

# Improving Vedanta Resources' governance of responsible business practices

## Executive Summary

Vedanta Resources, a diversified metals and mining group, is headquartered in the UK but operates mainly in India. Operations in India include Sterlite Industries, Madras Aluminium Company (MALCO), Bharat Aluminium Company (BALCO), Hindustan Zinc Limited (HZL) and Vedanta Aluminium Ltd (VAL). It also has copper mines in Australia and Zambia. Company revenue for the fiscal year of 2010 was stated at USD 7.9 bn. Anil Agarwal, who founded the Group in 1976, is also Chairman of Sterlite and is a Director of BALCO, HZL, and Vedanta Aluminum Ltd. He owns more than 50% of the shares in the Company<sup>1</sup>.

The Company has come under international scrutiny for its plans for a bauxite mine and the expansion of its Lanjigarh alumina refinery. Responsible investors have been engaging with the Company and some of these have disinvested because of concerns over stakeholder-related risks.<sup>2</sup> Shareholder engagement on such issues is increasing as a way to protect shareholder value in the long term. The UN protect, respect and remedy framework makes clear that companies have the responsibility to respect human rights and that due diligence should cover these issues.<sup>3</sup>

The UK National Contact Point (NCP) for the OECD Guidelines on Multinational Enterprises recently found that Vedanta Resources had failed to adequately consult indigenous communities about the proposed mine. In its statement the NCP cited international human rights instruments including the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous Peoples.<sup>4</sup>

This briefing focuses on the EIRIS Convention Watch reports on Vedanta Resources, giving details of the Company response. In addition to engaging with the Company specifically on these reports, EIRIS last sent the Company its complete profile on 23 February 2010.

By 'Company' EIRIS means an entity made up of a parent company, its divisions, subsidiaries, associated companies and operations.

**EIRIS' Convention Watch** analysis identifies serious allegations made against companies in press articles and through NGO campaigns. It reviews and assesses allegations of company breaches of the spirit of major international conventions on human rights, labour standards, the environment, corruption, anti-personnel landmines and cluster munitions.

### *Convention Watch reports for Vedanta Resources:*

- Lanjigarh Bauxite mine – indigenous rights / biodiversity
- Lanjigarh smelter – pollution (right to health, water, healthy environment)
- Chhattisgarh collapse of chimney at aluminium plant – safety
- Chennai factory – allegations of bribery

Best practice examples are given in the briefing in terms of response to stakeholders, due diligence processes and governance practice.

## Recommendations

To follow best practice in addressing investors' concerns, Vedanta Resources needs to strengthen its board governance in the following ways:

1. Widen the remit of the HSE committee to make clear that it includes all ESG issues. The committee should have responsibility for oversight of the development of human rights and indigenous rights policies (based on international norms). The committee should have oversight of stakeholder engagement generally. Additional members skilled in these areas should be recruited. It should report to the Audit Committee on risks.
2. Train and allocate responsibility at board level on the full range of the company's ESG risks.
3. Create a transparent link between both board directors' and senior executives' remuneration and ESG performance, starting with pollution, safety and community.
4. Set up complaints/grievance mechanisms at all operations.
5. Improve risk management systems available to the Board including: a) setting up a panel of external experts to assess the Orissa operations against international norms relating to human rights, indigenous rights and the environment and b) commissioning independent environmental and human rights impact assessments and publishing these and committing to issuing a public response to the recommendations.
6. Support voluntary self-regulation standards, such as the OECD Guidelines for MNEs, UN Global Compact, EITI, ICMM, and the Voluntary Principles on Security and Human Rights.
7. Strengthen systems for monitoring compliance with ESG policies and publicly report on any non-compliances and remedial actions taken.

## Background

Vedanta Resources has been subject to intense scrutiny and criticism from civil society organisations both in India and internationally regarding its plans for a bauxite mine and the expansion of its

alumina refinery near Lanjigarh in Orissa, one of the poorest areas in India.<sup>5</sup>

The risk for such projects in Orissa is well known. NGOs allege that Norsk Hydro (in 2001) and Alcan (in 2007) sold their stakes in bauxite/ aluminium joint ventures in Orissa due to conflict with the local community. A resolution calling on Alcan to sponsor an independent committee to assess the project's impact on the community was narrowly defeated, with more than a third of shareholders voting in favour of the proposal.<sup>6</sup>

The Company's Lanjigarh project has been controversial in India from its beginning; Sterlite India gained the rights to mine bauxite in the Niyamgiri Hills in 1997. Schedule V of the Indian Constitution lists a range of protected areas which give Adivasi communities (indigenous people) special customary rights over the land. In 1997 India's Supreme Court held in *Samatha v. State of Andhra Pradesh* that the provisions of Schedule V also applied to the transfer of private or government land in Scheduled areas to non-tribals.<sup>7</sup>

Some key dates for the Lanjigarh project according to the Amnesty International 2010 report:

- 2002: Orissa government decides that the *Samatha* judgement is not relevant in Orissa
- 2004: the Ministry of Environment and Forests (MoEF) grants environmental clearance for the refinery, and the Company initiates its application for diversion of protected land for the mine
- From December 2004: February 2007 the Supreme Court concluded that the refinery was given clearance based on 'inaccurate information' and it recommends that mining should not be allowed in the Niyamgiri Hills
- May 2005: the MoEF orders Vedanta Aluminium to stop construction work on the refinery in relation to clearing of forest land without regulatory permission. The Company argued that the refinery could be built without using forest land and withdrew its application for diversion of protected forest land for the refinery

