

## **Briefing on Vedanta and the Niyamgiri Hills**

### **I. Who is Vedanta Resources?**

The answer depends on whom you ask. According to its own web page, Vedanta Resources is an up-and-coming British mining company with operations in India, Zambia, Australia and Armenia. The company's core business is linked to the production of copper, zinc and aluminum in India, where it holds a significant share of the market (aluminum 20%, copper 40% and zinc 75%). Its CEO, Anil Agarwal, owns more than 50% of Vedanta's shares, earning him a place among the 30 richest people in Britain. Many of the world's largest commercial banks which have financed the company's rapid expansion would claim that Vedanta is a prime investment in the mining sector.

If you asked human rights and environment NGOs, they would answer that Vedanta is one of the world's most ruthless mining companies and a textbook case of irresponsible behavior in the sector. If you asked ethical investors or the Pension Fund of the Norwegian Government, you'd hear that investments in Vedanta present an "unacceptable risk of complicity in present and future severe environmental damage and systematic human rights violations."<sup>1</sup> After examining four Vedanta subsidiaries that operate in India (Sterlite Industries, Madras Aluminum Company, Bharat Aluminum Company and Vedanta Alumina), the Norwegian Government Pension Fund excluded Vedanta and its publicly listed subsidiaries from its portfolio in 2007.

The following briefing aims to educate investors and banks on the reasons why Vedanta has become a prime campaign target of Amnesty International, Survival International, BankTrack, the London Mining Network (an alliance of 23 human rights, development and environment organizations) and many other NGOs. Although almost all of Vedanta's operations have been dogged by reports of environmental destruction and protests by local communities, this briefing focuses on Vedanta's operations in the Indian State of Orissa.

### **II. Strip-Mining Orissa's Niyamgiri Hills**

The dense forests of the Niyamgiri Hills are one of the most important biodiversity hotspots in eastern India. The area was proposed as a wildlife sanctuary by the Indian Ministry of Environment and Forests (MoEF) in 1998 and was designated as an Elephant Reserve by the State of Orissa in 2004. There are more than 300 species of plants and trees on Nyamgiri Mountain, including at least 50 species of medicinal plants.<sup>2</sup> The forests are home to sambhars, leopards, tigers, barking deer, elephants, sloth bears, pangolin, the rare golden gecko and many other endangered species, whose habitat is protected under section 18 of the Indian Wildlife Act.

The Niyamgiri Hills are also home to the Dongria Kondh, one of India's most isolated tribes. It's ironic that a company which has chosen to name itself after an Indian school of philosophy (Vedanta) that emphasizes the unity of all life, should completely destroy a culture that worships the mountain as a living god. The Dongria Kondh number around 8,000 people, and their economy is based on the gathering of forest products in these hills. According to their beliefs, the mountaintop is home to

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<sup>1</sup> „Recommendations of the Council on Ethics of the Government Pension Fund – Global,“ May 15, 2007

<sup>2</sup> „A Brief Report on Ecological and Biodiversity Importance of Niyamgiri Hill and Implications of Bauxite Mining,“ Environmental Protection Group Orissa

their god and centerpiece of their religion. Under Indian law, the Dongria Kondh are considered to be a “scheduled tribe” and are thus awarded special protection under the Indian Constitution. As Prashant Bhushan, one of India’s foremost environmental lawyer points out: “If mining is permitted in Niyamgiri, two of India’s strongest constitutional guarantees will be overturned: the right of a ‘primitive’ tribal group to their territorial integrity and to decide on their own path of development (Schedule V of the Indian constitution), and the right to religious practices and beliefs (Article 25).”<sup>3</sup>



Vedanta is, nonetheless, determined to strip-mine the sacred hills of the Dongria Kondh for bauxite. The company has already built an aluminum refinery in the town of Lanjigarh at the foot of the mountain. Several villages have had to make way for the refinery. Others will have to vacate their lands as the plant expands and feeder roads, airstrips and toxic waste ponds are built.

