state level politicians. This way, key policymakers and ministers may be persuaded that their decisions have international significance and consequences which makes adherence to international standards more acute.

¹⁰⁵ Ibid.

Lessons For Business And Government

There are a number of lessons which business can learn from this case study.

Though non-binding, the decisions of non-judicial mechanisms can have significant consequences for business

Companies should be aware that investors sometimes take decisions made by non-judicial human rights mechanism very seriously. In this case there were a number of high-profile investors who disinvested after the UK NCP found in favour of Survival International. Furthermore, borrowing from Equator Principle banks was dependent on evidence of change within the company.

Vedanta was ill-prepared for this outcome, and had not responded thoroughly to Survival International's complaint to the mechanism. This left it open to criticism for failing to take human rights seriously, and severely damaged the reputation of the company.

Conflicts of this type can be extremely costly and time consuming

The Vedanta case study suggests that when consent for a proposal is not gained properly and in keeping with the law, this leaves the company open to sustained disputes in various forums and significant business uncertainty. In this case, because Vedanta invested significant funds building a refinery on the basis that it would have a secure supply of bauxite, the company was locked into a strategy of pursuing either the mine or alternative sources of bauxite. This was an aggressive and risky strategy on behalf of the company. The company would have lost far less money if it had first gained genuine consent from local communities in accordance with the law, and then made decisions about the wisdom of investing in building a refinery.

Appendix 1

Timeline of legal claims and other events in the case

April 1997. Sterlite Industries and the government of Odisha sign a Memorandum of Understanding to create an integrated mining and refining project in Kalahandi.

6 June 2002. The Collector of Kalahandi issues notices for acquiring land for the alumina refinery project. The notice shows that 118 acres of village forest land is involved in the project.

August 2002. The site is identified in principle, and rapid EIAs for the proposed refinery site and the mine are developed and submitted to the government of Odisha.

7 February 2003. Public hearings for the alumina refinery and bauxite mining project were commence at Lanjigarh.

17 March 2003. Public hearings for the bauxite mining project commence at Muniguda.

19 March 2003. Sterlite (Vedanta's parent company) apply to the MoEF for environmental clearance. In the application it is stated that no forest land is involved and that within a radius of 10 km there are no reserve forests.

7 June 2003. Vedanta and Sterlite Industries enter into a fresh MoU with the government of Odisha specifically for setting up 1 million tonne per annum alumina refinery along with associated 75 MW captive power plant and a 3 million tons per annum bauxite mining facilities at Lanjigarh in Kalahandi District.

24 March 2004. The MoEF write to Sterlite, informing them that since the functioning of the aluminium refinery would be dependent on the mining proposal, it has been decided to consider the proposal for the aluminium refinery and the mine together.

25 March 2004. Sterlite request that the MoEF grant environmental clearance for the aluminium refinery separately on the ground that it would take three years to construct the aluminium refinery whereas only one year would be required to set up the bauxite mines.

April 2004. All the permissions belonging to Sterlite Industries are transferred to VAL and an agreement is signed between the OMC and VAL.

5 August 2004. The Orissa Forest Department issues show cause notices to Vedanta for encroachment of 1041 acres of forest land (out of 58 943 ha for which *FC Act* clearance proposal was sent) by way of land breaking and levelling for the refinery.

16 August 2004. Vedanta applies for use of 58 943 ha of forest land, consisting of 28 943 ha of village forest and 30 ha of reserve forests. However, the application for environmental clearance is not modified and the same is processed on the premise that no forest land is involved.

22 September 2004. Environmental clearance is given for the alumina refinery project by the MoEF by delinking it from mining project. In the environmental clearance it is stated that no forest land is involved.

5 October 2004. An agreement is entered into between Vedanta and OMC. Apart from undertaking to build the mine, the refinery and a captive power plant, there is a proposal to also construct an aluminium smelter of about 220 000 tons in the Jharsuguda District of Odisha.