- Mid-2006 - early 2008: refinery completed and begins production
- October 2007 company seeks environmental clearance for 6-fold expansion of refinery
- November 2007: Supreme Court stays mining project
- January 2008: new Indian legislation guaranteeing the rights of forest-dwellers
- August 2008: Supreme Court clears mining project with conditions on development of local communities and protection of wildlife
- December 2008 – April 2009: MoEF grants in principle environmental clearance for mine
- January 2009: Orissa State Pollution Control Board (OSPCB) orders Vedanta Aluminium to stop construction on the refinery expansion
- April 2009: OSPCB conducts public hearing on refinery expansion and reports to MoEF that local communities favour the project. AI alleges this was despite 'significant opposition'
- May 2009: local communities file petition against MoEF clearance decision for mine<sup>8</sup>

In response to this controversy, responsible investors have been engaging with the Company, and some have subsequently disinvested or significantly decreased their stakes in the Company.<sup>9</sup> The Supreme Court in India has reportedly taken seriously the divestment by the Norwegian Government Pension Fund and the report it published.<sup>10</sup> This illustrates how responsible shareholders can influence the debate about specific instances of corporate responsibility. Other investor institutions which have divested include the Church of England and the Joseph Rowntree Charitable Trust.<sup>11</sup> Recently Dutch pensions manager PGGM Investments announced that it had also divested. PGGM stated that it had engaged with the Company for two years with regard to its mining activities in Orissa, and that: 'various discussions have taken place with the company's management and non-executive directors'. PGGM stated that with other investors it had tried to organise a meeting: 'to discuss possible solutions to the problems in Orissa. Vedanta did not accept the invitation to participate in this roundtable'.<sup>12</sup>

The need for high quality stakeholder engagement in the mining sector is well documented, including by mining industry bodies. The International Council on Mining & Metals (ICMM) for example stresses the value of proactive engagement with stakeholders and the need to build the impact of the company's activities on human rights into due diligence processes.<sup>13</sup> Professor Ruggie, the Special Representative of the UN Secretary General on business and human rights, has stressed that: 'Because human rights concern affected individuals and communities, managing human rights risks needs to involve meaningful engagement and dialogue with them'.<sup>14</sup>

Professor Ruggie has highlighted the materiality of stakeholder-related risks stemming from community challenges on environmental and human rights grounds. He has pointed out that unless adequately addressed these can cause delays in permits, reduced output, reputational hits and project cancellations. Professor Ruggie makes reference to a study of oil projects which indicated that non-technical risks accounted for nearly half of all risk factors, with stakeholder-related risks constituting the largest single category.<sup>15</sup>

Responsible shareholders are of course important stakeholders for companies and shareholder engagement is a way for responsible investors to use their power as shareholders to influence corporations on particular issues. Ownership of shares confers responsibilities as well as rights and shareholder engagement strategies are employed to:

- protect shareholder value - a significant proportion of a company's value lies in its reputation. Improving ESG practices, can improve a company's reputation and thus its overall value for shareholders
- encourage a focus on sustainable wealth creation by the company, other shareholders and other companies in the same industry
- broaden companies accountability to include all their stakeholders as well as the communities in which they operate

However, some civil society organisations and some in the responsible investment community are concerned that Vedanta

Resources is not fully engaging with its stakeholders. They cite as an illustration of this point the Company's response to the UK National Contact Point (NCP) for the OECD Guidelines on Multinational Enterprises regarding the NGO Survival International's complaint against the company. Vedanta Resources denied that it had breached the Guidelines and asked the UK NCP not to accept the complaint, stating amongst other points that most of the local community supports the mine project, that they consulted with them and that the project had been approved by the Supreme Court of India and the State of Orissa.<sup>16</sup>

According to the UK NCP, Vedanta Resources declined to be part of the conciliation and mediation stage of the UK NCP process, and therefore the NCP moved to the final stage of examination of the complaint. The NCP found that the Company had failed to adequately consult the Dongria Kondh, an Adivasi community about the proposed bauxite mine.

The UK NCP found that the company had not complied with the following sections of the OECD Guidelines for MNEs:

- Chapter V (2) (b): 'Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation'
- Chapter II (7): 'Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate'
- Chapter II (2): 'Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments'.<sup>17</sup>

According to the UK NCP: 'Survival International submitted a great deal of evidence in support of its allegations but Vedanta submitted no evidence in support of the claims made in its responses'.<sup>18</sup> The UK NCP states that it: 'did not find nor has received any evidence from the company that it carried out an assessment of the

impact of the construction of the mine on the Dongria Kondh or any other indigenous community which might be affected'.<sup>19</sup>

The UK NCP in its Final Statement made recommendations to the Company including that the Company: 'should immediately and adequately engage with the indigenous group Dongria Kondh seeking, in particular, the Dongria Kondh's views on the construction of the bauxite mine'. The UK NCP also stated that the Company: 'should include a human and indigenous rights impact assessment in its project management process'.<sup>20</sup>

On 29 December 2009 (with supplementary comments on 26 February 2010), the UK NCP received the Company's response on its implementation of the recommendations. According to the UK NCP *Follow up to Final Statement* document the Company stated: there will be no displacement from the proposed mine: 'as there is no inhabitation at the proposed mining site'. The Company reiterated that the mine is: 'being progressed in compliance with Indian law and regulations, in joint venture with the Government of Orissa and with the approval of the Supreme Court of India and central government'. The Company reported that a Special Purpose Vehicle has been set up: 'to ensure that some resources generated go towards developing infrastructures'. The Company stated that it: 'has in place a policy for engaging with local communities and is already engaging with the Dongria Kondh through the Orissa-Government-sponsored Dongria Kondh Development Agency (DKDA)'. The DKDA has developed a five year plan to improve such things as access to education and healthcare: 'following consultation with 62 Dongria Kondh villages, local NGOs and anthropologists'. The Company also stated that the consultation process with local communities which was carried out as part of the regulatory approval process: 'was advertised in the local vernacular (in accordance with Indian law)'.<sup>21</sup>

*Note:* the UK NCP Follow up to Final Statement procedure simply allows both parties to respond to the NCP's recommendations. The NCP does not assess what the parties to the complaint say or carry out any other investigations.

