

UK-LISTED MINING COMPANIES & THE CASE FOR STRICTER OVERSIGHT

Case Studies And Recommendations

London Mining Network
February 2012

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Cover: Bumi's Kaltim Prima Coal mine in Kalimantan, Indonesia - see case study 3.8 on p. 40. Photo: JATAM

1. INTRODUCTION

London Mining Network (LMN) is an alliance of 27 human rights, development and environmental groups concerned about the impacts of the activities of mining companies listed on the London Stock Exchange (LSE) or financed by London-based institutions.¹ In April and September 2011, LMN submitted comments² to the UK Treasury's consultations on the proposed new UK securities regulatory framework.

The proposed reform includes transference of the functions of the UK Listing Authority (UKLA) from the Financial Services Authority (FSA) to a new body, the Financial Conduct Authority (FCA). Based on knowledge of the social, environmental and human rights impacts of mining around the world, LMN considers that the proposed new body needs to be equipped with the authority, expertise, personnel and funding to enable it to exercise vigilance over all UK-listed companies – not only financial services companies – in a way that has been lacking in the past. Reform of securities regulation must result in much stricter oversight, particularly of companies involved in mining and trading in minerals.

Present regulation of both the LSE's Main Market and its Alternative Investment Market (AIM) sub-market is not sufficiently rigorous to prevent harm, as shown by the case studies in this report, and should be upgraded. The current regulatory system does not adequately operationalise the limited demands on corporate reporting contained in the Companies Act 2006. For example: findings against companies of non-compliance with International

Finance Corporation (IFC, a member of the World Bank Group), Organisation for Economic Co-operation and Development (OECD) and other international standards, as well as convictions in non-UK courts, should necessarily be included in corporate reports.

LMN is now publishing this report, including an updated and expanded version of the comments and case studies submitted to the Treasury in April and September 2011, as an advocacy briefing for the UK Government and other stakeholders to show the need for very significant reforms of the way the UK regulates listed companies, with a particular focus on the mining sector.

Recommendations for the proposed new FCA

If the FCA is to function effectively as the UK's new listing authority, its operational objectives must include enforcing good conduct on all UK-listed companies. As the case studies in this report demonstrate, even obedience to UK law has not in the past been effectively enforced by the UKLA.

1. London-listed companies and their directors must obey the law in the UK and in the countries where they operate and face appropriate sanctions when they do not obey the law. This must include compliance with national regulations concerning biodiversity, ecological and environmental protection.

2. UK-listed companies should be legally required to note in their corporate reports all findings of non-compliance with IFC and OECD standards, and of UK and non-UK regulation concerning biodiversity and environmental protection, as well as convictions in UK and non-UK courts.
3. The FCA should have powers to enforce the corporate reporting requirements relating to environmental and social impacts contained in section 172 of the Companies Act 2006, with sanctions for failure to comply.
4. The FCA should ensure that UK-listed companies recognise and respect international human rights and environmental standards to which the UK is a signatory, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Declaration on the Rights of Indigenous Peoples and the Convention on Biological Diversity, and implement the highest environmental, social, cultural, labour, and health and safety standards.³
5. The FCA's oversight needs to extend beyond the financial services sector to include vigilance over the behaviour of all companies listed on UK-registered investment exchanges. This will require sufficient funding for the FCA to be able to call on the expertise necessary.
6. The UK Government should back strong reporting rules for EU-listed and EU-based unlisted mining and other extractive companies. These rules should be based on current European-level proposals requiring extractive companies to publicly report payments to governments and other financial data on a country-by-country and project-by-project basis. EU rules should be at least as comprehensive as listing requirements for mining companies on the Hong Kong Stock Exchange and those proposed under the US Dodd-Frank Wall Street Reform and Consumer Act.⁴
7. Present regulation of AIM is not sufficiently rigorous to prevent harm and should be improved to ensure that AIM-listed companies fully comply with the human rights, social, cultural, labour and environmental laws, regulations and conventions noted above.
8. The FCA's governing body needs to include people with expertise not only in financial matters but also in human rights and environmental protection if it is to exercise its function in a competent manner.
9. People and organisations with well-founded concerns about the conduct of UK-listed companies should be able to make their concerns known to the FCA through an accessible and transparent procedure. The FCA should take account of, and respond to, these concerns, in compliance with legal obligations, and respect guidelines concerning meaningful public participation in decision-making.

2. UK-LISTED MINING COMPANIES: ADVERSE IMPACTS AND RISKS

The case studies in this report reveal recent instances where UK-listed companies' operations have had serious adverse impacts on workers' health and safety, individuals' and communities' human rights, developing country economies, and the quality and availability of natural resources.⁵ While not all mining firms commit equally disturbing acts, and some companies genuinely try to observe the benchmarks for good governance already in place, there is persuasive evidence that such benchmarks are ignored with impunity by others. None of the companies critiqued in this report has been ousted from the LSE Main Market or AIM or been subject to a thorough official examination of their alleged misdeeds.

The report pays special attention to Vedanta Resources, which is emblematic of multiple failures prevailing under the FSA's regulatory 'light touch' of recent years. Vedanta may not be the worst environmental and human rights offender in every respect. (The company has not been accused of complicity in the shooting down of citizens by security forces: an accusation levelled in May 2011 against African Barrick – case study 3.1.) Nonetheless, charges against Vedanta continue to mount, lending urgency to the debate on whether there should be a UK definition of a corporate 'bad actor' – and one going beyond that outlined in the US Dodd-Frank Act.⁶ Some of Vedanta's worst offences have been committed in the past two years.

Among other mining companies included in the case studies are: Glencore (case study 3.6), the LSE's largest-ever new entrant (in May 2011),

whose profits mainly derive from the exploitation and trading of minerals; and Bumi (case study 3.8), the world's second biggest extractor and exporter of thermal coal, the dirtiest of fuels.⁷

Zijin and Monterrico: a tale of two regulatory regimes

In March 2011, environmental non-governmental organisations (NGOs) called on the Hong Kong Stock Exchange (HKEx) to ensure that China's leading gold-copper mining company, Zijin, fully disclose material risks associated with one of its most controversial overseas projects, the Rio Blanco Mine in Peru which it had taken over in 2007. The NGOs claimed that the mine project had involved 'failure to obtain community authorisation', 'breaches of environmental law' and the 'torture and killings of local people'. The NGO letter raised concerns that 'Zijin has an obligation to report to shareholders the non-financial risks posed by its Rio Blanco Mine and other overseas projects.'⁸

The NGOs' initiative came soon after China's worst gold mine tailings (waste) disaster in 2010, for which the same company, Zijin, was found responsible. In this case, Chinese environmental groups had already urged the HKEx to ensure the company properly report the financial implications of the spill, and Zijin's trading on the exchange had been halted several times in advance of announcements of fines and penalties associated with the event. The company was delisted for a short period in March 2011 after contending that two of its subsidiaries, rather than the parent company, should be held responsible for

causing the deaths of 22 people and the destruction of 523 homes in the south-eastern province of Guangdong.⁹

Why is the case of Zijin relevant in the UK, five thousand miles from Hong Kong? For three reasons. First, Zijin's Rio Blanco mine in Peru is technically owned by a UK-registered company, Monterrico Metals; and the most serious human rights abuses committed during its operations were made when Monterrico was under British control, soon after it was accepted for trading on the LSE in 2005.¹⁰

Second, although guilty of causing huge harm in its home country of China (and fined US\$1.4 million for the Guangdong disaster, with five employees sent to jail for up to four years),¹¹ Zijin has been more circumspect over its obligations to local people and the environment in Peru than its predecessor management, and arguably more transparent. A civil society investigation of the Rio Blanco project, reporting in March 2007, found that Monterrico Metals, while in British hands, had made inaccurate statements, especially in claiming overwhelming support for the project from local people.¹² Later that year, more than 90% of these communities, on turning out for a referendum, voted to reject the mine.¹³ In April 2011, the Chinese chairman of Monterrico Metals agreed that his company had still not obtained the consent to operate it required from those communities.