24 November 2004. The state government informs the Environment Wing in the MoEF about involvement of 58 943 ha of land in the project as against the '[n]il' mentioned in the environmental clearance letter.

18 December 2004. The Forest Department and Revenue Department issues a forest offence report (FOR) and notices to Vedanta for breaking the law and encroaching on forest land..

December 2004. Three applications (nos 564, 571 and 579) are filed before Central Empowered Committee by Biswajit Mohanty of the Wildlife Society of Orissa, Prafulla Samantara and the Academy of Mountain Environics respectively, highlighting the violation of *FC Act*, questioning the validity of the clearance granted and the importance of the Niyamgiri Hills, among other issues.

16 February 2005. The State of Orissa files an affidavit before the CEC stating that 58 943 ha of an integral part of the project and is required for the alumina refinery complex, approach road and conveyor belt.

28 February 2005. During the hearing, the CEC raises the issue of the validity of the environmental clearance granted to the alumina refinery in view of involvement of forest land and whether environmental clearance is in the process of being cancelled. The CEC writes formally to the MoEF about the validity of the environmental clearance, and seeking comment on the

report of the fact-finding team. The MoEF is requested not to grant *FC Act* clearance till the entire issue is examined and a report is filed before the Supreme Court.

2 March 2005. A Supreme Court-established Central Empowered Committee questions the validity of the environmental clearance granted by the MoEF and requests that the Ministry withhold forest clearance on the project until the issue is examined by the CEC and report was submitted to the Supreme Court. The MoEF agreed to this request.

3 March 2005. For the first time, Vedanta informs the Environment Wing that forest land is involved in the project. The MoEF issues a 'stop work' order and directs that further construction of Alumina Refinery Project be undertaken only after obtaining *FC Act* clearance.

24 March 2005. Vedanta writes to the MoEF declaring their intent to implement the project without use of 58 943 ha of forest land and that therefore the 'stop work' order does not apply to them.

27 March 2005. The State of Orissa recommends that the MoEF withdraw the forestry clearance proposal.

28 March 2005. The MoEF agrees to the withdrawal of the forest clearance proposal and the stop work order of the Ministry was cancelled.

28 March 2005. The Environment Wing of the MoEF withdraws the 'stop work' order issued on 3 March 2005.

21 September 2005. The CEC submits its report to the Supreme Court recommending that the mining operations should not be granted forest clearance since there had been a violation of the *FC Act*.

3 June 2006. The Supreme Court asks the MoEF to consult with experts and organisations and submit a report on the objection by CEC that the refinery would be totally dependent on mining of bauxite from Niyamgiri Hills, Lanjigarh, which was a vital wildlife habitat (part of which constituted an elephant corridor), and also on the grounds that said project would obstruct a proposed wildlife sanctuary and the residence of tribes such as the Dongria Kondh.

20 October 2006. The Central Mining Planning and Design Institute (CMPDI), Ranchi submits its report on the impact of ground vibration from the project on hydro-geological characteristics, including ground propensity, permeability and the flow of natural resources.

14 October 2006. The Wildlife Institute of India (WII), Dehradun studies the impact of the mining project on biodiversity and submits its report to the MoEF.

25 October 2006. WII submits its supplementary report to the MoEF.

26 October 2007. The Supreme Court hands down an order that 'arguments concluded and reserved for Judgment. Parties are permitted to file written submissions, if any, within a week'.

27 October 2007. The Forest Advisory Committee (FAC) of the MoEF, after perusing the reports, approve the proposal lodged by the OMC for diversion of 660 749 ha of forest land for the mining of bauxite in Kalahandi and Rayagada Districts, subject to the conditions laid down by the WII.

23 November 2007. The Supreme Court, as a result of the findings of the CEC investigation, puts a halt to the mining project and proposes the establishment of a special purpose vehicle

(SPV) to administer development through consultation and to develop rehabilitation package for the Niyamgiri mine project.

December 2007. Siddharth Nayak, who was the petitioner in Writ Petition No 549 of 2007, files a Review Petition No 100 of 2008 and seeks review of the order dated 23 November 2007 passed by the Supreme Court.