## International conventions and norms

In its summary the UK NCP found that: 'Vedanta did not respect the rights and freedoms of the Dongria Kondh consistent with India's commitments under various international human rights instruments including the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous Peoples'.<sup>22</sup>

Such international norms, which are binding on states, are being increasingly cited in relation to companies, by civil society organisations and by soft law bodies such as the UK NCP. Therefore an emerging normative framework is evolving which holds that it may not be sufficient in certain situations for companies to simply say that they are in compliance with local laws.

This has been given added impetus by the UN 'protect, respect and remedy' framework, which was unanimously welcomed by the UN Human Rights Council<sup>23</sup> and which has won virtually universal acceptance from states, business organisations and many NGOs.

The framework makes clear that although states have responsibility to protect human rights (and to ensure that all organs of society including companies comply), companies themselves have the responsibility to respect human rights and therefore to 'act with due diligence to avoid infringing on the rights of others'.<sup>24</sup> The baseline for internationally recognized rights is the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights plus the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. However, Professor Ruggie makes clear that companies also need to take other standards specific to their operations into account, for example regarding rights of vulnerable groups such as indigenous people. Although businesses cannot violate these instruments as such because legally they apply only to states,

companies can adversely impact the rights these instruments recognise.<sup>25</sup>

International instruments specific to indigenous rights include the Declaration on the Rights of Indigenous Peoples, Article 32 of which requires free prior and informed consent (FPIC) 'to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.'<sup>26</sup> Consultation is also required by the International Labour Organization Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169).<sup>27</sup> The Convention on Biological Diversity also includes articles relating to the rights of indigenous peoples.<sup>28</sup>

However, broader international conventions (such as those cited by the UK NCP) are also used by the relevant UN committees to protect indigenous rights. For example Article 27 of the International Covenant on Civil and Political Rights which states: 'minorities shall not be denied the right... to enjoy their own culture'.<sup>29</sup> The Committee on the Elimination of Racial Discrimination (CERD) has criticized oil companies on the lack of meaningful consultation with indigenous peoples.<sup>30</sup>

In addition ever-expanding soft law instruments which are designed specifically for companies are being developed and refined. The OECD Guidelines for MNEs are just such a multilateral, voluntary instrument, which is being revised this year, and is likely to include a new standalone chapter on human rights. The UK NCP final statement has had an impact in India itself, with the MoEF reportedly taking a keen interest in it.<sup>31</sup> In this way we can see how soft law can influence hard law; the divide between them is not as definite as it might appear. Best practice companies are alert to the evolving nature of norms, and Professor Ruggie, has himself suggested that companies should act in a proactive and prudent way regarding human rights rather than taking a narrow view of legal compliance.<sup>32</sup>

Other soft law instruments include the UN Global Compact<sup>33</sup>, the International Finance Corporation (IFC) performance standards<sup>34</sup> (also being revised this year), the Voluntary Principles for Security and Human Rights<sup>35</sup> and ISO 26000.<sup>36</sup>

Companies also have the responsibility to be part of the remedy process and Professor Ruggie suggests they need to establish internal grievance mechanisms to provide remedy for those impacted by corporate activities.<sup>37</sup> The ICCM's good practice guidance document argues that complaints mechanisms: 'can serve as a tool to build local trust and a common understanding of issues and thereby strengthen stakeholder support for projects'.<sup>38</sup>

## Analysis

This briefing explores Vedanta Resources' CSR performance by focusing on the EIRIS Convention Watch reports which analyse allegations of breaches of international norms. The EIRIS Convention Watch reports include an analysis of the Company's responses to these allegations, sourced both from the public domain and from engagement by EIRIS. An assessment grade is given for the Company's response, based on, amongst other things, improvements it has made to its policies and systems and other preventative or remedial actions taken to address the allegations.

Vedanta Resources has been the subject of Convention Watch reports on allegations of breaches of indigenous rights, biodiversity, pollution and human rights, bribery and health & safety.

Best practice examples from other companies are given to illustrate the steps that Vedanta Resources could take in responding to investor and stakeholder concerns. This briefing also looks at board governance practices which can serve to integrate policies and systems throughout the company and in so doing change corporate culture.

The graph below is based on EIRIS's methodology for the assessment of governance and risk management practices as well as performance 'on the ground' in the face of serious controversies. EIRIS assesses

board practice (separation of Chair and CEO, independence of the board, directors' remuneration and the independence of the audit committee) and systems for identifying and managing company-wide ESG risks, on a scale from +6 to -2. The second indicator is a measure of performance in relation to specific controversies in the areas of human rights, labour standards, environment and bribery. This creates a further score from 0 to -3 for each of up to five Convention Watch allegations. Specific responses to these allegations are a reflection of the tangible impact of the company as well as a good proxy for the measurement of future exposure to risk. For the purposes of this assessment framework the EIRIS measurement of the companies' responses to 'controversies' makes up two thirds of the overall score.

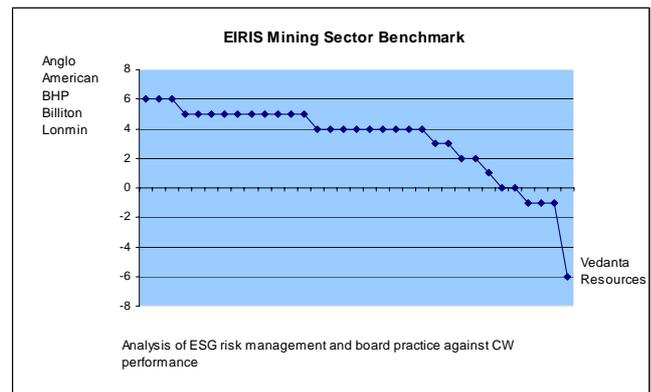


Table 1: According to EIRIS data – 20 July 2010.

