

Framing Human Rights and the Production of Translation Legal Consciousness

Keren Wang*

Department of Communication Arts & Sciences, Pennsylvania State University, USA

Abstract

This paper presents a case study on a complaint document filed by the British NGO "Survival International" against the multinational mining conglomerate Vedanta Resources for alleged human rights violations. By examining the internal and external dynamics of the text of the complaint document, this paper seeks to delineate the strategic framing of rights violations by Survival International within the context of international legal discourse. The document operates beyond the contours of international legal formalism. The complaint document functions as a polycentric legal document, as it seeks to bridge the gap between "hard" and "soft" international legal structures through the invocation of multiple discrete norm systems in a unified fashion. Most importantly, by bringing together civil-political and socio-economic rights into a singular, indivisible human rights narrative frame, the documents serves as an example of the ways which non-state actors utilize the discursive dynamics of the polycentric global norm structures for disciplining corporate social responsibility.

Keywords: Human rights; Production; Translation legal consciousness; Civil-political; Socio-economic

Polycentricity and the OECD Guidelines for Multinational Enterprises

"...It is not possible for the Dongria Kondh to petition the Supreme Court or any other national tribunal on the ground that their international human rights have been violated. Their one hope of recourse is through the OECD complaint mechanism." [1].

Through the examination of the complaint document filed by a non-government organization (NGO) against a multinational corporate entity on human rights violations, this paper seeks to explore the discursive dynamics of enforcing human rights norms within the *polycentric* global systems of governances. Instead of "a new phenomenon", it is perhaps more helpful to think consider the concept of *polycentricity* as a contemporary recapitulation of a governance structure that appeared in a variety of different guises over the centuries.¹ In terms of global government, one can understand polycentricity in its most basic forms as the simultaneous application of multiple governing or governance systems to a particular object or transaction. It is important to note that the notion of multiple differentiated systems of laws and customs that applied simultaneously is a quite ancient one. Consider the pre-modern Europe, when medieval decentralization represented a historical form of this multiple and complex mosaic of governance at the time—the law of the Roman Catholic church, the law of the monarchs, the law of the lesser feudal lords, the customs of the country, the customs of the particular ethnic groups within the place.

Traditionally, the notion of polycentricity is a problematic one, especially when looking at harmonizing a heterogeneous governance

order. If there are multiple rule frameworks simultaneously applicable to a particular transaction or body of transactions, the possibility of creating concurrent and equally applicable obligations creates a tension and a contradiction that cannot be resolved. There are two potential ways to deal with such difficulty: one is to harmonize various rule frameworks so all relevant systems of governance will impose functionally differentiated and yet harmonized rules to a particular object of regulation, with substantial level of tolerance for local deviation without fundamentality breaking the larger system. Alternatively, one may deal with the challenge of multiple systems by creating vertical hierarchy. The latter option happened with the rise of the nation-state structure after the 17th century, when we first decide that religion is now taken out of the matrix explicitly, and then we develop a system grounded in a hierarchy of law that implicitly takes in a bunch of social norms, but is grounded in that it is a formalist, singular, vertically arranged system that clusters around the state as the highest form of political organization, cognizant of its responsibility to protect social norms, including religious norms, but carving out an area that we'll call law, which is given its own peculiar majesty in the background of political power, and then ordered and organized through the state system, starting from the highest element of state organization apparatus all the way down to the bottom. This vertical state-centric power configuration reaches its finest flowering in the 1930s.

All of this is then redone and reorganized and the world starts changing rapidly since the end of World War II, when the international community sought to build a supranational edifice for the purpose of managing the commerce and the use of force among nations,² which

² See, e.g., History of the United Nations, Available <http://www.un.org/en/aboutun/>

¹ The concept of "polycentric globalization" is shared by diverse camps of scholars in the globalization discourse, "neo-institutionalist" perspective on "global culture" (e.g. JW Meyer, J Boli, GM Thomas and FO Ramirez, "World Society and the Nation-State", 103 American Journal of Sociology 1997, 144-181), and the systems theory perspective of differentiated global society (e.g. R Stichweh, *Die Weltgesellschaft*: Soziologische Analysen. Frankfurt: Suhrkamp, 2000), as well as the "post-modern" notion of global legal pluralism (e.g. BdS Santos, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*, New York, Routledge, 1995). See also, Larry Catá Backer, "The Structural Characteristics of Global Law for the 21st Century: Fracture, Fluidity, Permeability, and Polycentricity," *Tilburg Law Review* 17 (2012) 177–199.

*Corresponding author: Keren Wang, Department of Communication Arts & Sciences, Pennsylvania State University, 234 Lewis Katz Building, University Park, PA 16802-5201, USA, Tel: +1 814-865-3461; E-mail: kuw148@psu.edu

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then crystalized into series of aspirational frameworks of security, commerce, rule of law constraints.³ This process gives rise to the U.N. structure and the structure of public and international organizations, some of which also had legislative authority as well. Initially, the pre-existing vertical state construct remained relatively intact-the newly formed supranational framework merely functioned as the representation of the community of states creating a set of law through conventional treaty law and international law, and the law of nation states retained its privilege over everything else. Both national and international programs for the advancement of human rights have proceeded from the presumption that all regulation must be grounded on state legal systems.

With the globalization process and the rapid increase in the free movement of goods, capital, and investments across state borders, the vertical state-centric construct is being gradually displaced by the polycentric web of global governance framework. Globalization does something very strange-on the substantive level, it softens and eliminates the state-centric structures (such as national borders) and triggered the need to develop structures of rules that would govern objects and transactions that are no longer containable within a state as they're moving across these borders. Suddenly, to this vertically-ordered arrangement, this "skyscraper," we have now added huge blocks of birds and geese and sheep that are walking through the building horizontally, up and down, and every which way, without anything in the building controlling it. As a consequence, there arose a need for polycentricity, because of the transnational nature of the operations of these objects and transactions across borders, across states, and through markets, for the creation of governance forms for their own self-governance. You have, for example, the rise of what Gunther Teubner calls "societal constitutionalism,"⁴ that is, the rise of a polycentric *legal consciousness* of the world society, among groups that are tied together by the externally-oriented relationship to each other. The *legal consciousness* of the world society is not homogenous-it comprises multiples approaches to the order of law, and resonates with Hannah Arendt's notion of the "worldly" experience of human beings in their plurality sharing a "common world".⁵