Niyangiri is not only the Dongria Kondh’s most sacred site, it is also integral to the ecosystem of a much wider area. More than 30 streams and two large rivers, the Nagavali and Vamsadhara depend on water flow from the Nyamgiri hills. The bauxite deposits and the forests are essentially overhead aquifers, feeding the rivers during the dry season. The hydrological systems on which hundreds of thousands of people depend will be severely impacted if Vedanta’s plans go ahead.

Among the major environmental impacts of the project are also the dumping of overburden from mining and the disposal of toxic waste from the refinery. The Lanjigarh refinery produces up to 3 million tons of caustic soda waste, so-called “red mud”, every year. People living near the refinery report that the pollution is already damaging crop yields, killing livestock and causing pollution related diseases.<sup>4</sup> The red mud and ash ponds have been established on the banks of the Vamsadhara River, and in case of a major breach or a flashflood, highly toxic chemicals and heavy metals will poison the river and the communities that depend on it.

<sup>3</sup> Quoted in „Tribes Pray to keep Vedanta Away,“ ActionAid India, 2006

<sup>4</sup> See report by German television program „Markt“ at: <http://www.youtube.com/watch?v=NOXm4do7QFM>

### III. Violating India's Environment Legislation

Under Indian legislation, mines, dams and other industrial projects require an environmental clearance. If these projects entail the conversion of forestlands, they also require a separate forest clearance. The prerequisite for the clearances are an environmental impact assessment and public consultations of the affected people. On this basis, the Ministry of Environment and Forests (MoEF) then decides whether to award said clearances. No construction activity may begin until both the environment and forest clearances are in place.

For Vedanta's project in the Niyamgiri Hills, there was never a comprehensive environmental impact assessment (EIA). Instead, only a so-called "rapid EIA" – was carried out. This is a mechanism to evaluate small projects with only limited impacts. Vedanta, nonetheless, applied to the MoEF for environmental clearance in 2003. When it, however, became apparent that it would be difficult to achieve clearance for the conversion of forest lands for the mine, Vedanta argued that the refinery was an entirely separate project, and thus asked that a clearance for the refinery be awarded independently of the mining proposal. At the same time, the company provided wrongful information, by claiming that the construction of the refinery would not require forestland.<sup>5</sup> It also began construction of the refinery without bothering to wait for the MoEF clearance, which was awarded in September 2004.

In October 2004, Vedanta signed an agreement with the Government of Orissa that the proposed mine would be a joint venture between the state-owned Orissa mining company and Vedanta's subsidiary, Sterlite Industries. While Vedanta would effectively run the mine, the State Government would itself be responsible for achieving the necessary clearances for the mine.

Once the refinery was built, Vedanta/Sterlite completely changed its stance and now claimed that the mine is critically linked to the refinery project and that the refinery cannot function without ore from the Niyamgiri Hills. And because of the agreement on the joint mining venture, this pressure was seconded by the Orissa State Government. A fait-accompli had been created in order to circumvent environmental laws and force permission for the mining scheme.

Due to the petitions of three Indian environmental and human rights organizations, an advisory committee of India's Supreme Court was sent out to investigate Vedanta's operations in Nijamgiri. The 2005 report by the Central Empowered Committee (CEC) of India's Supreme Court documents Vedanta's numerous transgressions as well as the Government's lack of will to enforce India's environment legislation in Vedanta's operations. It notes that there were no in-depth studies about the effect of the proposed mining on the water regime, flora, fauna and on the Dongria Kondh tribe. The CEC Report notes that Vedanta violated environmental regulations by beginning construction work on the refinery before environmental clearance had been granted and that Vedanta deliberately concealed the involvement of forestland in the project. The CEC writes: "If Vedanta had furnished the correct information in its application for the environmental clearance, the construction work on the alumina refinery would not have been started at all." The CEC furthermore argued that the splitting of the project into two components is a "violation of the Forest Conservation Act," and

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<sup>5</sup> „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," Central Empowered Committee of the Supreme Court, September 21, 2005

recommended that the environmental clearance for the refinery project be revoked. In addition, it commented: “The casual approach, the lackadaisical manner and the haste with which the entire issue of forests and environmental clearance for the aluminum refinery project has been dealt with smacks of undue leniency and does not inspire confidence with regard to the willingness and resolve of both the State Government and the Ministry of Environment to deal with such matters keeping in view the ultimate goal of national and public interest.”<sup>5</sup>