## Refinery / mining project in Orissa

The Orissa project is covered in EIRIS Convention Watch reports for indigenous rights/human rights, biological diversity and pollution.

### Indigenous rights

One of the main allegations the Company faces is that it has violated indigenous peoples' rights regarding its planned bauxite mine and its alumina refining operations. The risk to their right to practice religion on their sacred site on the Niyamgiri hills is a particular impact in term of cultural survival as a distinct indigenous people.

EIRIS wrote to the Company on 24 May 2006 to ask for its comments on the allegations.

The Company did not respond at that time. The Company responded on 15 April 2009 with the following:

'We disagree with the suggestion that the company has infringed the rights of indigenous tribal people or has been complicit in the infringement of human rights. We believe that the suggestions recorded within your profile about the company's activities in Orissa are generally inaccurate. In connection with the assessment section, we should like to point out the following matters:

- The Indian Supreme Court examined all of the suggestions made about this project (including the ones mentioned within this profile) and has allowed it to proceed.
- No human rights abuses have taken place.
- The company has a specific human rights policy which is recorded on page 30 of our most recent sustainable development report.'<sup>39</sup>

However, the human rights policy mentioned refers only to non-discrimination and rights of the child, and not to indigenous peoples' rights. EIRIS has not found evidence of a further publicly available policy on human rights or indigenous peoples' rights.

The Company also provided a further response on 26 February 2010. In relation to indigenous rights it stated:

'We ensure that all our businesses are in compliance with all applicable regulations and beyond. All our mining projects are preceded by all required and relevant studies such as environment & social impact... These procedures are followed as part of the Company's own policy as well as required under the regulatory provisions... Vedanta is in compliance with generally accepted global practices such as those of the international council on mining and metals (ICMM).

'We at Vedanta respect the rights of the indigenous people and laws governing the same. We have developed and refined a number of programmes working with indigenous communities, and others to ensure that our initiatives remain relevant to both the indigenous people as well as our

businesses. India is yet to ratify the convention (on indigenous rights). It would therefore be premature to comment or examine whether the laws of India are consistent with the convention. However, The Fifth Schedule of Constitution of India has made special provisions for the administration of Scheduled Areas and Scheduled Tribes pursuant to which requisite statutes have been enacted in India to administer the rights of Tribal people of India and to safeguard their interest. We have ensured that all our projects/ operations/ developments undertaken in such Scheduled areas are in compliance with the requirement of the applicable statutes.'<sup>40</sup>

In its 2010 annual report the Company states the following: 'Commencement of mining operations awaits final clearance from the forestry authorities and has received all other clearances. We expect to receive the outstanding clearance in the near term; some complaints have been received from external third parties in relation to this project. However, Vedanta has and continues to operate within the legal framework and the jurisdictional control of the Government of India and vigorously defends its record in this regard'.<sup>41</sup>

The Company also states in its 2010 annual report that it is 'completely committed' to the Lanjigarh Project Area Development Foundation, a special purpose vehicle (SPV) required by the Supreme Court of India, by which: 'the company will have to give INR 100 million per year or 5% of the profit before tax – whichever is more for area development with clear focus on health, education, livelihood, communication and cultural heritage'. The Company states that it has already deposited INR 200 million with the SPV and a further INR 122 million for tribal development will be transferred to the SPV. The Company also states that: 'a tribal development plan and an employment plan for the community are being put together with a national level institute'.<sup>42</sup> The annual report 2010 gives details of the Company's development plan in operation at a Dongria Kondh village, Phuldumer. Details include a child care centre, a mobile health unit, a work project for women implemented by a local NGO and a drinking water project.<sup>43</sup>

However, critics continue to allege that the EIA process was deficient in certain aspects. In a report prepared for Amnesty International UK, Ritwick Dutta, a lawyer with the Indian advocacy group Legal Initiative for Forest and Environment (LIFE)<sup>44</sup>, has criticised the public availability of both the EIAs for the bauxite mine. Ritwick Dutta has alleged for example that only the Executive Summary of the 2002 EIA was made available and not in the languages of the Dongria Kondh. According to Ritwick Dutta neither of the two EIAs are 'Comprehensive', that is based on all seasons' data. Regarding the second public hearing for the 2002 EIA, according to Ritwick Dutta the record: 'shows that about 30 people participated' and states that: 'local people in general supported the setting up of mines except two NGOs', although: 'in a hand written note it is mentioned they came along with 500 people'.<sup>45</sup>

An analysis sourced from Amnesty International UK, written by Dr Alan Tingay, also alleges that the two EIAs are not 'Comprehensive'. Amongst the alleged main deficiencies are failure to identify communities and a lack of an assessment of the importance of the Niyamgiri hills for their livelihoods. The Alan Tingay report states that one of the main purposes of an EIA is to identify potential social impacts and design detailed management plans to mitigate these. Similarly, with respect to biodiversity, the Alan Tingay report states that there is no vegetation map of the mine site or lists of flora and fauna based on site surveys to enable comparisons to be made to assess potential environmental impact.<sup>46</sup>

A March 2010 report of experts for the MoEF, based on a visit to the area raises the concern that 'no experts have been brought in to assess the implications of the (mining) project' for the Adivasi and that regarding the refinery no monitoring has been set up to measure the impact on health. With regard to the Forests Right Act (FRA) the team states that they found no understanding in any of the villages about how to claim community and traditional rights. The report stresses that before these rights are recognised under the FRA, the habitat cannot be disturbed. This report also documents claims by villagers that they

had been detained and were facing trial following protests against the Company. Villagers alleged that they were released on bail only when they undertook not to raise any issues again.<sup>47</sup> As far as EIRIS is aware Vedanta Resources has not published any further response to the MoEF report.