In recent years, substantial efforts have been made to bridge the systematic gap between the state-centric legal system and those emerging human rights rule framework of non-state actors operating in transnational socio-political and cultural space. Among the most significant recent development is the articulation of a series of "Guiding Principles for Multinational Enterprises" by the Organization for Economic Cooperation and Development (OECD).⁶ The first

version of the OECD Guidelines for Multinational Enterprises (The Guidelines) was introduced in June 21st 1976 during the Meeting of the OECD Council. The Guidelines was adopted by the OECD member states as one of four instruments of the 1976 OECD Declaration on International Investment and Multinational Enterprises, a policy commitment "by adhering governments to provide an open and transparent environment for international investment", and to encourage multinational corporations to make positive contributions to economic and social progress.⁷ From 1976 to 2011, The Guidelines have been updated five times in order to ensure that they "remain at the forefront of the global responsible business conduct agenda and a leading tool in the ever-changing landscape of the global economy."⁸

The Guidelines represents one of several supranational efforts to create soft law frameworks for developing a customary consensus and culture of appropriate corporate behavior. One of its unique features is its enforcement procedures, which provides the possibility for the creation of quasi-judicial organs whose purpose is to enforce The Guidelines to the actions of multinational corporations. These panels, known as OECD National Contact Points (NCPs), are constituted whenever there is a complaint lodged. These complaints may be lodged by civil society actors, including non-governmental organizations (NGOs) [2].

Events behind the complaint document filed against Vedanta Resources

"British mining company Vedanta Resources has built a one million ton aluminium refinery in the nearby town, Lanjigarh, and plans to mine bauxite from the top of Niyam Dongar to feed the refinery...Mechanised extracting, blasting and crushing operations would cause round-the-clock disturbance to both people and wildlife. Swathes of forest would be cleared for access roads and conveyor belts to carry ore to the refinery. There are fears that local streams and cultivable land would be polluted by air-borne particulates from the mine..." [1].

Vedanta Resources Plc. is a multinational metals and mining corporation founded and owned by Indian business magnate and billionaire Anil Agarwal.⁹ Vedanta is primarily engaged in copper, zinc, silver, aluminum, iron ore mining and refining, as well as power generating business. Although headquartered in London, Vedanta is a large multinational conglomerate with most of its assets and operations located in the high growth markets of India, Zambia, Namibia, South Africa, Liberia, Ireland and Australia.

In recent years, Vedanta Resources has come under growing international scrutiny. The company's safety record was questionable and has generated much public outcry. It included reports of 1,247 injuries and 26 deaths in 2007.¹⁰ According to an analysis of deaths of

history/index.shtml (with links to source documents). For the official United States version see, United States Department of State, Office of the Historian, Milestones 1937-45, The Formation of the United Nations 1945. Available <http://history.state.gov/milestones/1937-1945/UN>.

3 United States Department of State, Office of the Historian, Milestones 1945-52, The Formation of the United Nations 1945. Available <http://history.state.gov/milestones/1937-1945/UN>.

4 Gunther Teubner, *Breaking Frames: The Global Interplay of Legal and Social Systems*, 45 AM. J. COMP. L. 149, 162-65 (1997); Graft-Peter Callies and Peer Zumbansen, *Rough Consensus and Running Code: A Theory of Transnational Private Law* (Oxford: Hart Publishing, 2010). See also, Gunther Teubner, "Societal Constitutionalism: Alternatives to State-centered Constitutional Theory", *Sorrs Lectures 2003/04 Yale Law School*. Available: <https://fhi.duke.edu/sites/default/files/Teubner,%20Societal%20constitutionalism.pdf>

5 Hannah Arendt, *Between Past and Future*. New York: Viking Press, 1961. Revised edition, 1968 at 221.

6 See OECD Guidelines for Multinational Enterprises (2011), available: http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html; "The OECD's Guidelines for Multinational Enterprises are recommendations

addressed by governments to multinational enterprises operating in or from forty three (43) adhering governments, representing most developed states. "The Guidelines provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. However, the countries adhering to the Guidelines make a binding commitment to implement them in accordance with the Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises."

7 Organization for Economic Co-operation and Development, "Guidelines for Multinational Enterprises National Treatment International Investment Incentives and Disincentives Consultation Procedures", June 21st, 1976. Available at: <http://www.oecd.org/daf/inv/mne/50024800.pdf>

8 See "2011 Update of the Guidelines," at OECD Guidelines for Multinational Enterprises Website: <http://mneguidelines.oecd.org/text/>

9 See <http://www.vedantaresources.com/who-we-are.aspx>

10 See Vedanta Annual Report 2007, available: <http://www.vedantaresources.com/uploads/VedantaRA07.pdf>

workers at FTSE 100 mining companies during the year 2009, Vedanta had the highest death toll among all 12 London-listed firms.¹¹ In April, 2009, a construction accident at a Vedanta power plant in Korba, India caused at least 40 deaths.¹² Vedanta is also criticized of having caused environmental damage and contributed to human rights violations, especially with respect to socio-economic and cultural rights.¹³ Accusations include repeated breaches of national environmental legislation, illegal production expansions, irresponsible handling of hazardous waste, deplorable wages and hazardous working conditions, and involvement in bribery and corruption.¹⁴

In October, 2003, one of Vedanta's Indian subsidiaries, Orissa Mining Corporation (OMC) signed a Memorandum of Understanding with the Odisha state government regarding the establishment of a joint venture company for mining bauxite in the heavily forested regions of southern Odisha. Included in the plan is establishment of a controversial open-pit mining site in Niyamgiri hills, in order to extract more than two billion USD worth of bauxite deposit in that area. Vedanta also indicated its plans to construct a bauxite refinery for alumina production and a coal-based power plant in Lanjigarh on the Niyamgiri foothills [3].