Third, and most relevant here, the HKEx requires that minerals companies comply with specific listing requirements that as yet have no counterpart in the UK. These include disclosure of: environmental, social, and health and safety issues; impact on sustainability of mineral and/or exploration projects; claims that may exist over the land on which exploration or mining activity is being carried out, including ancestral or native

claims; and the company's historical experience of dealing with concerns of local governments and communities on the sites of its mines and exploration properties.¹⁴

Mining and the flouting of standards

Extractive companies are much more likely than banks, retail or services companies, for example, to be directly responsible for significant environmental derelictions, such as the environmental release of toxic metals, chemicals and gases, which can have serious impacts on thousands of citizens.

While big global mining companies may report their conformity to a number of benchmarks (particularly ones set by the Global Reporting Initiative, GRI), the majority of mid-cap or small-cap mining companies do not.¹⁵ Nor do these necessarily sign on to several initiatives of the past ten years relating primarily to activities in the minerals sector, such as the EITI (Extractive Industries Transparency Initiative), the Kimberley Process (aimed at staunching supply of 'conflict diamonds') and the UN Global Compact.

There is a noticeably heavy weighting of mining companies on the LSE. Nonetheless, little or no special regard for the unique propensity of mining companies to do harm has been paid by the FSA since its inauguration in 1997. Nor is this propensity reflected in due diligence procedures referred to in pre-launch prospectuses, especially on the observance of human rights, required before these enterprises may be listed on the LSE.

The FSA has claimed that regulatory standards set on the Main exchange are unrivalled, but many would question this. And it certainly does not apply to the markedly lower bar set for listing on AIM, or for standard (secondary) listings

on the Main exchange, or for companies domiciled overseas which also raise capital in London. The compliance requirements set by other bodies (such as the World Bank/IFC and OECD) are often breached by UK-based mining companies, but they are not required to announce such breaches under existing UK rules.

The risks posed by investing in this notoriously cyclical sector are directly related to the performance of the players in the sector. For example, an extra year added to a mine development plan because of resistance by a local community, or a change of government, can bring down a company. When an international campaign is launched against a particular project, all investors (not only 'ethical' ones) need to be forewarned of the possible consequences; otherwise they might fail in their fiduciary duty to their clients.

Although investment institutions regularly, and increasingly, employ independent agencies to make social and environmental assessments of a company's performance and the risks posed, the most substantial such information often derives from NGOs and to a lesser extent journalists. However, these civil society groups and individuals are customarily under-resourced, and their lobbying power is minuscule compared to the companies they may be criticising. Furthermore, while NGO reports are frequently shared with banks and other investors, they are often ignored or considered implicitly biased by such institutions.

For example, three well-documented suits against Vedanta's Lanjigarh project were submitted to India's Supreme Court in 2004. These were occasionally registered outside the country but, even when noted by investment or credit agencies, were largely dismissed by them.¹⁶ It was thanks only to the relentless continuation of a civil society

campaign in India between 2005 and 2010, assisted by the Norwegian Finance Ministry's decision to delist Vedanta from its sovereign wealth fund portfolio in 2007, followed by UK-based NGO Survival International's successful complaint before the UK National Contact Point under the OECD complaints mechanism, and a detailed examination of the impacts of the company's existing alumina refinery by NGO Amnesty International in early 2010, that this issue achieved an international high profile. These initiatives led directly to the cancellation of the mining project by India's Ministry of Environment and Forests in mid-2010.

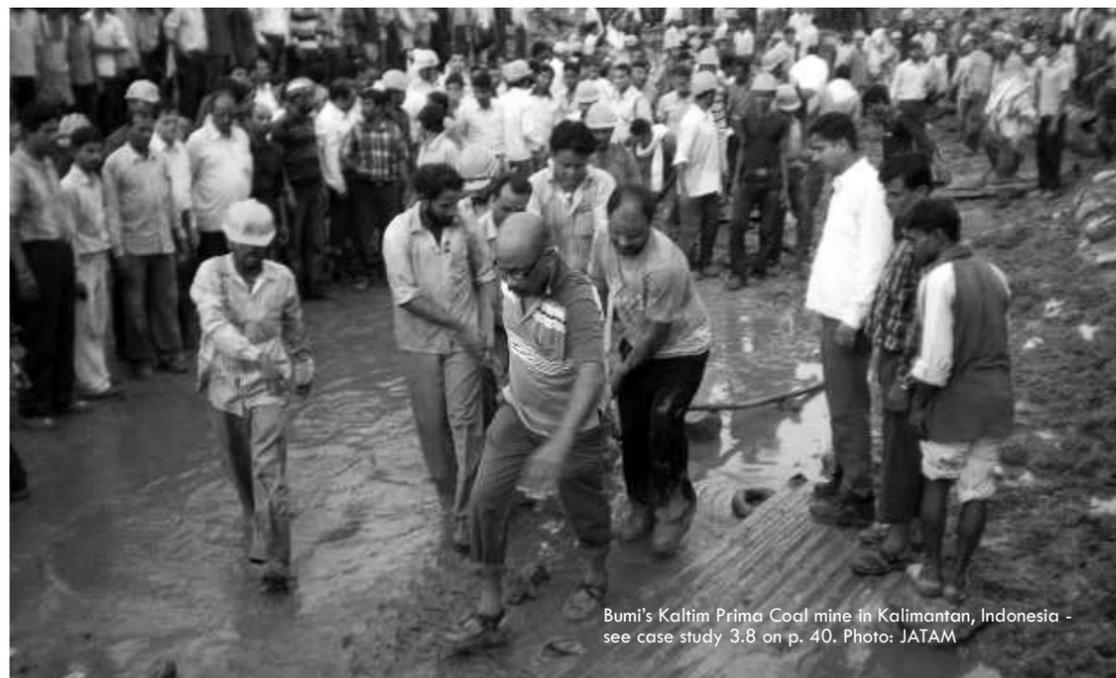
Civil society organisations should not be burdened with sole responsibility for determining whether UK-listed companies violate, or are complicit in violating, international human rights standards. Nor should they alone be relied upon to determine whether mining company practices fail to meet 'best possible' criteria or risk jeopardising the Precautionary Principle. The UK Companies Act 2006 sought to clarify directors' duties, *inter alia* to divulge the impacts of company operations on the community and the environment – thus (in theory) leading to an abatement of the worst such activities. As pointed out in a March 2011 assessment of the implementation of the Act by the Corporate Responsibility Coalition (CORE), this obligation is embedded in the concept of creating 'enlightened shareholder value'. But the UK Government, says CORE, has interpreted the term as excusing company directors from having to take any course of action which may materially favour communities or the environment should the directors consider it not to be in the interests of their shareholders.¹⁷

The 2008 UK Combined Code on Corporate Governance (now known as the UK Corporate Governance Code)

also sought to ensure not only ‘good housekeeping’ at company board level but also that no one group or shareholder could exercise overweening influence when decisions are taken by the board. It should therefore be of considerable concern that, in the case of several UK mining companies, this rule has been flouted.¹⁸