In summing up the petitioners claims regarding the forced evictions of local villagers, the CEC writes: “The national R&R policy requires that land for land should be given after a due process of consultation, particularly in the case of tribals. Contrary to the above, only cash compensation was offered. (...) The tribal people living on the plant site are mainly Kondhs, who are illiterate and depend completely on their agricultural lands and forest for their subsistence. The displacement was opposed vehemently by them, despite being offered large amounts of cash compensation. (...) An atmosphere of fear was created through the hired goons, the police and the administration. After being forcibly removed, they were kept under watch and ward by the armed guards of Vedanta, and no outsider was allowed to meet them. They were effectively being kept as prisoners.”

In regard to the proposed mine, the CEC concludes: “Niyamgiri is a very rich forest from a biodiversity point of view. (...)The CEC is of the considered view that the use of the forestland in an ecologically sensitive area like the Niyamgiri Hills should not be permitted. (...) The Niyamgiri Hills and the surrounding areas are the originating place of two major drainage systems – the Vamsadhara and the Nagvalli rivers. The extensive land degradation / disturbance at the plateau in all probability will alter the direction and the preferential path of the land water flow as well as the water system at the plateau and in the surrounding valley. (...) The project is located in a drought prone area where the rainfall is deficient and erratic and drought is a normal occurrence. Thus, any activity that interferes with the flow of water or is likely to pollute it will be detrimental. Any mining in this area is bound to destroy the biodiversity and affect the availability of water for local people. Under these circumstances, alternative sources of ore should be explored for the project.”

While the CEC did not undertake a detailed examination of the pollution issues, monitoring reports of the Orissa State Pollution Control Board indicate that the red mud ponds for the refinery were not properly constructed by Vedanta. The Control Board reports “continuous seepage of highly alkaline waste water” and a drastic ph increase of the river water. It warns: “the seepage from the red mud pond is alarming, and the situation is expected to further deteriorate when industry will go into full production capacity. And there is clear indication of ground water contamination in the area.”<sup>6</sup> In addition, it reports that waste water from the refinery’s power plant is being discharged into the Vamsadhara River and that particulate emissions exceed the prescribed limit.

In spite of these serious problems and the resulting health impacts for local communities, Vedanta has applied for environmental clearance for a six-fold expansion of its refinery in Lanjigarh. After a site visit in March 2009, Amnesty International wrote an open letter to the Indian Environment Minister, asking him to turn down Vedanta’s application. Amnesty points out that even under the

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<sup>6</sup> „Inspection Report on M/S Vedanta Aluminium Limited, Lanjigarh, Dist: Kalahandi,“ Orissa State Pollution Control Board, January 29, 2008

current production regime, the reports of the Orissa State Pollution Control Board show a consistent failure on the part of the company to adequately manage the disposal of waste from its refinery. The letter calls on the Environment Ministry to take immediate steps to assure that Vedanta stops poisoning the villagers' drinking water and cleans up the pollution that has already occurred.<sup>7</sup>

#### **IV. Clearances and Court Judgments**

Unfortunately, however, neither the Supreme Court nor the Ministry of Environment and Forests (MoEF) have seen fit to uphold India's environment legislation or its constitutional obligations towards the Dongria Kondh.

In its 2008 judgment, the Supreme Court ignored the recommendations of its own advisory Board, the CEC. It stipulated that both the mine and the refinery may go ahead, albeit that the mine must be under the auspices of Sterlite Industries instead of Vedanta (as Vedanta controls Sterlite Industries, this distinction is superfluous). The Supreme Court also ruled that Sterlite Industries must invest at least five per cent of its profits from the mine into conservation and tribal development. However, the body that has been set up for this purpose is completely in the hands of the company and the State Government of Orissa and it is quite clear that the Dongria Kondh will have no say over the use of this money and most likely not see any of its benefits.

The Dongria Kondh are fighting for their survival as a people. After the Supreme Court order, they have blockaded roads leading into their forests and organized numerous protest actions. On January 17<sup>th</sup>, 2009, some 7,000 protestors marched to the gates of Vedanta's refinery in Lanjigarh. On January 27<sup>th</sup>, over 10,000 people formed a 17 km long chain around Niyamgiri Mountain. Their banners and placards said: Vedanta: Quit Niyamgiri! Our mountain is sacred!