"The Dongria Kondh are one of the most isolated tribes in India. They live among the Niyamgiri Hills in Orissa, in the east of the country. They call themselves Jharnia, meaning "protectors of streams", because they safeguard their sacred mountain, Niyam Dongar, and the rivers that rise within its forests. The culture, identity and livelihood of the Dongria Kondh are all dependent on the Niyamgiri Hills..." [1].

The Niyamgiri hills in Southern Odisha is the home of roughly 8,000 indigenous Dongria Kondh people, spreading over 90 tribal communities around the mostly undeveloped hills [4]. The Dongria Kondhs (or simply "Dongrias") is a sub-group of the Kondha people, an *adivasi* (indigenous) tribal group in the remote regions of Eastern India. The Kondha communities are collectively classified as a "Scheduled Tribe" under Article 342 (25) of the Indian Constitution¹⁵-a special legal destination reserved for the most "primitive" and isolated ethnic groups in India.¹⁶ Scheduled Tribes constitute roughly 8.2 percent

11 Simon Bowers, "Vedanta stripped of safety awards in light of Indian site disaster," *The Guardian*, posted 28 August 2010:

"...in response to findings thrown up by a broader Observer analysis of deaths of workers at all FTSE 100 mining groups. The analysis found that 154 work-related deaths have been disclosed by London's largest multinational miners in their latest annual reports and other shareholder filings. All 12 London-listed firms have "zero fatality" targets, but only Mexico's Fresnillo achieved this last year. Vedanta had the highest death toll, with 67..."

Available: <http://www.theguardian.com/business/2010/aug/29/vedanta-safety-awards-stripped>

12 Ibid.

13 See "Recommendation of 15 May 2007, To the Ministry of Finance," by the Council on Ethics, The Government Pension Fund of Norway, available: <http://www.regjeringen.no/Upload/FIN/Statens%20pensjonsfond/RecommendationVedanta.pdf>

14 See report by Amnesty International, supra note 13.

15 See The Constitution of India, Art. 24. Available: <http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm>

16 "REPORT ON SOCIO-ECONOMIC CONDITIONS OF SCHEDULED TRIBES LABOUR AT VAPI, VALSAD, NAVSARI AND SACHIN (GUJARAT) (2006-07)" Labour Bureau, Government of India, Chapter I: "A well-established criterion being followed is based on certain attributes such as:

Geographical isolation - They live in cloister, exclusive remote and inhospitable areas like hills, forests,

Backwardness - Livelihood based on primitive agriculture, low cost closed economy based on low level of technology which leads to their poverty. They have a low level of literacy and health.

of India's total population,¹⁷ and like the rest of the groups within this category, the Dongrias for the most part live in exclusive wilderness areas like hills and forests, with their livelihood based on subsistence economy.¹⁸ They have marginal degree of contact with other cultures and people, and have developed their own distinctive culture, language and religion [5].

For centuries, Dongrias have based their agrarian livelihood on the rich ecosystem offered by the densely forested hills. Niyamgiri forests are historically recognized for its rich wildlife population. Since 2004, this area has been designated as an Elephant Reserve by the state of Orissa. It contains elephants, leopards, tigers, and various species of endemic birds and other endangered species of wildlife.¹⁹ The hills also have special spiritual significance for the local population. To be a Dongria Kondh is to live in the Niyamgiri hills- they do not live anywhere else.²⁰ Dongria Kondh people consider the Niyamgiri hills to be holy, with each mountain representing a deity. Among the hills in Niyamgiri, the Niyam Dongar Mountain is the holiest of the holy-it is the seat of their supreme deity Niyam Raja.²¹ The Dongrias do not cultivate on the Niyam Dongar hill top out of respect, and the hill is worshipped by them.²² The Dongrias believe that Niyam Raja, the "maker of all things", has created the Niyamgiri hills as the homeland for the Dongria Kondh people.²³

In 2004, an Indian human rights organization²⁴ filed a public interest suit against Vedanta to the Indian Supreme Court sub-committee Central Empowered Committee (CEC), raising concerns regarding the potential environmental impact of the proposed mining project. Subsequent CEC investigations have found inadequate environmental clearance for the alumina refinery project,²⁵ as well as evidence of forcible eviction of local inhabitants of the proposed project site.²⁶ According to the CEC Report, members of the Dongria Kondh tribe have been displaced from their houses through physical eviction by Vedanta employees, with the help of local government in preparation for the mining project.²⁷ The CEC recommended that

Distinctive culture, language and religion - They have developed community wise their own distinctive culture, language and religion. Shyness of contact - they have margin degree of contact with other cultures and people."

Available: http://labourbureau.nic.in/SE_Gujarat%2006-07_Content.htm

17 Ibid.

18 "Subsistence economy" typically refers to forms of non-monetary economic systems that rely on natural resources to provide for basic needs -- usually through hunting and gathering, pastoralism, and small scale agriculture.

19 See The Central Empowered Committee, supra note 16, available at <http://www.indiaresource.org/issues/globalization/2005/CECSep2005cancellicense.html>

20 See "The Dongria Kondh", *Survival International* <http://www.survivalinternational.org/tribes/dongria>

21 Damian Grammaticas, "Tribe takes on global mining firm," *BBC News*, last updated 17 July 2008: http://news.bbc.co.uk/2/hi/south_asia/7486252.stm

22 The Central Empowered Committee (CEC) 2005: Report in IA no. 1324 regarding the alumina refinery plant being set up by m/s Vedanta Alumina Limited at Lanjigarh in Kalahandi district, Orissa, 21.09.05. Available at <http://www.indiaresource.org/issues/globalization/2005/CECSep2005cancellicense.html>

23 Ibid.

24 Peoples Union for Civil Liberties, See <http://www.pucl.org/history.htm>

25 See CEC Report, supra at section 32:

"The CEC is of the considered view that the use of the forest land in an ecologically sensitive area like the Niyamgiri Hills should not be permitted. The casual approach, the lackadaisical manner and the haste with which the entire issue of forests and environmental clearance for the alumina refinery project has been dealt with smacks of undue favour/lenny and does not inspire confidence with regard to the willingness and resolve of both the State Government and the MoEF to deal with such matters keeping in view the ultimate goal of national and public interest."