In the case of Brinkley Mining (case study 3.2), this breach of rules contributed to the company’s downfall. Among other examples, FTSE 100-listed Eurasian Natural Resources (ENRC) was until recently majority-owned by three oligarchs – Alexander Machkevich, Patokh Chodiev and Alijan Ibragimov – with the Kazakhstan Government apparently holding the upper hand. And AIM-listed Archipelago Resources, embroiled for several years in conflicts with Indonesian communities, fisherfolk and, at one point, a provincial governor, as it struggled to bring on-stream a gold project in North Sulawesi, is now majority-owned by the huge private business conglomerate Rajawali, which is registered in Indonesia.¹⁹

Disproving the idea that, by having a few ‘independent’ directors on board, a company can counteract the potentially malign influence of one or more of its leading shareholders, Vedanta is again a prime example. Appointed executive chairman of the company in 2005, Vedanta’s founder Anil Agarwal rubs shoulders with five fellow board members, only two of whom can reasonably be described as ‘independent’.²⁰ In defending Agarwal’s role as executive chairman – a clear violation of the UK Combined Code Vedanta’s 2010 corporate governance report notes merely that he ‘has shown continuing commitment to developing the Group for the benefit of its shareholders. For this reason the Board is unanimously of the opinion that his continued involvement in an executive capacity is vitally important to the success of the Group.’²¹ Mr Agarwal has indeed been developing his company for the benefit of shareholders: Volcan, the trust owned by himself and his family, controls more than 62% of Vedanta’s shares.



Bumi’s Kaltim Prima Coal mine in Kalimantan, Indonesia - see case study 3.8 on p. 40. Photo: JATAM

3. CASE STUDIES

3.1 African Barrick (FTSE 250 listed)

Barrick Gold Corp of Canada is the world’s biggest gold producer in terms of mined output. The company’s four main Tanzanian mining operations were spun off by the Canadian parent in March 2010 when it launched African Barrick Gold (ABG) through an initial public offering (IPO) on the LSE. Barrick currently holds around 74% of ABG. Some analysts saw the IPO as an ‘attempt by Barrick to reduce portfolio risk’, with one commentator judging it simply ‘a marketing thing’.²²

Within nine months, the company suffered what Numis Securities described as ‘two false starts’, and by October 2010 its share price had fallen by almost 10%.²³ Hedge fund manager David Einhorn had disposed of his stake in ABG by January 2011, declaring that only the rising price of gold ‘prevented an even worse outcome’.²⁴

African Barrick blamed its poor performance mainly on the theft of fuel intended for trucks and mining equipment at one of its four mines. The impression it conveyed was that such events were all too likely in a country like Tanzania. Barrick spoke of ‘criminal fuel-theft syndicates’ which had ‘widely infiltrated our mining department’.²⁵

In June 2009, a report presented to the Christian Council of Tanzania (CCT), researched by a team under Dr Mkabwa Manoko of the University of Dar es Salaam, concluded that nickel, cadmium, lead and chromium levels in water sediment and soil samples, taken from the vicinity of Barrick’s North Mara

mine, were higher than standards set by the World Health Organisation and by the Tanzanian and US environmental protection agencies. In respect of nickel, lead and chromium, levels in water had become much higher than when observed in 2002.²⁶

The report followed an alleged poisonous leak from the mine in May 2009 into the Thigithe river, Rarime district, which local people claimed had killed their cattle, and even some people. Tanzanian human rights organisations called for the mine to be closed until an independent enquiry could be held, while Barrick dismissed the accusations. No independent enquiry has yet been organised; nor has Barrick called for one.

In May 2011, Zahra Moloo, a correspondent for the Africa-wide news service Pambazuka, published an account of her investigation into the consequences of this disaster. She found what had happened nearly two years before still at the forefront of the minds of local people – but not, apparently, of the minds of those representing the company. When Ms Moloo asked African Barrick spokesperson Charles Chichester for an interview she was refused, with Chichester reportedly claiming that ‘the Thigithe River incident was no longer an issue of concern’.²⁷

Village chairperson Abel Kereman Nyakiha told Moloo that ‘more than 40 people from the three villages of Weigita, Nkerege and Nyakunguru have died since the spillage occurred in 2009, 20 of them alone in the months between June and October 2010’. Mr Nyakiha added: ‘We don’t yet have an official record at

the village level, but we have asked each hamlet to record all the deaths that have taken place. The problem areas are three and these are the areas that are primarily using Thigithe river water in their everyday life.²⁸

Nyahiri Ryoba Mwita, a farmer from Weigita, also testified to the loss of 39 heads of livestock due to the spill, claiming animals continued to die later: 'We have complained, but our complaints were not listened to. The company has never been here to talk to the villagers who have been affected by the spillage.'²⁹

In March 2011, Bloomberg reported a board member of the Dar es Salaam Stock Exchange saying that ABG planned to start trading shares on the East African bourse later in the year.³⁰

On 23 May 2011, in one of the most serious recent incidents of its kind reported from sub-Saharan Africa, five men (some reports claimed seven) were shot dead by security forces at North Mara and at least a dozen injured, when several hundred people entered the mine site in search of gold ore. ABG issued a statement that: 'A number of intruders sustained gunshot wounds, resulting in seven intruder fatalities and twelve injuries. African Barrick Gold sincerely regrets any loss of life or injury on or near its mine sites. The company will continue to support the government and the community in their efforts to improve law and order and security in the North Mara region.'³¹

This was by no means the only event of its kind to have impacted on North Mara communities and the company over the past three years – although it was arguably the worst. One Canadian journalist reported: '[I]t has tainted Canada's international mining image, say industry observers.'³²

Previously, barely nine months after ABC's London listing, evidence provided by an independent journalist had cast strong doubts on the company's claim to observe fundamental human rights around its North Mara operations. In an unusually harsh critique of the company's behaviour, Bloomberg journalist Cam Simpson reported in December 2010: 'At least seven people have been killed in clashes with security forces at the mine in the past two years.' (The statement was based on testimony given to Simpson by 28 people he interviewed.) 'In at least four cases, police acknowledged the shootings in contemporaneous press accounts,' said Simpson, while Barrick company documents showed that the company 'pay[s] the Tanzanian government for federal police protection at the mine and employ[s] private armed guards'.³³

Barrick did acknowledge deaths at the North Mara mine during 2008 in its 486-page UK pre-listing prospectus of March 2009, stating that: 'In some cases, those involved in security incidents have been injured, sometimes fatally.' However, the company has never admitted responsibility for such injuries or deaths.

A year and a half later, in November 2010, Barrick announced it had joined an international group of extractive companies, governments and non-profit organisations that promotes voluntary standards to foster human rights in security operations. These Voluntary Principles on Security and Human Rights include one which recommends that companies should report credible allegations of human rights abuses by public security forces to the appropriate authorities.³⁴

Andrew Wray, head of investor relations for ABG, promised Cam Simpson that his company 'will make a formal request to the regional police commissioner's office for an investigation if it's made aware of allegations of abuse'.

Nonetheless, says Simpson, ABG 'mentioned no violence at the mine in reports describing its social responsibility record on community relations, health and safety for 2009 and 2010'. The company's 2010 report simply stated: 'At Barrick, we are committed to making a positive difference in the communities in which we work.'