On April 28<sup>th</sup>, 2009, the MoEF issued an environmental clearance for the mining project in Niyamgiri.<sup>8</sup> Although the Clearance states that "the project proponent shall not expose more than 20 hectares of area for mining at any point in time," it is unlikely that anyone will be willing or able to enforce this condition, especially in view of the planned six-fold expansion of the refinery operations. The experience in over three decades of "conditional" environmental clearances in India shows that in some 90 per cent of projects, companies ignore the conditions set out in such clearances without having to suffer any consequences.<sup>9</sup>

Environment and human rights organizations are appalled at the turn of events in Niyamgiri. "Development" that destroys local tribes has no place in the 21<sup>st</sup> century," says Stephen Corry of Survival International. "We are calling on investors and banks to act responsibly and to exclude this company from their portfolios," says Johan Frijns of BankTrack.

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<sup>7</sup> „Open Letter calling on Authorities not to Approve the Expansion of Vedanta's Alumina Refinery until existing Human Rights Impact is Addressed," Amnesty International, May 15, 2009

<sup>8</sup> It should be noted, however, that the forest clearance for the project has not yet been issued and that India's Environment Minister, Jairam Ramesh, recently warned Vedanta that they would be prosecuted if they begin mining without obtaining full permission from the government.

<sup>9</sup> „Project Shocks – The Environmental Clearance Farce," by Ashish Kothari in Frontline, August 11, 1995

## V. Investors and Financial Institutions

Some investors have already taken action. The Council on Ethics for the Norwegian Government Pension Fund undertook a comprehensive review of Vedanta's operations in 2007 and subsequently pulled out US \$13 million of investments in the company.

In 2008, the Scottish investment group Martin Currie sold its 2.3 million pound stake in Vedanta. The company's press officer, Scott White, commented: "It is fundamental that we expect companies to behave both within the law and morally. The doubts over the issues with the bauxite project (...) led to exiting the stock."<sup>10</sup>

In reaction to such steps, Vedanta has put together a smoke and mirrors campaign to create the impression that sustainability is one of the company's core values. The company put out its first sustainability report, received ISO 14000 certification and claims to have 425 staff working full-time on sustainability issues. On the ground, however, nothing has changed. In spite of all the talk about "our communities" and PR videos, such as "Walking Hand in Hand with the Dongrias", Vedanta continues to run roughshod over the rights of the Dongria and other communities.

It seems that many international banks have been misled by Vedanta's high gloss CSR brochures and have failed to realize that sustainability plays no role in the company's core business operations. Vedanta has thus received generous support from 30 international banks, including ABN Amro, ANZ, Barclays, Calyon, Deutsche Bank, HSBC, JPMorgan Chase, Mizuho, Normura, Societe Generale, Standard Chartered, Sumitomo and WestLB. Although many of these banks have, in fact, committed themselves to sustainability and human rights initiatives such as the Equator Principles or the Global Compact, they, nonetheless, continue to do business with a company that has one of the worst environment and human rights track records worldwide. In the words of the Norwegian Council of Ethics:

"The violations analyzed by the Council have taken place over many years and are still ongoing. They occur not only in one company, but in all of [Vedanta's] companies that have been investigated. In the Council's opinion, this indicates a systematic practice, where breaches of the law and an indifference to the damage the activities inflict upon people and the environment seem to be an accepted and established element of Vedanta's corporate culture. The Council therefore finds that there is little reason to believe that the company's unacceptable practice will change in the future."

NGOs from around the world are now calling upon public and private financial institutions to follow the Norwegian government pension fund's lead and cease financial support and investments in Vedanta. Vedanta is one of the world's most irresponsible mining companies. Financial institutions which have a social ethic or a concept of responsible lending should sever ties with this corporation.

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<sup>10</sup> „Scots Firm Pulls Cash out of Mining Scheme on ‚Sacred‘ Indian Mountain,“ The Scotsman, August 14, 2008