26 Ibid., at section 3, under "Forcible eviction and rehabilitation package"

27 Ibid., at section 3, xvi:

mining in Niyamgiri should not be allowed, and that were it not for administrative peculiarities the refinery may never have been allowed to be built.²⁸

Meanwhile, Vedanta continued its mining project with full speed. In 2005, Vedanta began the construction of its bauxite refinery on the Niyamgiri foothills, and the plant became operational in 2006.²⁹ Orissa State Pollution Control Board (OSPCB) had documented widespread water and air pollution caused by the Lanjigarh refinery since it opened in 2006. Reports also suggest that those living near the Lanjigarh refinery in Orissa breathed polluted air and were afraid to drink from or bathe in local rivers.³⁰

Despite CEC's recommendation against the proposed mining projects,³¹ in 2007, India's Supreme Court ruled in favor of Vedanta by allowing its subsidiary to reapply for a license. One year later, the Supreme Court approved Vedanta's mining activities at Niyamgiri hills, including the large open-pit bauxite mine at the top of Niyam Dongar.³² The Supreme Court of India is the final court of appeal of the land. After the 2007 Supreme Court ruling in favor of Vedanta, all evidence at the domestic level suggests that the Dongria Kondh people have lost their fight against the proposed bauxite mine at their sacred tribal land.

Strategic framing of the Complaint text

"If the NCP cannot persuade Vedanta to do this, the Dongria will have no other means of securing their right to be heard. Denied that right, they may feel driven to use every means available to them to resist and disrupt Vedanta's operations. This cannot be in the long term interests of anyone" [1].

"Many were beaten up by the employees of M/s Vedanta. The National R&R policy requires that land for land should be given after due process of consultation, particularly in the case of the tribals. Contrary to the above cash compensation was offered to them and which was not acceptable to many. 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 report also indicates that:

"... (the Dongrias) have deep spiritual and cultural attachment to their ancestral lands and settlements. The displacement was opposed vehemently by them despite being offered large cash compensation by M/s Vedanta. In the face of resistance, the District Collector and the company officials collaborated to coerce and threaten them... An atmosphere of fear was created through the hired goons, the police and the administration. Many of the tribals were badly beaten up by the police and the goons. After being forcibly removed they were kept under watch and ward by the armed guards of M/s Vedanta and no outsider was allowed to meet them. They were effectively being kept as prisoners..."

28 The Central Empowered Committee (CEC) 2005: Report in IA no. 1324 regarding the alumina refinery plant being set up by m/s Vedanta Alumina Limited at Lanjigarh in Kalahandi district, Orissa, 21.09.05, p.7 and p. 50.

"The agreement signed between the Orissa 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"; available at: http://assets.survivalinternational.org/static/files/behindthelies/CEC_report_smaller.pdf

29 "India refinery 'threatens health of local community,'" *BBC News*, last updated 9 February 2010: http://news.bbc.co.uk/2/hi/south_asia/8505250.stm

30 *Ibid.*

31 *Ibid.*, at sections 32-33.

32 "Vedanta Resources caught in web of allegations," *The Economic Times*, posted Feb. 8, 2010. http://articles.economictimes.indiatimes.com/2010-02-08/news/28391260_1_niyamgiri-mine-bauxite-vedanta-resources

In 2008, the Dongria Kondh people received a "professional advocator" for their cause. Survival International (SI), a UK based indigenous rights NGO (non-governmental organization) has launched a global campaign targeting Vedanta's mining activity at Niyamgiri hills.³³ Survival International refers to itself as the organization "representing the movement for tribal peoples worldwide."³⁴ Founded in 1969, Survival International gained international recognition during the 1990s for its indigenous campaigns in South America, when the organization played a crucial role in catalyzing the establishment of Yanomami reservations in Brazil.³⁵

In December 2008, Survival International filed a document to the UK Department for Business, Innovation & Skill (BKS) titled "Complaint to the UK National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises"³⁶ raising concerns with regard to Vedanta's planned mining activities in Niyamgiri [6]. The complaint was filed to the UK National Contact Point (NCP) responsible for responding to allegations of OECD Guideline violations. SI has also posted its 31-page long official complaint on its website [1]. Specifically, Survival International claims that Vedanta has breached the OECD Guidelines for Multinational Corporations Vedanta Resources in that: [1] it has failed to respect the human rights of those affected by its activities (Part II, paragraph 2) [2] it has also failed to 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 (Part II, paragraph 7); and [3] it's failure as well as to engage in adequate and timely communication and consultation with the communities directly affected by its environmental, health and safety policies (Part V paragraph 2(b)). Additionally, Survival International accused Vedanta failed to respect are the rights of the Dongria Kondh to enjoy their own culture and to profess and practice their own religion (Articles 18 and 27 of the Civil and Political Rights Covenant; Article 12 of the UN), and their right to be consulted about any project affecting their lands or other resources (Article 8j of the Convention on Biological Diversity; Article 5(e) of the Race Convention; Articles 19 and 32 of the Declaration of Indigenous Rights).³⁷

33 "New Survival campaign targets British company Vedanta – mine set to destroy remote tribe", Survival International, 29 April 2008 <http://www.survivalinternational.org/news/3272>

34 "About us", <http://www.survivalinternational.org/info>

35 Napoleon A. Chagnon, *Yanomamo: Case Studies in Cultural Anthropology*. Wadsworth Publishing, 2009. p. 231–232.

36 See "UK National Contact Point for the Organisation for Economic Co-operation and Development (OECD) guidelines for multinational enterprises," UK Department for Business, Innovation & Skills: "

The UK NCP complaint process is broadly divided in three key stages: (1) Initial Assessment (Desk based analysis of the complaint, the companies response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted.); (2) Conciliation/Mediation/Examination (If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified.); and (3) Final Statement- If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If the UK NCP examined the complaint (because conciliation/mediation is refused or fails to achieve an agreement), it will prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and recommendations to the company for future conduct, if necessary. See, OECD Guidelines for Multinational Enterprises, Part II, Implementation Procedures of the OECD Guidelines for Multinational Enterprises."

