

Initial Assessment by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Survival International and Vedanta Resources plc

1. On 19 December 2008, Survival International wrote to the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) raising a number of concerns which they felt constitute Specific Instances under the Guidelines, regarding the operations of Vedanta Resources PLC, a registered company under the UK Companies Act.
2. These concerns relate mainly to the operations in Orissa, India, of an Indian subsidiary of the company, Sterlite (India) Ltd.
3. The concerns were specifically related to the following provisions within the Guidelines:

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

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

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

4. Survival International alleges that a planned bauxite mine in the Niyamgiri Hills will have serious adverse impacts on the Dongria Kondh, one of India's most isolated tribes. Survival International submits that the operation of the planned mine and the creation of the necessary supporting infrastructure to support the mine will partially take place on traditional Dongria Kondh land, which the Dongria Kondh are spiritually and culturally tied to. It is alleged that the Dongria Kondh have not been consulted in relation to the mine and are still not in a position to measure, or to ensure that steps are taken to minimise, the negative impacts the mine will have on them, including the impact the supporting infrastructure, will have on the villages surrounding the mine.
5. Vedanta Resources plc responded that Survival International does not have the necessary interest in the matter to bring a complaint to the NCP. It also contends that the impact on the local community has been considered by the State Government of Orissa (which is a joint venture partner in the mining project) and the Supreme Court of India, which granted permission for the mining project subject to certain conditions for the benefit of the local community, and that it is therefore inappropriate for the UK NCP to consider. In addition Vedanta contends that the allegations are unfounded as, in conjunction with the Collector and District Magistrates, it has undertaken the

necessary public consultation with the local community, and as part of this process is complying with measures prescribed by the Indian Supreme Court for community development including the rehabilitation of all affected families and the development of resources available to affected indigenous people in the area taking into account their requirements for health, education, communication, recreation, livelihood and cultural lifestyle. Vedanta also maintain that it has been in regular contact with the Dongria Kondh Development Agency in relation to the development of all such resources.

The UK NCP process so far

6. The UK NCP sent the complaint to Vedanta Resources plc on 19 December 2008 and Vedanta responded on 20 January 2009, the response was forwarded to Survival International on the same day. The NCP met with Survival International on 27th January but Vedanta has not been able to meet the NCP within the allocated timeframe for the initial assessment so communication was undertaken by the exchange of emails and letters, which has been copied to the other party. The NCP has stated that it is still willing to meet Vedanta and has offered to arrange a videoconference with India if this is of assistance.

7. Neither party has raised any objection to the sharing with other party of all documents sent to the NCP.

UK NCP decision

8. The UK NCP has decided that all the issues raised in the Survival International submissions merit further consideration and has decided to accept the specific instance. **This does not mean that the NCP considers Vedanta Resources plc to have operated inconsistently with the Guidelines.** The reasons for the decision are explained below.

9. As stipulated in the commentary on implementation in specific instances (text of the OECD Guidelines p.60 paragraph 14), the UK NCP considers that the issue is bona fide. It has taken the following points into consideration when considering whether Survival International's concerns merit further consideration:

a) The UK NCP is satisfied that Survival International is a legitimate body to be making this complaint under the Guidelines, having taken account of the commentary on implementation in specific instances (paragraph 14, page 60 of the OECD Guidelines) and paragraphs 2.3.1 and 2.3.2 of the published NCP procedures for handling complaints.

Vedanta has questioned the eligibility of Survival International to bring this complaint on the grounds that it does not have close interest in the case having shown limited evidence that it has the backing of the local community, in particular the Dongria Kondh, or that it has first hand knowledge of local conditions, in that it has relied mainly on information provided by other

organisations to support its allegations. Paragraphs 2.3.1 and 2.3.2 of the published process say:

“2.3.1. According to the Guidelines, any “interested party” can file a complaint. The complainant may be, for example, a community affected by a Company’s activities, employees or their trade union, or an NGO. A complainant may act on behalf of identified other parties.”

2.3.2 The NCP will consider all complaints it receives. However the NCP will need to receive detailed information from the complainant in order to deal with the complaint. Therefore, complainants should have a close interest in the case and be in a position to supply information about it. They should also, in accordance with the principles of the Guidelines, have a clear view of the outcome they wish to achieve.

The UK NCP process specifically allows for NGOs, such as Survival International to bring complaints under the Guidelines. The UK NCP considers that Survival International has an interest in this matter because one of its stated objectives is to promote for the public benefit the human rights of indigenous peoples established by UN covenants and declarations. Furthermore, the UK NCP is satisfied that Survival International has submitted sufficient information for the complaint to be accepted which includes research from UK and India-based organisations as well as research by the complainant. In addition, Survival International has provided details of the support they say they have from members of the Dongria Khond in Orissa, the tribe which is the focus of this complaint.

b) The issues that have been accepted for the specific instance appear to be outstanding and the NCP considers that further checking of information received, evidence gathering and consultation with the parties in this complaint is required.

c) The relevance of applicable law and procedures: The UK NCP understands from Vedanta that the State Government of Orissa and the Supreme Court of India have approved the mining project and that the Supreme Court has made approval subject to certain conditions, including the condition that the project be undertaken by a joint venture entity owned by both the State Government of Orissa and Sterlite Industries (India) Ltd. The Guidelines are not a substitute for nor should they be considered to override local law and regulation, rather they represent supplementary principles and standards of behaviour of a non-legal character. While the Guidelines may extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements. It remains unclear to the UK NCP whether any decision it may make in relation to this matter has the potential to conflict with the decisions of the Court and the State Government as it has yet to receive sufficient evidence as to how closely they relate to the issues raised by Survival International. The NCP will offer the parties mediation but if mediation should fail and the process default to investigation, the NCP will ask Vedanta for the necessary documents in line with the NCPs published procedures and undertake a thorough analysis of the

issues before the Indian Courts and any ensuing ruling and supporting documents, before determining how best to proceed.

d) The Guidelines are designed partly as a dispute resolution mechanism and a clear difference in understanding currently exists between the parties that may benefit from the independent platform for dialogue that the NCP process provides.

Next steps

10. The UK NCP will contact both parties to confirm willingness to proceed immediately to mediation with the aim of reaching a settlement. The NCP will then liaise with Survival International and Vedanta Resources plc to make arrangements for mediation.

11. If the offer of mediation is not taken up or if a mediated settlement is not possible, the NCP will conduct a separate investigation into the issues raised in Survival International's complaint.

12. In either case, the NCP will issue a concluding statement on the case.

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