In a December 2010 written response to questions posed by Bloomberg, Wray also said that: 'ABG categorically refutes any claim that any persons injured or killed were artisanal or small scale miners' (as if this justified the shooting of citizens who may not fall into this category). But, according to Simpson, Wray 'decline[d] to comment on specific cases, citing active or potential police investigations, except for one. He said allegations that mine security inflicted lethal injuries in that instance are "fundamentally untrue". They were the result of a fight between intruders over stolen ore.'³⁵

In the space of little over a year, this UK company, a subsidiary of one of the most powerful mining corporations on earth, has had a great deal to answer for. First, according to local people it has neglected to take seriously allegations of major failures at its largest Tanzanian project, leading to the poisoning of people and animals. Second, it is accused of effectively standing by while 'security' forces guarding its assets kill and injure those claimed to be sabotaging or 'invading' the company's operations. Third, whatever the truth behind these events, African Barrick has not joined calls for an independent enquiry; nor has the UK FSA demanded one.

Just a year before, the Norwegian Government Pension Fund (which is managed by the Ministry of Finance) had, on the recommendation of its Council on Ethics, removed Barrick Gold from its investment 'universe'. This followed an investigation of the company's operations at its Porgera mine in Papua New Guinea, which yielded evidence of significant environmental violations. The Council concluded that Barrick posed 'an unacceptable risk of contributing to ongoing and future environmental damage'.³⁶

Thus one European government made a considered judgment on the consequences of continuing finance for a company whose behaviour it could not condone; nor did it place much faith in the company changing its ways. By contrast, another European government authority, that of the UK, just over a year later, accepted that same corporate entity on to its premier stock exchange – and maintained it there, even when accusations of serious environmental pollution (causing the deaths of humans and animals) and complicity in unlawful killings swirled around it.

What, we may wonder, was the UK Companies Act of 2006 – with its promise to significantly improve the corporate social responsibility behaviour of London-listed businesses – all about?

3.2 Brinkley Mining (formerly AIM listed)

Before a mining company may be admitted to trading on AIM, an independent ‘competent person’ is required to assess its ‘trustworthiness’, by assembling a wide variety of data specific to the industry, such as on the nature, availability, grade, and economic value of a deposit; the extraction and processing technologies to be employed; the environmental implications of any particular project; the legal status of land to be used; and the issue of exploration or mining permits.³⁷ (See also Glencore, case study 3.6.)

What a ‘competent person’ need not carry out (and is not usually qualified to perform) is an assessment of the wider socio-political risks a company may face. As the example of Brinkley Mining demonstrates, this is arguably a major omission of what should be a key prerequisite of the pre-admission process.

SRK Consulting is one of the leading international independent advisory and engineering groups that prepare listing particulars for mining company IPOs. Among SRK’s recent reports has been a resources estimate, performed for African Minerals’ Tonkolili venture in Sierra Leone (see case study 3.3), and an independent engineers’ report which included ‘an ... opinion of projections and cash flow forecasts’ for Vedanta Resources, prior to its inclusion on the LSE in December 2003.

SRK prepared a ‘competent person’s report’ for Brinkley Mining’s application to trade on AIM in May 2006, where it estimated the mineralised potential of the Waterval uranium prospect in South Africa: a lease then 49%-owned by Brinkley through its associate company Western Uranium.³⁸

Brinkley’s other major interest at the time was in the Democratic Republic of Congo (DRC)’s uranium potential, specifically uraniferous deposits in war-torn Katanga Province. In October 2006, Brinkley signed an agreement with state-run CGEA (the Congolese Atomic Energy Authority) under which a new company would be formed, called SOCIMAR, over which Brinkley would have board control. SOCIMAR would be entitled to access and test five areas for the presence of uranium, while Brinkley pledged to certify ‘export materials with a view to implementing proper controls and to restrict the illicit export of radioactive material’.³⁹

The plan seemed practicable and mostly above suspicion. However, there was an unusual clause in the agreement, whereby Brinkley would also be granted priority rights to any uranium discovered through its explorations. The clause is unusual because uranium is a strategic mineral whose ownership is usually restricted to a government authority. Some of this fissile fuel, included in the bombs dropped on Hiroshima and Nagasaki, had come from the then Belgian Congo.

Brinkley suffered a pre-tax loss of nearly £1 million for the first half of 2007, and by the end of that year was still awaiting its prospecting rights from the DRC Government. According to the *Financial Times*, Brinkley’s shares had ‘slumped to a new low ... in spite of [the company] insisting that mining agreements signed with the [DRC Government] were legally binding. Reports ... suggested the arrangements were under threat as part of a DRC anti-corruption drive.’⁴⁰

By September the following year, Brinkley had been forced out of DR Congo, as well as withdrawing from Chad. In August 2009, the company announced it would dispose of its two remaining assets in South Africa and the

Sudan – instead turning itself into ‘an investing company with its main asset being its cash balance’.⁴¹

What had happened to bring Brinkley down?

From the outset, pointed questions should have been asked about the role of the company’s executive chairman, Gerald Holden. He is a financier who spent most of his career at Barclays Bank, for seven years as global head of mining and metals. Why was Holden able to take a position which, in principle at least, violated a key tenet of corporate governance, as laid down in the 1992 Cadbury Report, which strongly advocated a separation of CEO and chairman roles?⁴²

Mr Holden has never been charged with corrupt dealings in promoting Brinkley’s DR Congo ventures, but he was less than circumspect in negotiating them and, at the very least, incompetent in defending them. On 16 September 2007, two days before the company’s shares dropped to an all-time low, and while Holden was defending the legality of his agreement with the DR Congo’s CGEA, Ben Laurance of the London *Sunday Times* broke a disturbing story.

Laurance claimed to have established that ‘a convicted fraudster played a pivotal role in securing uranium mining rights in the Congo for the British minerals group Brinkley Mining’. The alleged criminal, a South African called Niko Shefer, had been ‘sentenced to 14 years in jail in the late 1980s for his part in one of South Africa’s biggest bank frauds. Moreover, a 2002 United Nations report into the plunder of the Congo’s natural resources named him as one of 54 people who should be subjected to travel restrictions and penalties.’⁴³

‘It has now emerged that a Shefer company was instrumental in securing a deal for Brinkley to mine uranium in

the Congo,’ wrote Laurance, going on to say that ‘since the deal was struck, Shefer was declared *persona non grata* by the government of the Democratic Republic of Congo (DRC) last month. The minister who approved the deal has been sacked and a civil servant involved in the agreement has been suspended.’

Laurance commented: ‘[T]he company has yet to tell shareholders of the new developments’; while ‘Shefer’s role in Brinkley’s DRC uranium project has never been disclosed to investors.’ However, ‘papers seen by *The Sunday Times* show that Brinkley acknowledges that a key role in securing the deal was played by Sentinelle Investments. Shefer’s wife’s family trust has been a major shareholder in Sentinelle. Shefer’s accountant is the company’s sole director.’

Moreover: ‘The other key Congolese player was Fortunat Lumu, head of the country’s atomic energy commission. He was suspended from his job this year after being accused of agreeing uranium deals with Brinkley without the authorisation of DRC president Joseph Kabila. Science minister Bonane was sacked from the government in July only days after Brinkley announced in London that a deal with the DRC had been signed.’⁴⁴

On 18 September 2007, Holden stuck up for Brinkley in an interview he gave to Allan Seccombe of miningmx.com. Without naming any specific party, he claimed that ‘People have been putting rumours into the market for some months now to damage us and get us out of the DRC.’ Holden agreed that Sentinelle Investments ‘had laid the foundations with the CGEA for about 90% of the transaction’ although he claimed this was ‘before Brinkley bought the deal’.