Available: <https://www.gov.uk/uk-national-contact-point-for-the-organisation-for-economic-co-operation-and-development-oecd-guidelines-for-multinational-enterprises>

37 *Ibid.*

Although the complaint document revolves around allegations of “human rights violations” and the breach of “international law”, its claims are problematic in as the [1] OECD NCP structure formally provides no legal remedies; [2] violations of socio-economic and cultural rights are often considered outside of the purview of “human rights”, and [3] human rights themselves are not part of the traditional international law structure. To overcome these intrinsic difficulties, the document framed its language in ways that would be more recognizable and identifiable in relation to the global legal consciousness.

“Vedanta has no human rights policy. It is not a member of the International Council of Metal and Mines, whose Position Statement on Mining and Indigenous Peoples would have required it to accept that special arrangements may be required to protect sites of religious significance for indigenous peoples, and to ‘respect the rights and interests of Indigenous Peoples as defined within applicable national and international laws’” [1].

What is legal consciousness? To answer this question, we must first consider the meaning of “legal consciousness”. The New Oxford Companion to Law defines the term legal consciousness as “what people do as well as say about law [1].” In other words, one way to understand legal consciousness is that it is a general and rather abstract term that describes some sort of legal culture or custom within a society. Legal consciousness understood as such are the substantive social knowledge that regulates that defines and regulates social relations. However, “legal consciousness” does not have to exist in a purely abstract and psychological form. After-all, one’s state of mind with regard to legal perception is often a reflection of the formal legal structure already exist in a society, and legal culture can also affect the way legal institutions form. In this sense, a state’s formal legal structure, or its municipal law, can also in some way be viewed as being part of its legal consciousness. Since we are dealing with “human rights” legal consciousness, and assuming by “human rights” we are not referring to the culture any single state, but rather a set or norms that all state and non-state actors are expected to adhere to, it is safe to assume that the notion of human rights legal consciousness is not referring to any particular country’s legal system, but rather the general legal culture/custom that is commonly associated within the human rights discourse.

A good starting point for our analysis on this matter is look at the Statute of the International Court of Justice, Article 38.1. It is often considered as the principle statute dealing with the sources of the international law. The statute stipulates:

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a). international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b). international custom, as evidence of a general practice accepted as law; (c). the general principles of law recognized by civilized nations; (d). subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Article 38.1(a) provides that “international conventions” can be a source of international law. Although the concept of the human rights “legal consciousness” itself can be very abstract, if the relevant parties decide to enter into a treaty that defines the meaning of human rights, then this seemingly abstract concept of legal consciousness will be reified into treaty or an international convention, and it can become a formal source of international law under ICJ Statute Art. 38.1(a). It is not unprecedented for states to transform their common legal

consciousness into a binding treaty. The Lisbon Treaty, or the Treaty of on the European Union (TEU) is an example where member states entered into a binding agreement that is designed party to promote their common European values. TEU Article 1 provides that: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, nondiscrimination, tolerance, justice, solidarity and equality between women and men prevail.” Also, Art. 6, ind. 3 of TEU states that “fundamental rights...as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.”

Article 38.1(c) recognizes “general principles of law recognized by civilized nations” as a possible source of international law. There are two different views as to the concept of “general principles of law recognized by civilized nations”. One is that it refers to the general principles of law recognized by all civilized nations. If this view is taken, and assuming that India and UK are considered “civilized nations”, then this 38.1(c) should be only referring to the general principles in the most broad term, and the localized or culturally-specific concepts of human rights would seem irrelevant as their fundamental legal conceptions should be already included in that broad reading. The alternative view on 38.1(c) is that the “general principles of law” is referring to general principles of municipal jurisprudence.³⁸ If this view is taken, and if the “*human rights generally*” is referring to the municipal legal jurisprudence of India and UK, then such legal consciousness may be seen as applicable under public international law. Paragraph (d) of Article 38 provides that subject to the provisions of Article 59 (which stipulates that the decision of the ICJ has no binding force except between the parties and in respect of that particular case), authoritative legal discourse, that is, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. If there are abundant precedents of judicial decisions and the teachings of the most “highly qualified” legal writers made reference to human rights standards, then those concepts of jurisprudence may have a place in the international law under Art. 38(d).

Most importantly, Article 38.1(b) refers “international custom” can be used as evidence for international law. Scholars have identified four elements to the customary international law, and they are: duration, uniformity, generality, belief of legal necessity (*opinio juris et necessitates*).³⁹ As for the duration, although a long practice would certainly add weight to the evidence supporting the applicability of the custom in international law, as long as the uniformity and generality elements are fulfilled, the ICJ does not usually emphasize the time element as a prerequisite. The common “human rights” legal consciousness as we know today, especially relating to socio-economic rights is commonly seen as a by-product of the waves of civil rights movements and international political discussions during the 1960s and 70s, which is not particularly long in history. Lastly, *opinio juris et necessitates*, that is, recognition by the parties of a certain practice as obligatory, and the given the practice is required by, or consistent with prevailing norms international law. The notion of human rights, as an outgrowth of Western notions of civil-political rights and the reflection from the tragedies that savaged the world during World War II, has

38 Local legal system, such as U.S. states law

39 Ian Brownlie, *Principles of Public International Law*, Oxford University Press, Oct 22, 2008 at 7.

become an anchor of international legal system.⁴⁰ However, there is lack of global consensus on the parameter of human rights standards, and whether socio-economic and cultural rights are protected by any prevailing formal frameworks of international law.