**CASE STUDY:** Rio Tinto publishes a policy stating that it respects the rights of indigenous people in accordance with international instruments such as ILO 169<sup>48</sup> and the UN Declaration on Indigenous Peoples.<sup>49</sup> The Company states: '(we).. strive to achieve the free and informed consent of indigenous people to proceed with developments'.<sup>50</sup> The Company carries out an Indigenous Impact Assessment as part of its scoping analysis, and it has a grievance mechanism, which enables indigenous communities to raise concerns about the company's operations.

**CASE STUDY:** BP's Tangguh Independent Advisory Panel (TIAP) is an example of how independent experts can be brought in at the beginning of a project to assess and mitigate risks to stakeholders. TIAP considers BP's LNG Project in West Papua in relation to international norms including the UDHR, the OECD Guidelines for Multinational Enterprises, ILO 169, the World Bank Operational Directive with respect to indigenous peoples and the Voluntary Principles on Security and Human Rights (VPs). The Panel, initially chaired by former US Senator George Mitchell, meets annually with leaders of the directly affected villages, local and central government officials and representatives from donor agencies, including the World Bank.<sup>51</sup> TIAP publishes its annual reports on the BP website together with BP's responses. Examples of recommendations from the TIAP 2009 report include that BP should annually publish a summary of grievances and details of how BP addressed these. Also that BP should continue its discussions with local people on the content and pace of revenues and benefits throughout the operations phase.<sup>52</sup>

## Biodiversity

A report from the Wildlife Institute of India claims that the mining project poses a threat to the unique wildlife habitat of the Niyamgiri hills. This hill range is important both for its biological richness and for its functional role providing contiguous forest tracts and for providing an effective buffer for larger conservation units, such as an elephant reserve proposed by the Forest Department in Orissa. The report identifies a number of endangered species in the area, including the Indian elephant, which is classified as having a high risk of extinction in the wild in the near future by the IUCN Red List of Threatened Species.<sup>53</sup>

EIRIS first wrote to the Company about this on 15 November 2006. Responding to subsequent engagement by EIRIS the Company stated: 'Biodiversity conservation and protection is at the core of the Vedanta Group's philosophy on environment stewardship, with clear objectives of protecting long term health, function, and viability of natural environment and its components surrounding our operations and activities. Our approach towards biodiversity management can be categorized under various heads including greenery enhancement initiatives, financial support to conservation projects in partnership with local communities, governmental agencies & NGOs, funding bio-diversity related research, support management of existing conservation projects, and rehabilitation, reclamation and restoration of mined areas.' The Company states that its policy is in line with the Convention on Biological Diversity.

'We do not accept that the planned mining project will pose a threat to local biodiversity. The project, which has received the necessary and legal clearances, including a detailed examination by the Indian Supreme Court, has been undertaken following the conduct of detailed independent environmental impact surveys which have confirmed that local biodiversity will be conserved. Considerable stakeholder engagement activity has also been conducted and the majority of the local population has been found to be in favour of the project.'<sup>54</sup>

In its 2010 annual report the Company states that INR 505.3 million towards wildlife management has been deposited with the Compensatory Afforestation Fund Management and Planning Authority (CAMPA).<sup>55</sup>

**CASE STUDY:** Alcoa's response in 2005 to NGOs campaigning against its new hydropower project<sup>56</sup> in East Iceland is an example of how a company can engage with the issues and develop mitigation strategies in response. Alcoa and its state joint venture partner published reports on a dedicated website identifying the sustainability objectives for the project. They published their biodiversity assessments identifying the key impacts of the project and the plans to mitigate impacts. Targets were set for each sustainability indicator and specific responsibility was assigned to named managers at both Alcoa and its state partner; these roles had responsibility for reviewing impacts and taking action if targets were missed. An Advisory Group was set up of key stakeholders to facilitate stakeholder engagement.<sup>57</sup>

## Pollution and human rights

In its 2010 report Amnesty International (AI) alleged that plans to mine for bauxite threatened the continued existence of the Adivasi communities and that the alumina refinery at Lanjigarh had already caused serious air and water pollution, which undermined indigenous peoples' right to health, water and a healthy environment. Although AI acknowledges that the Company has carried out corrective actions, they allege that these have been 'only after significant delays and repeated warnings'<sup>58</sup>.

AI state that the Company has: 'repeatedly denied that pollution has occurred'.<sup>59</sup> AI recommends that the Company should cooperate with an independent human rights and environmental impact assessment and commit not to expand the refinery or begin mining until existing problems are addressed.<sup>60</sup>

**CASE STUDY:** The Canadian mining company Goldcorp has also been challenged through the OECD NCP system, in this case a complaint was submitted to the Canadian NCP regarding its operations in Guatemala. Allegations include violations of communal property rights, the right to free, prior, and informed consent (FPIC) and water contamination affecting health. In response to a 2008 shareholder resolution Goldcorp had already agreed to commission an independent human rights impact assessment (HRIA). Goldcorp published the HRIA in May 2010 and the Company has committed to issuing a public response to its recommendations including a detailed action plan. The consultants used the Danish Institute for Human Rights' *Human Rights Compliance Assessment* tool to assess compliance with international human rights standards. The HRIA reviewed the Company's systems to identify gaps in its due diligence to respect rights and compared stakeholder concerns with those gaps. Amongst the recommendations were that the company should provide training on indigenous peoples' rights (including on ILO 169) to management and relevant staff and that there should be independent external auditing of its water monitoring programme.<sup>61</sup>

EIRIS wrote to the Company on 24 May 2010. In response to EIRIS the Company said it intends to reply, but no reply has yet been received (as at 20 July 2010).