Holden then said that Shefer – the convicted fraudster – was ‘extremely well connected in the DRC, making a valuable consultant’. The former Barclays mining investment chief admitted that Brinkley had put some reliance on Shefer, although he claimed this was ‘sporadic and likely to become less as Brinkley set up and established its own networks in the country’. Further: ‘We’ll use whoever we need to at different times and if Niko can help then we will talk to him again.’⁴⁵

A year later, and with Brinkley on the brink of collapse, this saga might have been forgotten. Then, among the numerous ‘Wikileaks’ released in early 2011, was a cable, dated 11 September 2007, sent home by Roger A. Meece, US Ambassador to DR Congo, which cast further light on the affair. Meece was concerned to examine allegations that a company called Malta Forest, long active in DR Congo, had been ‘trafficking’ uranium illegally out of the country. The ambassador found no compelling evidence that this was true. But he confirmed that Fortunat Lumu – the CGEA official named in Laurance’s

Sunday Times story – ‘planned to ... push Malta Forest aside and form a personally profitable partnership with Brinkley’.⁴⁶

On 3 April 2009, the DR Congo Government released its examination of a host of contracts signed under the previous regime that raised major concerns over their legitimacy, as well as imputing complicity between former political leaders and officials and overseas mining companies. The Congolese peoples had recently endured the most brutal civil conflict in the recent history of Africa (which is not yet at an end).

The role played by AIM-listed Brinkley Mining may merit only a footnote in a future history of the continent. However, it is clear that the UK regulatory authorities had failed to maintain a thorough, ongoing check on the company’s activities, even when allegations of impropriety, verging on corruption, surfaced in the national press.



Bumi’s Kaltim Prima Coal mine in Kalimantan, Indonesia - see case study 3.8 on p. 40. Photo: JATAM

3.3 and 3.4 African Minerals (AIM listed) and London Mining (AIM listed)

African Minerals

African Minerals is listed on AIM but is a ‘non-UK registered company’ and, as such, ‘not all fields of data are available at this time’ – to quote the formula used by Morningstar/Hemscott, a leading UK investors’ services provider. In fact, its registered office is in Bermuda.

What we do know is that the company is effectively controlled by Frank Timis, who was initially its executive chairman. This is yet another example of a breach of the guidelines for good corporate governance set down in the Cadbury Report twenty years ago; see Vedanta and Brinkley case studies. Timis is a 46-year-old Romanian-Australian financier domiciled in London with a track record of disappointing investors. Those who bought shares in his Regal Petroleum some years ago invested in what seemed a promising Greek oil discovery, hyped up by Timis between June 2003 and May 2005, before the find proved to be chimerical (‘commercially unviable’). In 2009, Regal was fined £600,000 by the LSE’s AIM – the largest penalty the market had imposed – when it found that Timis’s company had ‘on 11 separate occasions ... failed to take reasonable care to ensure its announcements were not misleading, false or deceptive, and did not omit material information’.⁴⁷

In 2005 Timis bought into AIM-listed Sierra Leone Diamond Corporation, via his Bermuda-registered Timis Diamond Corporation.⁴⁸ With the acquisition came some highly prospective diamond fields and the even more inviting Tonkolili and Marampa iron ore projects. On 16 August 2007, Sierra Leone Diamond was renamed African Minerals on AIM.⁴⁹

In January 2008, Sierra Leone Diamond was fined for putting out ‘misleading and unrealistically optimistic information’ following statements made by the company in summer 2006 that it had found ‘a significant number’ of rare pink diamonds in Sierra Leone. However – and as the company admitted in December that year – the pink hue got ‘washed out’ when put through an acid-cleaning process.⁵⁰

While Timis made some attempt to correct the official record, it took a year and a half before the LSE took steps to censure the company, and only then by way of a ‘private censure’, accompanied by a relatively modest £75,000 fine (around the price of a genuine 1 carat intense pink Rio Tinto Argyle diamond). Worse, it appears that the public was not informed about this censure for another two and half years when the *Financial Times* divulged it in July 2010.⁵¹

African Minerals began testing the Tonkolili deposit in Sierra Leone in 2003 and judges that it might host a massive 10 billion tonnes of ore. The company was finally granted a mining licence in July 2009, currently covering an area of 227 square kilometres.⁵²

Some Sierra Leone local citizens claim to have been literally bulldozed by Timis’s company, while others say they have been fired upon by ‘security’ forces protecting his interests. According to Sierra Leone’s Right to Food network: ‘Since 2003 African Minerals has ... promised development, jobs and better infrastructure. Nevertheless, its operations have resulted in bloody confrontations ... 500 people live in Kemedugu [where African Minerals operates], but when we arrived there it seemed like a ghost town. Only a dozen inhabitants came out to meet us on the village square, and bullet holes from the last riot were still visible on a number of the houses.’

The Right to Food network report continues: ‘The protest is said to have been triggered by the firm’s attempt to conduct surveys regarding the upcoming construction of a dam. One village inhabitant told us, “If they build the dam, we will lose water for our fields. We are afraid that we will not be able to grow enough rice.”

‘According to the police a number of young men working for African Minerals attacked the firm’s headquarters and set an excavator on fire. The police response was massive. They stormed the village and destroyed a number of houses. More than eighty people were arrested and there were numerous injuries, some of them serious. The majority of the villagers fled to the nearby forests. Those who have returned to the village fear further attacks. As yet African Minerals has refused to respond to the request by a member of the alliance for the Right to Food for a statement regarding the incidents.

‘According to the villagers the firm has refused to engage in any dialogue with them. They have attempted to communicate with the firm on innumerable occasions and negotiate a compromise involving compensation for the land the firm is using to no avail. The only result has been massive police violence ... Even though African Minerals also talks about infrastructural improvements on its website, there is no evidence of these in Kemedugu. “We are afraid that our land will be ruined by African Minerals and we will not be provided with any compensation,” says [Kemedugu Chief] Musa Turay bitterly.’⁵³

London Mining

Running parallel with African Minerals’ forays into Sierra Leone are those of another AIM-listed company, London Mining. In contrast to Timis’s dubious corporate vehicle, London Mining is driven by an eminent board of non-

executive directors, backed by a clutch of ‘respectable’ investment funds (including F&C Asset Management, Schroder Investment Management, Fidelity Investment, BlackRock Inc., the Union Bank of Switzerland, Investec and Barclays Wealth) none of which holds a controlling stake in the company.⁵⁴

London Mining has not progressed half as far at its Marampa project as African Minerals has at Tonkolili. The company did not record any revenue for the past two years and in February 2011 reported a pre-tax loss of US\$58 million for the fourth quarter of 2010.⁵⁵

Adding to London Mining’s concerns, in November 2010, Sierra Leone’s environmental protection agency temporarily suspended the company’s on-site operations, citing its failure to comply with environmental regulations. ‘Yet by the end of the day the head of the agency recanted and the company announced work was going on as usual.’⁵⁶

London Mining had already won some extraordinary concessions from the Sierra Leone Government, allowing it an 80% reduction in income tax for ten years and an 80% reduction in other major revenue streams for no fewer than 26 years. Its corporation tax was fixed at only 6% (in contrast to the 37.5% set under Sierra Leone’s 2009 Mining Act); duty on mining materials at 1% (rather than the official rate of 5%); royalties were reduced to 3%, rather than the 4% mandated by state law.⁵⁷ (For its part, African Minerals also benefited from some concessions – its corporation tax rate was set at 26%.)