The advent of socio-economic rights and cultural rights have elicited the talks of fragmentation in human rights norms—that those traditional Western civil and political rights are first generation human rights, and socio-political rights being the second generation (some consider right of development, to a decent environment, and right to standard of living as ‘third generation’ human rights).⁴¹ This schism between civil-political rights and socio-economic rights has profound political, ideological, and cultural implications. In her article “The Minimal Core for Economic and Social Rights”, Katharine Young puts this generational divide succinctly:

The lack of consensus on human rights norms is due in part to the late secularization of the protection of collective material interests in human rights history compared with other categories of rights. It is also a feature of the ideological disagreements of the Cold War period, when Western governments worked actively to demote the importance of economic and social rights and when the human rights nongovernmental organizations headquartered in the West, including Human Rights Watch and Amnesty International, followed suit. Yet even with the end of this polarization, consensus continues to lead to conservative and abstract expressions of the content of economic and social rights.⁴²

The idea of incorporating socio-economic and cultural rights under the umbrella term of “human rights” has been met with considerable resistance from legal scholarship. Many have expressed skepticism on the fundamental validity of socio-economic rights, arguing that the so-called economic and social rights are in fact “entitlements” that justify the development of “welfare states”.⁴³ Some even go as far as suggesting socio-economic rights as the antithesis of human rights.⁴⁴ The schism between civil-political and socio-economic rights in international legal discourse is exemplified by the continued U.S. resistance against the incorporation of the right to safe drinking water, a socio economic right, as an UN-recognized human right.⁴⁵

The term “polycentricity” implies the existence of tensions between “provincial” and “universal” norm structures that are intrinsic in the global legal consciousness. While the legal consciousness of the world is an amalgamation of both provincial and global values, those values

are nonetheless subject to the hierarchy of recognition—that ideas are more authoritative when they are more widely recognized by the world. It can be said that the polycentric legal consciousness of the world enables a kind of “race towards universality”, where civic society actors are striving to speak out and seeking for the “universal” recognition of their embodied values. In this sense, the of the complaint document from Survival International embodies the language of polycentric legal discourse – the text is deployed strategically by drawing from various differentiated norm systems concurrently in a unified fashion, transforming parochial norms into authoritative global rules, effectively elevating the otherwise non-legal document into a functional legal complaint.

To elevate the apparent legality and authoritativeness of its allegations, it is necessary for SI not only to draw from various rule frameworks in support its claims, but to present the claims in a coherent and unified fashion that is easily recognizable under the global legal consciousness. To achieve this, SI has employed the following strategies: [1] stylistically frame the format of the document to resemble a “legal complaint” rather than a typical “OECD inquiry”; [2] brush over the legal distinctions between cultural rights, socio-economic rights and civil-political rights by avoiding rights-categorization and referring them collectively as “human rights”; [3] frame violations of corporate social responsibility and OECD Guidelines as breaches of *international law*. The relationships between various rule frameworks, types of rights, and the presentation styles of the document with respect to their perceived legality and authoritativeness under the global legal consciousness can be demonstrated in the Table 1 below (in a simplified and generalized fashion).

The strategic framing is evident from the very first page of the document, when SI decided to use the word “complaint” in the document title “Complaint to the UK National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises”. It is well-understood that observance of the Guidelines by enterprises is voluntary and not legally enforceable. Consequently, according to the filing procedure of The Guidelines, reports of guideline violations should not be called “complaints”. Rather, the report should be filed as “inquiries” in “specific instances” seeking “clarification of the Guidelines”.⁴⁶ Although it is no longer the case, for many years the OECD even prohibited “inquiries” from naming the corporations whose conduct gave rise to the allegation of guideline violations.⁴⁷ The term “complaint” is commonly recognized as a legal term, which carries the connotation of allegations pertaining to legal violations—the nonobservance of rules that expect strict observance. By titling the document as a “complaint” rather than an “inquiry”, this seemingly minor deviation from OECD’s formatting requirement effectively (and scrumptiously) intensified the expectation of observation with regard to the alleged violations, and helped to set the legal-sounding tone for the rest of the document.

More importantly, the complaint document deals with the recognition difficulty associated with socio-economic and cultural rights by simply grouping all alleged rights violations under the widely-recognized umbrella term of “human rights”. For instance, when looking at the document’s table of contents, specific allegations of rights violations are arranged as follows (Table 2).⁴⁸

Note that traditional (Western) understanding of human rights

40 Alexandra R. Harrington, Don't Mind the Gap: The Ride of Individual Complaint Mechanisms Within International Human Rights Treaties, 22 DUKE J. COMP. & INT'L L. 153, 177 (2012).

41 See Ian Brownlie, Principles of Public International Law, 7th ed. p.519-604

42 See Katharine Young, “The Minimum Core of Economic and Social Rights: A Concept in Search of Content”, THE YALE JOURNAL OF INTERNATIONAL LAW Vol. 33 p.113

43 See Alex Kirkup* & Tony Evans, “The Myth of Western Opposition to Economic, Social, and Cultural Rights? A Reply to Whelan and Donnelly”, *Human Rights Quarterly* 31 (2009) 221–238

44 See Amartya Sen, “Human Rights and Asian Values,” *The New Republic*, July 14–July 21, 1997.

45 AMNESTY INTERNATIONAL “DOCUMENT - UNITED NATIONS: GENERAL ASSEMBLY MAKES PROGRESS ON THE HUMAN RIGHTS TO WATER AND SANITATION, BUT ONLY SO FAR AS THE USA PERMITS”, 26 November 2013 IOR 40/005/2013 Available: <http://www.amnesty.org/en/library/asset/IO40/005/2013/en/91fa9086-8b80-4f95-a8ab-e0a178062816/ior400052013en.html>

“The USA’s view that the definition of the rights set out by the Human Rights Council is ‘expansive’ cannot be sustained. That definition of these rights is in fact limited and relates to essential elements without which they would only be hollow promises. People are entitled to water and to sanitation that is within reasonable reach and at a price they can afford.”

46 Backer et al., *supra* at 53.

47 *Ibid.*, see also, MNE Guidelines.

48 See Complaint, p.1.

	3 rd gen. human rights (“green rights”, right to development)	2 nd gen. human rights (economic, social and cultural)	1 st gen. human rights (civil-political rights)
Legal formality	Informal, normative	Semi-formal	Formal
Perceived legality:	Non-legal	Quasi-legal (soft law)	Legal (hard law)
Rule framework:	Corporate social responsibility	OECD Guideline UN Guiding Principles on Business and Human Rights	National and International law
Enforcement	Self-regulation	Civil society actors, transnational organizations	States

Table 1: The relationships between various rule frameworks, types of rights, and the presentation styles.

only includes individual natural rights (e.g. religious freedom) and civil-political rights (e.g. equality before the law)⁴⁹, whereas the rights of “means of subsistence” and “to be consulted and to give or refuse their FPIC (Free, Prior and Informed Consent) of an indigenous people typically belong to the contested domain of socio-economic and cultural rights. Against this inconvenient rights-fragmentation, the document unproblematically presented all of its references socio-economic, cultural, and civil-political rights as fundamental “human rights” that are equally protected under international law. Likewise, under the “Summary of complaint” section, the document narrated its allegation of rights violation in a similar unified framework (Table 3).⁵⁰