### Other Convention Watch allegations

EIRIS has two other Convention Watch reports written on allegations concerning Vedanta Resources; these are for health & safety and bribery. They are both in India, but not connected to the Lanjigarh project.

### Health & Safety

A collapsing chimney at an aluminium plant owned by Balco, a subsidiary of Sterlite Industries, killed at least 40 workers in the central India state of Chhattisgarh in September 2009<sup>62</sup>. After the incident reports alleged that Balco did not have the required permission for the construction of the chimney. Local government officials reportedly alleged that before the incident Balco was served notices for regulatory

violations and had ignored the local government's orders to stop work. The state government ordered a judicial inquiry into the accident and lodged a first information report against Balco alleging that the company neglected workers' safety.<sup>63</sup>

EIRIS wrote to the Company on 21 October 2009 seeking comments on the allegations and the Company responded on 2 December 2009. The Company said that it would conduct a detailed investigation of the accident and also commission an independent report. The Company stated that it is committed to taking appropriate steps, both administrative and technical, based on findings of the investigations.

The Company states that its safety systems include employee and contractor training, senior responsibility and risk assessment. The company's operations in India and Zambia have OHSAS 18001 certification and regular internal and external audits are performed on health and safety systems at each of the sites. The Company's stated goal is to achieve zero fatalities and zero injuries amongst employees and contractors. Each site has health and safety managers and committees; overall responsibility for safety rests with members of the HSE committee, a sub-committee of the board.<sup>64</sup>

In its 2010 annual report, the Company mentions the investigations and states that preliminary findings indicate that: 'the probable cause of accident appears to be a severe lightning strike as a blast in the upper section of the chimney has been reported'. The Company also states that it is using the technical reports which have resulted from these investigations so far to develop improvement measures at all project sites.<sup>65</sup>

**CASE STUDY:** Anglo American and its then associated company AngloGold Ashanti (it no longer has any stake in AGA), has disclosed to stakeholders in a timely fashion what actions it had taken to remedy causes of accidents. For example when five miners were killed in a rockfall at the AGA TauTona mine, mining regulators, unions and a panel of experts including industry and research organisations reviewed the mine designs and re-designed the mine shaft.<sup>66</sup>

As far as EIRIS is aware neither the Government investigation nor the Company's investigation has reached a conclusion

**Bribery**

In December 2008 the Chief Inspector of Factories in Chennai, India, was arrested for allegedly accepting a bribe of INR 200, 000 (GBP 2,687) from officials employed by Sterlite Industries. It was alleged that payment was requested in return for permission to re-open a factory, following a fatal accident.<sup>67</sup> EIRIS is not aware that the Chief Inspector of Factories or any Sterlite officials have been charged in relation to this allegation.

EIRIS wrote to the Company on 18 May 2009. The Company stated in May 2009 that it would respond to EIRIS on this, but as at 20 July 2010 no response has been received.

Vedanta Resources has a policy prohibiting giving and receiving bribes, and it states that all business units are analysed for risks relating to corruption.

**CASE STUDY** BHP Billiton has a Global Ethics Panel, which consists of internal company representatives and one external member with relevant anti-bribery knowledge and experience. The Panel conducts quarterly reviews of non-compliance with the Company's code of business conduct.<sup>68</sup>

**CASE STUDY:** Anglo American is a supporter of the Extractive Industries Transparency Initiative (EITI), in which companies declare in their operations in participating host countries the payments they make to the government.<sup>69</sup>

**Internal controls, risk management and corporate governance**

Improving the corporate risk management system to include stakeholder issues is key to having effective systems of control. Community-related reputational risk can be added to the corporate risk register so that it becomes an issue that is reviewed and managed. Sustainability board committees can report to risk and audit committees on

compliance with ESG policies, including on impact assessments for new projects.

**CASE STUDY:** Anglo American's Social Way guidelines methodology uses a 24 criteria scorecard, which includes issues such as the rights of indigenous peoples and complaints and grievance procedures for stakeholders. CEOs of local businesses have to regularly report to the Board on their scorecards.<sup>70</sup>

Examples of due diligence processes and tools have been given in the above case studies. They include assessing company impacts, establishing policies and systems and integrating these into internal control and management systems. If CSR initiatives are 'decoupled from companies' internal control and oversight systems' potentially material impacts can be overlooked.<sup>71</sup>

According to *Rewarding Virtue*, a report of a joint inquiry by Insight Investment, Business in the Community and the FTSE Group, boards have a crucial role to play in shaping an organizational culture in which responsible behaviour is rewarded. Boards must not: 'treat corporate responsibility as a bolt-on' but rather see it as a: 'precondition for sustainable long-term value creation'.<sup>72</sup>

**CASE STUDY:** BHP Billiton has a sustainability committee, which focuses on health, safety, environment and community (HSEC) risks and the group's performance in relation to these. The committee consists of at least three independent non-executive directors each of whom is appropriately skilled in these issues. The committee reviews the effectiveness of the group's policies and systems and reports to the Risk and Audit Committee the results of its reviews. The Vice President of HSEC and Sustainability is accountable to the CEO.<sup>73</sup>

Board committees are central to this process. Vedanta Resources has a health, safety & environment (HSE) committee which meets quarterly, reports to the Board and is chaired by an independent director.<sup>74</sup> The Company states that social policies are covered by this committee. However, it is not clear what social issues are included or what the expertise is of the committee

members on social issues, in particular on human rights and grievance mechanisms.