7 May 2008. Nayak's petition is dismissed by the Supreme Court.

8 August 2008. The Supreme Court grants clearance with certain conditions related to the sustainable development of local communities, protection of the environment and conservation. VAL and the OMC accept the Supreme Court's proposed SPV and are subsequently granted clearance for mining project infrastructure development. The SPV commits to investing USD2.2 million or 5 per cent of profits before tax annually for the rehabilitation of local tribes.

11 December 2008. Pursuant to the orders of the Supreme Court, the MoEF, Government of India in its order gives in-principle Stage I clearance to the diversion of 660 740 ha of forest land for the mining project.

31 December 2008. The MoEF orders that the transfer of forest land to the user agency should not be effected by the state government until formal orders approving diversion of forest land are issued.

28 April 2009. The MoEF grants environmental clearance to OMC for Lanjigarh bauxite mining project subject to various conditions.

May 2009. Local communities file a petition against the MoEF's decision to approve the mine to the National Environment Appellate Authority, which directs a review by a special committee.

10 September 2009. The state government confirms compliance with the conditions of the in-principle approval for 660.749 ha of forest land. Further, the state government also confirms compliance with the conditions of the in-principle approval for diversion of 33.73 ha of village forest in Kalahandi district for construction of the conveyer corridor and the mine's access road to the OMC's Lanjigarh bauxite mining project.

4 November 2009. The state government's final proposal is placed before the FAC, which recommends that final clearance would be considered only after the ascertaining of community rights on forest land and after the process for establishing such rights under the *Forest Rights Act* is completed.

26 February 2010. On the issue of *FC Act* violations, a three-member committee (Dr Usha Ramnathan, Dr Vinod Rishi and Mr J K Tewari) is assembled by the Forest Advisory Committee on 1 January 2010, and they submit their report on 26 February 2010.

19 July 2010. The MoEF assembles a four-member committee (the Saxena Committee) comprising of Dr N C Saxena, Prof S Parasuraman, Dr Promode Kant, and Dr Amita Baviskar. This committee is mandated to examine, in detail, the proposal submitted by the OMC.

16 August 2010. The Saxena Committee submits its report to the MoEF.

17 October 2010. The state government submit their written objection to the MoEF on the Saxena Committee's report and request that an opportunity of hearing be given to it before any decision is taken on the report.

24 August 2010. The MoEF reject the Stage II forest clearance for diversion of 660 749 ha of forest land for the mining of bauxite ore at the Lanjigarh bauxite mines in Kalahandi and Rayagada districts.

September 2010. The National Environmental Appellate Authority (NEAA) completes hearings on four petitions filed in May 2009 that challenged the April 2009 environmental clearance for the mining project.

15 September 2010. The NEAA points out that, of the two EIAs undertaken for the mine plans, one was commissioned by Vedanta in 2002 and the other by the OMC in 2005. The NEAA held that the second EIA produced in 2005, on the basis of which the mine plans received environmental clearance, was never in the domain for 'people to express their views/concerns during the two public hearings held in Rayagada and Kalahandi during 2003'. The NEAA suspends the MoEF's April 2009 environmental clearance for the mine plans and asked the MoEF to revisit the issue.

October 2010. Aggrieved by the order dated 15 September 2010 passed by the Authority, Prafulla Samantra files Review Application No. 3 of 2010.. The order of remand is challenged on several grounds.

28 July 2011. The National Green Tribunal pass the following order:

After hearing learned counsels for the parties, perusing the Memorandum and after giving conscious thoughts we are satisfied that nothing remains to decide in this Review Application, as the order sought to be reviewed has worked out and no longer exists, accordingly the Review Petition is dismissed, but then, without costs.

1 April 2011. The OMC file a petition in the Supreme Court challenging the MoEF's refusal to grant forest clearance for the project.