Sierra Leone is one of the world’s poorest nations, yet endowed with some of its richest mineral deposits. For decades its economy has been sacrificed to what is often called the ‘resource curse’ – not to mention the ravages of a horrendous recent war, centred around its mining fields. As the people begin to

recover from these traumas, a number of organisations have vigorously struggled to recapture the proceeds of mineral wealth in order to ‘rebuild’ the nation’s civil society.

One of these is Sierra Leone’s Network Movement for Justice and Development (NMJD). At the February 2011 World Social Forum in Senegal, the NMJD, along with the Association of Journalists on Mining and Extractives (AJME), hosted a symposium on ‘Reforms in Mining Regime – Challenges in Sierra Leone’, specifically targeting London Mining’s operations. The symposium declared that the West African country ‘since the early 1980s till date, has produced billions and billions of dollars’ worth of precious minerals, but yet remains at the very bottom of the human development index and classified as a least developed nation.

‘While structures such as the Presidential Task Force, the Strategic Policy Unit, the Anti Corruption Commission, the Income Tax Act of 2000, the Law Reform Commission etcetera have been put in place to enhance reforms that would ensure that the country benefits most from its already hugely depleted mineral wealth, it came out that the said structures are yet to display much seriousness in fulfilling their all-important mandates.’ Concerns were raised that ‘political will seems to be there but that undue priority is being given to attracting investors of all sorts, rather than striving to change the resource-curse syndrome, thereby meeting the expectations of the electorate and the suffering masses’.⁵⁸

According to panellists at the forum, while the 2009 Mines and Minerals Act ‘has the potential of changing the history of mining in the country’, nonetheless ‘the continued violation of some of its crucial provisions to so-called attract investors who often turn out to be economic criminals, is undermining the very act and at the same time treating the laws of the land with disregard’.

In this key respect, these two AIM-listed mining companies, African Minerals and London Mining, were singled out for indictment.



Bumi's Kaltim Prima Coal mine in Kalimantan, Indonesia - see case study 3.8 on p. 40. Photo: JATAM

3.5 Vedanta Resources (FTSE 100 listed)

In May 2011, the world's seventeenth largest publicly-listed mining company, Vedanta Resources,⁵⁹ said it soon expected to float its Zambian subsidiary, Konkola Copper Mines (KCM), on London's Stock Exchange. Anil Agarwal, Vedanta's progenitor, majority shareowner and executive chairman, had expressed a similar intention in 2010.⁶⁰ Possibly prompted by Glencore's May 2011 IPO, and with copper prices at a high, the UK-domiciled 'Non-Resident Indian' presumably judged the time ripe to attempt a repeat of Vedanta's LSE debut in December 2003.⁶¹

Neither a pre-listing prospectus for KCM nor any formal announcement of a float has yet been issued. Serious allegations have been levelled against KCM's behaviour (see below), but whether these will be thoroughly exposed well in advance of a listing must be in doubt.

That doubt is strongly compounded when we realise just how inadequate to the point of misrepresentation was the prospectus published by Vedanta itself more than eight years ago. We have good reason to demand that the company's appalling record of violations and mismanagement in the succeeding years will be addressed in all its detail before the UK's financial regulator admits any of its subsidiaries to public trading of their own shares.

If Vedanta is indeed an intrinsically 'bad actor' (a concept soon to be discussed by the US Securities Exchange Commission as it works on implementing one of the provisions of the Dodd-Frank Act),⁶² what should now be done to prevent the sins of the parent being repeated by the child?

In 2007 Norway's Council on Ethics released the results of a two-year

examination of Vedanta's operations, primarily those in the Indian state of Orissa (see below). It concluded that '[C]ontinuing to invest in the ... company would present an unacceptable risk of contributing to grossly unethical activities.'⁶³

In response to this indictment, the Norwegian Finance Ministry sold all the government's Vedanta shares (valued at around US\$13 million). An open invitation had already been extended by the Council to Vedanta to refute its findings and, at any future point, demonstrate a radical improvement in its *modus operandi*, at which time the Council would consider reversing its earlier stance. Vedanta has failed to do so, and the company remains 'blacklisted'.⁶⁴

Norway's is not the only government concerned at allegations of Vedanta's behaviour. In the second half of 2010, Agarwal had inked an agreement (worth around US\$9.6 billion) with Cairn Energy in order to secure a controlling share of the Scottish oil enterprise's Indian subsidiary. With this deal Vedanta would secure access to India's largest known oilfield, in Rajasthan. Although quickly bankrolled by a number of UK and other commercial banks, the arrangement raised fears within India's state-owned oil and gas producer ONGC (itself holding a 30% stake of the field) that it would lose effective control over a prized national resource, and sacrifice an equitable share in the project's future royalties.

In view of this, prominent ex-civil servant E.A.S. Sarma (a former adviser on energy to India's government planning commission) wrote to Indian Prime Minister Manmohan Singh, questioning the appropriateness of the takeover. Said Mr Sarma: 'Vedanta's track record so far in mining and power sectors has not been satisfactory ... To allow that company to get hold of

a sizeable share in the equity of the company that controls the extraction of hydrocarbons in Rajasthan and elsewhere may not be desirable.’

As a result of this intervention, the Indian Prime Minister’s Office called for a review of Vedanta’s track record. It was an unusual move on the part of the government. More importantly, in late 2007, India’s Supreme Court had heard compelling evidence of contraventions by Vedanta’s aluminium subsidiary (VAL) of state forest and environmental regulations at the company’s costliest project to date.

The Niyamgiri bauxite deposit lies at the heart of a thickly forested Kondh tribal area, linked to the nearby Lanjigarh alumina refinery which serves Vedanta’s Jharsaguda smelter, 335 kilometres away – all three situated in Orissa. In rejecting Vedanta’s application to access Niyamgiri, the judges had paid tribute to the weight of allegations against the company, contained in the Norwegian Council of Ethics report.⁶⁵

Orissa: breaking more than one law

The Niyamgiri mountain is regarded by local tribal inhabitants as Niyam Raja roughly translated as ‘Lord of the Law’ or ‘Lord of Dharma’: ample testimony to the reverence paid by the Dongria Kondh to a deeply sacred place.⁶⁶

In September 2005, an inquiry by a leading advisory committee to India’s Supreme Court (the Central Empowered Committee, or CEC) concluded that *inter alia* Vedanta had ‘falsified information’ to obtain environmental clearances for the alumina refinery under construction on plains below the mountain. The company had also destroyed more than ten hectares of forest land. The CEC urged the mining venture be rejected on environmental grounds, and also because it would violate the constitutional rights of the Kondh people.⁶⁷

Despite the CEC’s forthright recommendation, during the succeeding five years Vedanta continued battling to clear the mining project. Meanwhile many Khonds rose up in vociferous opposition to what they perceived as an unprecedented threat to their land and livelihoods. The strength of their campaign attracted the backing of leading Indian human rights and environmental NGOs and of international organisations such as Amnesty International and ActionAid.⁶⁸

In September 2009, the UK-based tribal peoples’ campaign group Survival International submitted a complaint about Vedanta’s activities around Lanjigarh to the UK Government’s National Contact Point (NCP) for a ruling under guidelines set by the OECD for the conduct of multinational corporations.⁶⁹ The NCP ruled that Vedanta ‘did not respect the rights of the Dongria Kondh’; did not ‘consider the impact of the construction of the mine on the [tribe’s] rights’; and ‘failed to put in place an adequate and timely consultation mechanism’.