Vedanta Resources states that: ‘Sustainable development performance is an important element of how all of our senior managers are assessed and remunerated’.<sup>75</sup> However, the details of this are not clear on its website, and it is not clear whether this includes directors.

**CASE STUDY:** At BHP Billiton pay and incentives for directors as well as a proportion of those of senior management are linked to HSEC performance aspects. In terms of what they call their ‘consequence severity table’, a single fatality is rated as ‘major’ in terms of being reported as significant.<sup>76</sup>

## Recommendations

To follow best practice in addressing investors’ concerns, Vedanta Resources needs to strengthen its board governance in the following ways:

1. Widen the remit of the HSE committee to make clear that it includes all ESG issues. The committee should have responsibility for oversight of the development of human rights and indigenous rights policies. These policies should be based on international norms. The committee should have oversight of stakeholder engagement generally. Additional members skilled in these areas should be recruited. It should report to the Audit Committee on risks.
2. Train and allocate responsibility at board level on the full range of the Company’s ESG risks.
3. Create a transparent link between both board directors’ and senior executives’ remuneration and ESG performance, starting with pollution, safety and community.
4. Set up complaints/grievance mechanisms at all operations
5. Improve risk management systems available to the Board including:
  - a. setting up a panel of external experts to assess the Orissa operations against

- b. commissioning independent environmental and human rights impact assessments and publishing these and committing to issuing a public response to the recommendations

6. Support voluntary self-regulation standards, such as the OECD Guidelines for MNEs, UN Global Compact, EITI, ICMM, and the Voluntary Principles on Security and Human Rights.
7. Strengthen systems for monitoring compliance with ESG policies and publicly report on any non-compliances and remedial actions taken

## Notes

<sup>1</sup> Vedanta Resources website, [www.vedantaresources.com](http://www.vedantaresources.com)

<sup>2</sup> <http://www.independent.co.uk/news/business/news/church-drops-vedanta-over-ethical-concerns-1891029.html>

<sup>3</sup> *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprise - Business and Human Rights: Further steps toward the operationalization of the ‘protect, respect and remedy’ framework*, 9 April 2010 [http://www.reports-and-materials.org/Proff\\_Ruggie-report-2010.pdf](http://www.reports-and-materials.org/Proff_Ruggie-report-2010.pdf)

<sup>4</sup> UK National Contact Point (NCP) *Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises* <http://www.oecd.org/dataoecd/49/16/43884129.pdf>

<sup>5</sup> *Don’t mine us out of existence – bauxite mine and refinery devastate lives in India*, Amnesty International, 2010, <http://www.amnesty.org/en/library/info/ASA20/001/2010/en>

<sup>6</sup> <http://www.minesandcommunities.org/article.php?a=32>

<sup>7</sup> (5) Amnesty International

<sup>8</sup> (5) Amnesty International

<sup>9</sup> (2) Independent

<sup>10</sup> Site Inspection Report, Dr Usha Ramanathan  
[http://moef.nic.in/downloads/public-information/rpt\\_usha.pdf](http://moef.nic.in/downloads/public-information/rpt_usha.pdf)

<sup>11</sup>  
<http://www.guardian.co.uk/business/2010/feb/18/rowntree-trust-pulls-out-from-vedanta-resources>

<sup>12</sup>  
[http://www.pggm.nl/About\\_PGGM/Press/Press\\_releases\\_and\\_news\\_items/Press\\_releases\\_and\\_news\\_items/100630\\_PGGMdisinvestsfromVedantaResources.asp](http://www.pggm.nl/About_PGGM/Press/Press_releases_and_news_items/Press_releases_and_news_items/100630_PGGMdisinvestsfromVedantaResources.asp)

<sup>13</sup> ICMM (2009) *Human Rights in the Mining and Metals Industry: Overview, Management Approach and Issues*  
<http://www.icmm.com/page/14809/human-rights-in-the-mining-and-metals-industry-overview-management-approach-and-issues>

<sup>14</sup> (3) Ruggie

<sup>15</sup> (3) Ruggie

<sup>16</sup> (4) UK NCP

<sup>17</sup> OECD Guidelines for Multinational Enterprises,  
[http://www.oecd.org/document/18/0,3343,en\\_2649\\_34889\\_2397532\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,3343,en_2649_34889_2397532_1_1_1_1,00.html)

<sup>18</sup> (4) UK NCP

<sup>19</sup> (4) UK NCP

<sup>20</sup> (4) UK NCP

<sup>21</sup> *Follow up to Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises, 12 March 2010*,  
<http://www.bis.gov.uk/assets/biscore/business-sectors/docs/10-778-survival-international-against-vedanta-resources.pdf>

<sup>22</sup> (4) UK NCP

<sup>23</sup> <http://www.reports-and-materials.org/Ruggie-statement-to-UN-Human-Rights-Council-1-June-2010.pdf>

<sup>24</sup> (3) Ruggie

<sup>25</sup> (3) Ruggie

<sup>26</sup> <http://un.org/esa/socdev/unpfii/en/drip.html>

<sup>27</sup>  
<http://www.ilo.org/indigenous/Conventions/no169/lang-en/index.htm>

<sup>28</sup> <http://www.cbd.int/convention/convention.shtml>

<sup>29</sup> <http://www2.ohchr.org/english/law/ccpr.htm>

<sup>30</sup> Alexandra Xanthaki, *Indigenous Rights and UN Standards*, (Cambridge University Press)

<sup>31</sup> (10) Ramanathan

<sup>32</sup> (3) Ruggie

<sup>33</sup> <http://www.unglobalcompact.org/>

<sup>34</sup>  
<http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards>

<sup>35</sup>  
<http://www.voluntaryprinciples.org/principles/index.php>

<sup>36</sup>  
<http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935096/home.html>