Often, cases of indigenous population being deprived from their “means of subsistence” due to development projects without their FPIC⁵¹ is framed as “economic or contractual dispute” rather than “rights violations”, despite the grossly asymmetric balance-of-power between small native tribes and multinational enterprises. This seemingly trivial terminology distinction carries major legal and semantic implications—consider the difference betwixt “economic disputes *between* Vedanta and Dongrias”, and “rights violations committed by Vedanta *against* Dongrias”. It is evident that the use of the term “economic dispute” often masks the underlying power disparity between the parties involved. Furthermore, the phrase “economic dispute” in itself only signifies the presence of *difference* between negotiating parties; it does not suggest any damages or injuries suffered. Whereas the invocation of “rights violation” implies underlying damages and injuries, it does not refer to any specific rule framework for addressing and disciplining the alleged violations. The frame of “human rights violation”, however, triggers both the rhetorical exigency of underlying injuries, as well as situating the exigency within well-established normative framework of international law.

Lastly, while it is unlikely that Survival International is unaware of the non-binding nature of the OECD Guidelines, the document was nonetheless drafted in such a way that frames The Guidelines as “international law”. Such framing effort, *prima facie*, appears to be paradoxical. International laws are recognized as such because they embody general principles of law and customs⁵² that transcend state and institutional boundaries, and are widely recognized by the citizens of the world. The OECD Guidelines on the other hand can almost be

seen as the antithesis of internal law—it is a set of newly introduced intra-organizational recommendations that receives little widespread recognition.

However, it is also important to note that the subsistence and substance of international law is the global legal consciousness, which is manifested through the intersubjective recognition of individuals living-in-the-world. There is no international law *a priori* recognition, and there is no recognition *a priori* the exchange and circulation of meanings. Many foundational principles of international law today were once little more than neologistic jargons articulated by those Enlightenment philosophers, in the hope of persuading people to adopt and extend those obscure ideas into common values [7]. In this sense, the emergent global legal consciousness is in fact the result of individuals and groups attempting to interpellate [8] others, through the circulation of meanings, into seeing the new and different meanings of the relations in the world, hopefully breaking out of the ossified limitations that bind the transaction of meanings. Though

Contents	
VII. Specific violations of human rights.....	20
Religious freedom	20
Equality before the law.....	21
Means of subsistence.....	22
Right to be consulted and to give or refuse their FPIC.....	22
1	

Table 2: Document’s table of contents.

Summary of complaint	
21. The human rights to which the host government has made international commitments but which Vedanta has failed to respect are the rights of the Dongria Kondh:	
(1) to enjoy their own culture and to profess and practice their own religion...	
(2) to equality before the law...	
(3) not to be deprived of their means of subsistence...	
(4) to be consulted about any project affecting their lands or other resources and to give or refuse their free, prior and informed consent to the project before it is permitted to proceed...	
8	

Table 3: Summary of complaint.

I. Introduction	
8. ...They [the Dongria people] should be allowed to follow their own path in their own time, and that they should not have a new one foisted upon them by Vedanta or anyone else.	
9. International human rights law fully endorses this position, recognising as it does that the free, prior and informed consent (“FPIC”) of an indigenous people must be obtained for any project likely to affect its lands...	
14. In the meantime Vedanta should agree to stop work on the mine and its infrastructure...	
15. This approach accords not only with well-established principles of international law but with commercial good sense.	

Table 4: Introduction section of complaint document.

49 See “The Universal Declaration of Human Rights,” Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.” Available: <http://www.un.org/en/documents/udhr/index.shtml>

50 Complaint, p. 7-8.

51 FPIC stands for “Free, Prior and Informed Consent”.

52 See Statute of the International Court of Justice, Article 38.1.

the transformation and proliferation of meanings are in part driven by historical and social forces that are outside of the manageable domain of any single individual or organization, there is nonetheless a practical need for organizations like SI to catalyze knowledge creation by strategically frame neologistic expressions as an integral part of a larger set of well-accepted value framework.

The "Introduction" section of the complaint document already presupposes that one of the key functions of the document is to address violations of international law (Table 4).⁵³

As the introduction orderly presents the summary of the substantive content of the rest of the 32-page-long document, it problematically juxtaposes the invocation of "international law" (indents 9, 15) after the statements of specific demands (indents 8, 14), implying that the demands are clearly backed by well-established principles international law. The introduction therefore gives the appearance that from the very beginning the document was drafted within the context of international law, and expects an interpellated reader whom is already a subject to the normative recognition of international law. Throughout the rest of the document, the complaint did not address the fundamental question of whether those alleged violations really in fact pertain to international law—as such question should be already "evident" from the introduction of the document. The theme of international law is further reinforced through the frequent highlighting of "human rights" violations throughout the document, without separating those rights that are less recognized under traditional international law from the "human rights" frame. Finally, all the alleged violations of international law listed in the document refer back to the singular body of OECD Guidelines, which in turn implicitly frames the OECD Guidelines an inseparable and integral part of the international law cosmos.

Conclusion

*"If the NCP cannot persuade Vedanta to do this, the Dongria will have no other means of securing their right to be heard. Denied that right, they may feel driven to use every means available to them to resist and disrupt Vedanta's operations. This cannot be in the long term interests of anyone."*⁵⁴

Nine months after the filing of the complaint document by Survival International against Vedanta, UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises responded positively to Survival International's complaint [9]. The UK NCP affirmed all three charges of OECD guidelines violations lodged against Vedanta by Survival International. The UK NCP concluded that Vedanta failed to properly inform the affected Dongria Kondh people on the construction of the bauxite mine; it did not adequately consider the impact of their proposed mining project on the rights and freedoms of the Dongria Kondh, and made little effort to mitigate the impact of its activities in the region.⁵⁵

53Complaint, pp. 2-7.