11 July 2011. The MoEF withdraw the environmental clearance dated 28 April 2009 granted in favour of the OMC.

1 November 2011. *Adivasi* leaders also file a petition asking the Supreme Court to hear their arguments against the mine plans.

6 December 2012. The Supreme Court pronounces its interim order on the matter.

18 April 2013. The Supreme Court pronounces its judgment on *Orissa Mining Corporation v Ministry of Environment and Forests*. The Court gives a direction to the State of Odisha to place these issues before the Gram Sabha with notice to the Ministry of Tribal Affairs and the Government of India. The Gram Sabha are to take a decision on them within three months and communicate the same to the MoEF, through the state government.

2 May 2013. The Ministry of Tribal Affairs (MoTA) write a letter to the state government of Odisha requesting they take the necessary action for implementing the Supreme Court order dated 18 April 2013.

23 May 2013. The MoTA again write to the state government of Odisha requesting they complete the Gram Sabha process as per the Supreme Court Order.

1 June 2013. The state government make a decision on the Gram Sabha process in the Niyamgiri area.

5 July 2013. The state government reiterate, in a letter to the MoTA, that its decision on conduct of Gram Sabha meetings in seven villages in Rayagada district, during 18 July–19 August 2013 and five villages in Kalahandi district, during 23–30 July 2013, is in compliance with the Supreme Court order dated 18 April 2013.

23–30 July 2013. Gram Sabhas in Tarijhola, Kunakadu, Plaberi, Fuldumer and Ijrupa (villages in Kalahandi district) convene during this period.

18 July–19 August 2013. Gram Sabhas in Serkapadi, Kesharpadi, Batudi, Lamba, Lakhpadar, Khambesi and Jarpa of (villages in Rayagada district) convene during this period.

3 October 2013. The state government send the decisions of 12 Palli Sabha (five villages in Kalahandi and seven villages in Rayagada district) concerning the Lanjigarh bauxite mining lease area with the report of the observer to the MoEF. All 12 Pallasabhas unanimously decide not to allow any mining activities on Niyam Dangar (Niyamgiri Hills).

8 January 2014. The MoEF reiterate its decision of the rejection of Stage II approval under the *FC Act* for diversion of 660 749 ha of forest land to OMC for mining of bauxite ore in Lanjigarh Bauxite Reserve in Kalahandi and Rayagada districts.

Expansion of the refinery project

October 2007. Vedanta seek environmental clearance from the MoEF for a sixfold expansion of the refinery's capacity.

March 2008. The MoEF issues Terms of Reference (ToR) for the preparation of the Environment Impact Assessment Report of the proposed expansion.

12 January 2009. The Orissa State Pollution Control Board (OSPCB) lays down strictures in its memo, asking the company to immediately cease construction related to expansion of the refinery as it had not obtain the required permissions, including the environmental clearance for expansion.

31 March 2009. A subsequent OSPCB report notes that the expansion activities for the expansion of the refinery project were continuing without proper legal clearance.

25 April 2009. The public hearing commences and opinion are expressed in the public hearing for the proposed expansion of the refinery from one to six. Production capacity is grossly distorted in the recording of its minutes. Out of 27 people recorded as speaking, only one supported the project.

20 October 2010. MoEF suspend the 2008 ToR for the refinery's expansion and annul the April 2009 public hearing held by the OSPCB at Lanjigarh.

November 2010. VAL asks the MoEF to consider the expansion again and issue the Environmental Clearance but the MoEF responds with a request to obtain fresh consent.

January 2011. Vedanta challenge the MoEF decision in the Orissa High Court.

19 July 2011. The Court dismisses the petition, stating that the MoEF was justified in suspending its March 2008 ToR for the refinery's expansion and annulling the April 2009 public hearing held at Lanjigarh.

27 August 2011. The MoEF stipulates conditions that Vedanta would have to fulfill before any

clearance could be granted. These conditions stipulate that Vedanta commission a new EIA and subject itself to a new public hearing to enable consultation of affected communities.