The UK Government body concluded that a ‘change in the company’s behaviour’ was ‘essential’. Moreover, it criticised Vedanta for ‘fail[ing] to provide any evidence during the examination’ despite repeated requests. According to Survival International, this was ‘the only time a [UK] company has refused to participate in an OECD investigation’.⁷⁰

In February 2010, Amnesty International published detailed allegations about the company’s social and environmental violations in the Lanjigarh area, which Vedanta has neglected to answer.⁷¹

Finally, in August 2010, a high-level independent report, commissioned by India’s Ministry of Environment and Forests (MoEF), unequivocally rejected the Niyamgiri mining project and also urged a halt to Vedanta’s planned sixfold



expansion of its Lanjigarh refinery. The report’s authors concluded: ‘The Vedanta Company has consistently violated the FCA, FRA, EPA⁷² and the Orissa Forest Act in active collusion with the state officials. Perhaps the most blatant example of it is their act of illegally enclosing and occupying at least 26.123 ha of Village Forest Lands within its refinery, depriving tribal, dalits [lowest-caste] and other rural poor of their rights.’⁷³

Shortly afterwards, the MoEF minister, Jairam Ramesh, went on record to criticise India’s Supreme Court for permitting construction of the Lanjigarh refinery in the first place; and he placed a ban on expansion of the refinery.⁷⁴

At the time of writing, Vedanta and its partner, the state-owned Orissa Mining Company, are trying to overturn this

ruling. However, following an Orissa High Court ruling in January 2012, the expansion has been barred. In April and May 2011, mismanagement at the refinery resulted in two involuntary and illegal on-site releases of highly alkaline toxic solid wastes, commonly-known as ‘red mud’.⁷⁵ On several occasions between 2007 and 2009, the Orissa State Pollution Control Board had criticised Vedanta for the poor construction of its red mud pond, issuing three ‘show cause’ notices to the company and ordering that it prevent these wastes entering into the adjacent Vamsadhara river.⁷⁶

On 5 April 2011, part of the pond wall burst open, causing many tonnes of these wastes to cascade into the river for around three hours. Although a video clearly showing evidence of the violation was swiftly posted on YouTube,⁷⁷ the CEO of Vedanta Aluminium denied that

there had been any breach of the wall, even suggesting the footage was part of a 'dirty tricks' campaign by those opposed to the mining.

Just six weeks later, on 16 May 2011, the pond wall broke once again, prompting Amnesty International on 1 June to issue a statement drawing attention to what it called a 'toxic sludge leak' that 'threatens rural communities'. Amnesty estimated that 'four to five thousand people in twelve villages are threatened by the leaks, which could worsen during heavy monsoon rains'.

It maintained that 'Local people have protested that they have not been given any information by Vedanta Aluminium or the government about efforts to prevent further leaks ... Vedanta Aluminium denies that there were any spills from the red mud pond and has reportedly not repaired the damaged areas.' But Amnesty 'is ... not aware of any attempts by the company to assess pollution of land and water caused by the reported leaks, or to clean up any damage that has occurred'.⁷⁸

In addition, the Indian National Human Rights Commission identified 3.66 acres of land within the refinery that it said legally belonged to the tribal Khond, as a result of which the local administration registered a case of land-grab against Vedanta.⁷⁹

Jharsaguda: in the smelting pot

From the beginning of its trajectory in Orissa, Vedanta conceived a three-pronged design to become one of the world's major aluminium producers, and at the cheapest possible cost. It would build a smelter to receive alumina from the refinery it hoped (and expected) would be fed by bauxite on Niyamgiri mountain.

The Jharsaguda smelter has been under construction since 2005. In the year April 2010 to April 2011, Vedanta claims the plant produced 380,000 tonnes of aluminium.

During this period, the Lanjigarh refinery had been supplying the smelter daily with hundreds of truckloads of bauxite that travel 335 kilometres between the two points.⁸⁰ These journeys have significantly damaged road surfaces, caused a large number of accidents and stirred up dust and particulates, the impacts of which will inevitably deepen as output from the smelter mounts.⁸¹

Prafulla Samantara, a respected Orissa civil society organiser, in mid-2006 accused Vedanta of illegally undertaking construction work on the smelter and its captive coal-fired power plant specifically of destroying protected forests, trampling over vegetation and polluting a stream.⁸²

In 2007, Mr Samantara secured an order from the Orissa State Pollution Control Board (OSPCB) which demanded Vedanta cease the smelter construction. Yet, within a month, the order had been withdrawn. Mr Samantara issued a vociferous objection to what he considered evidence of pressure by the company on the OSPCB. When, a year later in January 2008, he pleaded for the case to be heard before India's National Environmental Appellate Authority (NEAA), he was refused. The NEAA determined that he was not a 'person aggrieved' within the meaning of the law, since he was not directly affected by the project.

However, on 6 May 2009, in something of an historic decision, Delhi's High Court recognised that Mr Samantara was indeed 'aggrieved', since he was an environmentalist with close connections to communities around the smelter site. The court delivered an

eloquent appraisal of activists like Mr Samantara, recognising that they play a vital role in safeguarding rights and obligations broadly set out under the country's constitution.

Said Judge S. Ravindra Bhatt: 'If standing before a special tribunal, created to assess impact of projects and activities that impact, or pose potential threats to the environment, or local communities, is construed narrowly, organizations working for the betterment of the environment whether in form of NGOs or otherwise, would be effectively kept out of the discourse that is so crucial an input in such proceedings.' The court then ordered Vedanta to pay 50,000 rupees (about US\$1,000) to Mr Samantara by way of a fine and in meeting his costs.⁸³

In July the same year, the OSPCB issued show-cause notices against Vedanta, relating to various violations of water and air pollution acts at the Jharsaguda captive power plant: negligent disposal of coal ash, unacceptable emissions from the ESP (electrostatic precipitator), and defects of the smelter's effluent treatment plant and in the coal handling area.⁸⁴

More than a year later, thanks to the diligence of the *Hindustan Times* in its use of India's Right to Information Act, journalist Priya Ranjan Sahu revealed that 'two 135 MW captive power units of Vedanta Aluminium's 500,000-tonne-a-year smelter never got any clearance from the board'.⁸⁵ Furthermore, said Sahu: '[T]he "trial consent to operate" order OSPCB issued to the smelter and seven other 135 MW captive power plants expired on March 31 this year [2010].'

According to Sahu, the board 'refused to renew its consent, citing numerous violations of its guidelines', and issued four show-cause notices between May and September 2010. Even if the company had satisfactorily responded to these, Sahu pointed out, 'that doesn't

explain how the two power plants for which even trial consent orders were not issued remain in operation'.⁸⁶

Zambia: the toxic river

In 2004, Vedanta Resources acquired a 51% stake in Konkola Copper Mines (KCM), paying \$48 million in cash. During the first full three months of operation, the company posted net profits of \$26 million, provoking a number of Zambian politicians to ask why the takeover had been allowed in the first place at such a low price. A 'call option', secretly negotiated in 2004, also enabled Vedanta to exercise a right to purchase another 28.4% in KCM from Bermuda-registered ZCI, effectively granting Vedanta a 79.4% monopoly.⁸⁷

Vedanta benefited from an earlier drastic privatisation of the country's once highly profitable state-owned copper industry. The labyrinthine process by which this was engineered, specifically in relation to KCM, was exposed in a November 2001 report by Patricia Feeney of Oxfam.⁸⁸ The report raised urgent questions over KCM's record of environmental pollution and its impact on the health of workers and communities.