54 Complaint, p.30.

55 Ibid:

- The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) upholds Survival International's allegation that Vedanta Resources plc (Vedanta) has not complied with Chapter V(2)(b) of the Guidelines. The UK NCP concludes that Vedanta failed to put in place an adequate and timely consultation mechanism fully to engage the Dongria Kondh, an indigenous community who would be directly affected by the environmental and health and safety impact of its plans to construct a bauxite mine in the Niyamgiri Hills, Orissa, India.
- The UK NCP upholds Survival International's allegation that Vedanta has not complied with Chapter II(7) of the Guidelines. It concludes that Vedanta failed to engage the Dongria Kondh in adequate and timely consultations about the

It is important to remember that the OECD Guidelines are "soft law" with limited legal effect, and the UK NCP's response does not have binding legal force. But rhetorically speaking, the NCP's opinions generated significant effect in Great Britain and beyond. Immediately after the NCP's opinions were released, the British government issued follow up statements reaffirming the NCP's conclusions [10]. In response to the UK NCP's findings, Amnesty International, one of the largest international human rights NGOs, released a report on February 9 2010 condemning Vedanta's activities at Niyamgiri, where it highlighted Vedanta's breach of the OECD Guidelines, and framed the breach as "violations" of international law [11].

The mounting international pressures have compelled the Indian government to reconsider its previous position. In summer, 2010 the Indian Ministry of Environment and Forests commissioned a special committee to reevaluate the mining activities in Niyamgiri region. The special committee released a report raising concerns over Vedanta's planned projects in Niyamgiri: "...allowing mining in the proposed mining lease area by depriving two Primitive Tribal Groups of their rights over the proposed mining site in order to benefit a private company would shake the faith of tribal people in the laws of the land which may have serious consequences for the security and well-being of the entire country [12]." The report further claims suggested several potential violations of law committed by Vedanta in its mining projects in the area, which include violation of Forest Conservation Act,⁵⁶ violation of the Environment Protection Act,⁵⁷ as well as non-implementation of the Panchayats Extension to the Scheduled Areas Act.⁵⁸

construction of the mine, or to use other mechanisms to assess the implications of its activities on the community such as an indigenous or human rights impact assessment. Vedanta therefore failed to develop and apply effective self-regulatory practices to foster a relationship of confidence and mutual trust between the company and an important constituent of the society in which it was operating.

- The UK NCP also upholds Survival International's allegation that Vedanta has not behaved consistently with Chapter II(2) of the Guidelines. The UK NCP concludes that Vedanta failed to engage the Dongria Kondh in adequate and timely consultations on the construction of the bauxite mine; it did not consider the impact of the construction of the mine on the rights and freedoms of the Dongria Kondh, or balance the impact against the need to promote the success of the company. For these reasons, Vedanta did not respect the rights and freedoms of the Dongria Kondh consistent with India's commitments under various international human rights instruments, including the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous People.

56 Ibid., p.71: "The company is in illegal occupation of 26.123 ha of village forest lands enclosed within the factory premises...This is an act of total contempt for the law on the part of the company and an appalling degree of collusion on the part of the concerned officials. For the construction of a road running parallel to the conveyor corridor, the company has illegally occupied plot number 157(P) measuring 1.0 acre and plot number 133 measuring 0.11 acres of village forest lands. This act is also similar to the above although the land involved is much smaller in extent."

57 Ibid., p.73: "The company M/s Vedanta Alumina Limited has already proceeded with construction activity for its enormous expansion project that would increase its capacity six fold from 1 Mtpa to 6 Mtpa without obtaining environmental clearance as per provisions of EIA Notification, 2006 under the EPA. This amounts to a serious violation of the provisions of the Environment (Protection) Act."

58 Ibid., p.73: "The concerned area is a schedule V area where PESA is applicable. Thus, in addition to the implementation of FRA, the state government also has to ensure the compliance of the following provisions of PESA:

Section 4(i): The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects.

section 4(d) : every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;

section 4(m) (iii), according to which Gram Sabha has the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore

In August, 2010, in response to the special committee's report, India's Environment Minister Jairam Ramesh has said that Vedanta shown a "shocking and blatant disregard for the rights of the tribal groups", and has announced the move by the Ministry to block Vedanta's controversial mining plan at the Niyam Dongar Mountain.⁵⁹ In October, the Environment Ministry rejected Vedanta's plan to expand the Lanjigarh refinery below the Niyamgiri hills, and demanded immediate improvements to environmental conditions of the existing plant.⁶⁰

From the case study and the analysis of the complaint document, we can see that the Guidelines for Multinational Enterprises have opened a possibility for a framework through which standards of human rights and corporate social responsibility could be applied directly to private entities by states enforcing transnational norms under their treaty obligations. The Guidelines were especially important because they provided a quasi-judicial mechanism through which non-state actors could bring complaints against multinational enterprises for violations of socio-economic and cultural rights—rights that are often unprotected under traditional human rights standards. Technically, the system is not "hard law"—it is neither binding on states and corporations, nor incorporated into their domestic; but they could affect the judgment of individuals and investors that might persuade either state or private entities to adhere to these customary human rights norms. More importantly, these systems may have legal effect, regardless of whether to not they conform to the classically understood notions of "law". The Survival International case also demonstrates an effective process of operationalizing soft law to produce the "hard law" effects beyond national borders without directly challenging state authority. The output of quasi-judicial and interpretive statements, like those from the Survival International case discussed below, will continue to contribute to the institutionalization of transnational systems of human rights enforcement. This is not only instructive for civil society actors that seek to enforce corporate social responsibility beyond state-centric frameworks, but may also contribute for those projects of corporate governance that are currently being developed, such as the United Nations Guiding Principles on Business and Human Rights.⁶¹

any unlawfully alienated land of a Scheduled Tribe."

59 "David v. Goliath: Indian tribe in 'stunning' victory over mining giant," Survival International, 24 August 2010: <http://www.survivalinternational.org/news/6385>.

60 "Troubled Vedanta loses appeal for controversial refinery," Survival International, 21 October 2010: <http://www.survivalinternational.org/news/6605>.

61 See "UN 'Protect, Respect and Remedy' Framework Guiding Principles", Business and Human Rights Resource Centre. Available: <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples>.

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