19 January 2012. The Orissa High Court dismisses the review petition by Vedanta which was filed in the month of July 2011 against the order dated 19 July 2011.

2 March 2012. Vedanta writes to the OSPCB to seek a waiver of the public hearing, stating that the OSPCB had already issued its consent for the project on 16 February 2010, that there was no change in the project site or capacity, and that holding a new public hearing would not serve any purpose except giving an opportunity to those opposed to the refinery expansion, but this too is turned down.

1 April 2012. The OSPCB announce that they would hold a public hearing on 2 May 2012 at Rengopalli village on the refinery's expansion plans.

17 April 2012. The MoEF defer the public hearing until the authorities fully resolve the long-standing issue of Vedanta denying the local communities access to 26 ha of village forest land within the refinery area.

3 May 2012. The state government's forestry department inspect the plant area, conclude that Vedanta had failed to protect 0.047 ha of village forest land and filed a case against Vedanta under ss 81 and 83 of the *Orissa Forest Act*. This case is pending before the Bhawanipatna sub-divisional judicial magistrate.

Timeline of Vedanta Smelter Plant, Jharsuguda, Odisha

4 November 2005. The OSPCB publish a notice for a public hearing by Vedanta on 9 December 2005 regarding the aluminum smelter plant (2 500 000 tons per annum) at villages of Bhurkamunda and Brundamal, in Jharsuguda district.

9 December 2005. The OSPCB conduct a public hearing regarding the aluminum smelter plant (2 500 000 TPA) at municipal town hall in Jarsuguda. Mr Parfulla Samantra, President Lok Shakti Abhiyan (Orissa Unit, Berhampur) sends his representation to the Member Secretary of the OSPCB, objecting to the setting up of aluminum smelter plant on various grounds.

5 June 2006. Mr Samantara raises his objection by letter dated 5 June 2006 before the OSPCB, and tries to draw attention to the illegal construction work undertaken by Vedanta for its proposed smelter plant and captive power plant at Jharsuguda without first getting environmental clearance.

8 February 2007. The OSPCB, by its letter dated 8 February 2007, directed Vedanta's general manager (HR) to halt all construction activities pending environmental clearance from the MoEF.

7 March 2007. The MoEF grants environmental clearance to Vedanta's alumina smelter plant (2 500 000 tons per annum) at Bhurkamunda/Brundamal, Jharsuguda district without considering the objections of petitioner raised at various point in time.

5 April 2007. Prafulla Samantara, aggrieved by the order of the MoEF, files Appeal No 4 of 2007 before the NEAA.

29 January 2008. The NEAA dismisses Appeal No 4 on the grounds that the petitioner is not

qualified to file the appeal under the cl (a) of the s 11(2) of the *National Environment Appellate Authority Act 1997*.

February 2008. Mr Samantara, the writ petitioner in Appeal No 4, challenges an order dated 29 January 2008 of the National Environmental Appellate Authority dismissing his appeal stating that he is not a 'person aggrieved' under s 11 of the *National Environmental Appellate Authority Act 1997*.

6 May 2009. The Delhi High Court delivered the following judgment:

The impugned order of the [NEAA] which dismissed Appeal No 4 cannot be sustained. It is hereby quashed. The authority is directed to entertain and dispose of the petitioner's appeal, in accordance with law. The writ petition is allowed with costs, quantified at Rs.50,000/- to be paid by the third respondent, to the petitioner, within four weeks.

May 2009. An appeal is launched against an order of the Delhi High Court dated 6 May 2009 where the one-judge bench had quashed the impugned order of the NEAA which dismissed the Appeal No 4.

14 September 2009. The division bench of the Delhi High Court declares that:

In the circumstances it is not right to say that the first respondent is not an aggrieved person within the meaning of Section 11 of the Act. Denial of the right to appeal would virtually defeat the legislative intention of granting access to the expert appellate authority in the matter of grant of EIA. In our opinion, the appeal is devoid of any substance and the same is hereby dismissed with costs quantified at Rs.25,000/-

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