<sup>37</sup> (3) Ruggie

<sup>38</sup> Human Rights in the Mining & Metals Industry – Handling and Resolving Local Levels Concerns & Grievances [www.icmm.com/document/691](http://www.icmm.com/document/691)

<sup>39</sup> Communication from Company to EIRIS, 15/04/2009

<sup>40</sup> Communication from Company to EIRIS, 26/02/2010

<sup>41</sup>  
[http://www.vedantaresources.com/uploads/vedantaplca\\_rfy2010.pdf](http://www.vedantaresources.com/uploads/vedantaplca_rfy2010.pdf)

<sup>42</sup>  
[http://www.vedantaresources.com/uploads/vedantaplca\\_rfy2010.pdf](http://www.vedantaresources.com/uploads/vedantaplca_rfy2010.pdf)

<sup>43</sup>  
[http://www.vedantaresources.com/uploads/vedantaplca\\_rfy2010.pdf](http://www.vedantaresources.com/uploads/vedantaplca_rfy2010.pdf)

<sup>44</sup> <http://www.wri.org/stories/2010/03/indias-environmental-detectives>

<sup>45</sup> Ritwick Dutta, *Opinion on Legal Issues concerning Vedanta Alumina Ltd Operation in Orissa – Submitted to Amnesty International, UK*

<sup>46</sup> Written submission on EIA for proposed bauxite mine, Alan Tingay (provided by AI UK)

<sup>47</sup> (10) Ramanathan

<sup>48</sup>  
[http://www.riotinto.com/documents/The\\_way\\_we\\_work.pdf](http://www.riotinto.com/documents/The_way_we_work.pdf) - Appendix

<sup>49</sup>  
[http://www.riotinto.com/ourapproach/17216\\_human\\_rights\\_17380.asp](http://www.riotinto.com/ourapproach/17216_human_rights_17380.asp)

<sup>50</sup>  
[http://www.riotinto.com/documents/ReportsPublications/corpPub\\_HumanRights.pdf](http://www.riotinto.com/documents/ReportsPublications/corpPub_HumanRights.pdf)

<sup>51</sup>  
<http://www.bp.com/sectiongenericarticle.do?categoryId=9004751&contentId=7008791>

<sup>52</sup>  
[http://www.bp.com/liveassets/bp\\_internet/indonesia/STAGING/home\\_assets/downloads/t/TIAP\\_Report\\_2009.pdf](http://www.bp.com/liveassets/bp_internet/indonesia/STAGING/home_assets/downloads/t/TIAP_Report_2009.pdf)

<sup>53</sup>  
<http://www.minesandcommunities.org/article.php?a=6044>

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<sup>54</sup> Communication from Company to EIRIS, 15/04/2009 and 26/02/2010

<sup>55</sup>

[http://www.vedantaresources.com/uploads/vedantaplca\\_rfy2010.pdf](http://www.vedantaresources.com/uploads/vedantaplca_rfy2010.pdf)

<sup>56</sup> Mines and Communities

<http://www.minesandcommunities.org/article.php?a=83>

<sup>57</sup> Company response to EIRIS, 18/11/2005

<sup>58</sup> (5) Amnesty International

<sup>59</sup> (5) Amnesty International

<sup>60</sup> (5) Amnesty International

<sup>61</sup> <http://www.goldcorp.com/operations/marlin/hria/>

<sup>62</sup> Reuters website, *India chimney collapse toll up to 40*

<http://www.reuters.com/article/idUSTRE5803HO20090925>

<sup>63</sup> EIRIS Corporate Ethics Overview October 2009,

<http://www.eiris.org/CEO/CEO%20-%20October%202009%20edition.pdf>

<sup>64</sup> Vedanta Resources website, [www.vedantaresources.com](http://www.vedantaresources.com) and Company response to EIRIS 2/12/2009

<sup>65</sup>

[http://www.vedantaresources.com/uploads/vedantaplca\\_rfy2010.pdf](http://www.vedantaresources.com/uploads/vedantaplca_rfy2010.pdf)

<sup>66</sup> [www.angloamerican.co.uk](http://www.angloamerican.co.uk) and Company response to EIRIS 18/12/2009

<sup>67</sup> The Hindu, 14/12/2008 sourced from Dow Jones / Factiva

<sup>68</sup>

<http://www.bhpbilliton.com/bbContentRepository/20071251117916/gepcharter.pdf>

<sup>69</sup>

<http://www.angloamerican.co.uk/aa/development/approach-and-policies/transparency-and-ethics/transparency/>

<sup>70</sup>

[http://www.angloamerican.co.uk/aa/siteware/docs/aa\\_social\\_way.pdf](http://www.angloamerican.co.uk/aa/siteware/docs/aa_social_way.pdf)

<sup>71</sup> (3) Ruggie

<sup>72</sup> *Rewarding Virtue - Effective Board Action on Corporate Responsibility*  
[www.acona.co.uk/reports/rewardingvirtue.pdf](http://www.acona.co.uk/reports/rewardingvirtue.pdf)

<sup>73</sup> BHP Billiton website,

<http://www.bhpbilliton.com/bbContentRepository/sustcommiteetor.pdf>

<sup>74</sup> Vedanta Resources' website

[http://www.vedantaresources.com/sustainability/hse\\_policy.html](http://www.vedantaresources.com/sustainability/hse_policy.html)

<sup>75</sup>

<http://ar2008.vedantaresources.com/managementapproach.aspx>

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<sup>76</sup> BHP Billiton 2009 Sustainability report  
<http://www.bhpbilliton.co>

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