Ms Feeney's strictures applied to the company's Konkola operations before they were sold to Anglo American and then on to Vedanta. However, in the light of a later disaster, which occurred when KCM had been firmly under Vedanta's control for nearly three years, the report sounded an important warning note: 'Women, men and children on the Copperbelt have to live with a range of environmental hazards. Heavy metals such as arsenic and lead and other industrial chemicals have contaminated streams and the main Kafue River.'

Although Vedanta took some steps to reduce this contamination, its failure to adopt a comprehensive management

plan soon became self-evident. By early November 2006, KCM's nine-kilometre-long pipelines, conveying slurry for disposal from its copper tailings leaching plant, had deteriorated to bursting point. And burst they did – precipitating a flood of highly acidic effluents into the Kafue river.

The discharges led to a major disruption of domestic water supply to 75,000 residents of the nearby town of Chingola. The country's tourism, environment and natural resources minister, Kabinga Pande, declared in a ministerial statement to Parliament on 14 November 2006: 'The situation experienced recently is not accidental but is a result of the failure by the current mine owners to implement the KCM Nchanga Mine Environment Plan (EMP) that was inherited from the Anglo American Corporation, the previous owners of the mines.'⁸⁹

A detailed examination of Zambia's minerals industry, published in 2007 by an alliance of Zambian civil society organisations, noted that the Kafue river had 'turned blue' as a result of the disaster and estimated that the discharges raised the river's chemical concentrations to 1,000% of acceptable levels of copper, 77,000% of manganese and 10,000% of cobalt.⁹⁰

Later the same year, in a report by three UK development NGOs, the Environmental Council of Zambia was cited as declaring that KCM management had displayed 'grossly negligent' behaviour, resulting in rivers used by local communities for drinking water becoming 'significantly polluted'. The report threw strong doubt on KCM's claims to be 'corporately responsible' towards its subcontracted workers and pointed out that the company was failing to make a fair and equitable contribution to government from its profits.⁹¹

In November 2010, KCM yet again polluted the same Kafue river it had poisoned four years earlier. A court fined the company and found it guilty of willfully failing to report the 'accident' to the authorities.⁹² KCM's lawyer, Mr Elijah Banda, reportedly told the court that the company 'was remorseful and had undertaken necessary measures to mitigate the damage caused and to prevent future incidents'.⁹³ This was almost exactly what Vedanta had promised to do following the 2006 disaster.

Readers may note a similarity between these Zambian incidents and recent events at the Lanjigarh refinery site (see above); there is also a pattern to Vedanta's dismissive attitude in response to them. The Precautionary Principle places responsibility on the party contemplating an action for proving that that action or practice will not cause unacceptable harm.⁹⁴ At its refinery in Orissa, and its operations in Zambia's Copperbelt, Vedanta has signally failed this test – and continued doing so. In late March 2011, four subcontracted KCM miners at the Nchanga open pit in Chingola went to their deaths after being suffocated by an excavated heap of soil.⁹⁵

The criminally negligent attitude of Vedanta to site safety, already warned of by the three UK NGOs in 2007,⁹⁶ has not substantially improved. This leads us directly to exposing one of the worst examples in recent years of the fatal neglect of its contracted workforce by a UK-listed company.

Korba: 41 workers buried alive⁹⁷

One of the concerns mentioned in Mr Sarma's letter to the Indian Prime Minister's Office (see above) was the September 2009 collapse of a power plant chimney, under construction at Korba town in the Indian state of Chhattisgarh. The disaster claimed

the lives of at least 41 workers (possibly considerably more)⁹⁸ employed by two firms contracted to Vedanta's subsidiary BALCO (Bharat Aluminium Company).⁹⁹

It was around 4pm on 24 September 2009 that the 245-metre chimney toppled to the ground.¹⁰⁰ As local youths ran towards the clouds of billowing dust to help rescue workers and pull bodies from the rubble, BALCO officers were observed fleeing the scene.

There are no precise records of who died in this worst Indian industrial accident of recent times. In all the confusion immediately following the event the subcontractors' on-site office was mysteriously burned down whether by company officials (as some have alleged) or by incensed workers and local people. The office contained records of workers' names and other details that might have enabled the authorities to understand the causes of the accident and exactly how many workers had gone missing.¹⁰¹

Vedanta executive chairman Anil Agarwal has claimed the tragedy was the result of 'severe thunderstorms and lightning' earlier that day.¹⁰² However, an investigation commissioned by the Korba police and carried out by the Raipur-based National Institute of Technology (NIT) in Chhattisgarh, challenges this assertion.

The NIT spent two days on-site, sifting through the wreckage soon after the disaster and analysing the materials it gathered. Its report states categorically that lightning could not be attributed as a cause of the tragedy, since there were no signs of melted steel rebars, nor evidence of burns on the recovered bodies. The institute concluded that 'careless, poor construction practice and poor workmanship in the construction of piles' and 'improper cement content in the concrete mix' were likely causal factors.

The NIT found that new layers of the chimney were being built before lower levels had been given time to cure (harden) properly: 'The compressive failure of the chimney may have taken place at somewhere in the upper portion of the chimney ... the upper portion may have sunk telescopically down to the lower portion, exerting enormous sudden pressure to the bottom portion.'

Three BALCO employees, including the project leader for the chimney, Viral Mehta, and one employee of subcontractor GDCL, were charged with 'culpable homicide not amounting to murder'. All four were released on bail after the Supreme Court overturned a Korba District Court decision to withhold it.

The deputy director of prosecutions in Korba, J.N. Chandra, is palpably annoyed at the hoops he has had to jump through in securing any kind of justice. He told UK researcher Simon Chambers in April 2011 that 'there is no likelihood of anyone being brought to trial in the foreseeable future because the accused continue successfully applying for stays from the Chhattisgarh High Court and Supreme Court, which could drag out proceedings interminably'.

A judicial enquiry into the disaster, the Buxi Commission, has already postponed release of its findings three times due (it says) to 'unavailability of witnesses and facts'. According to Mr Chandra, most people in Korba see the commission as an attempt by the state government to appear to 'at least be doing something', when in reality 'there are too many powerful people who want nothing to be done'.

A senior ex-employee of BALCO, who left the company in 2003 and did not wish to be named, informed Simon Chambers that, after Vedanta's foundation company, Sterlite Industries, took control of BALCO in March 2001,

company practices changed drastically. The management was told 'it should not worry about obtaining approvals from the authorities on pollution, environment and forestry issues'.

When a town and country planning notice was served on BALCO in December 2003, ordering a cessation of expansion work, the company retorted: 'We wish to state that only basic preparatory work like sample excavation and site grading are being taken up to ensure timely completion of this prestigious project for the State and people of Chhattisgarh.'

The mayor of Korba at the time of the September 2009 disaster was Lakhaniel Dewanen. He is sure that the fatal chimney was built illegally, on a 92.84-acre plot which is still classified as forest land, owned by the State of Chhattisgarh. The Korba Municipal Corporation (KMC) served a number of 'stop notices' throughout 2009, threatening legal

proceedings and the dismantling of any previous constructions. All were ignored by the company.¹⁰³

According to Mr Dewanen: 'Just a week before [the accident] a team from the KMC reached the site and stopped the construction work. But the company started the work again.' BALCO also received notices from the Central Pollution Control Board and Town and Country Planning Department ordering work on the chimney to be stopped.

The families of most of the workers reported dead on that traumatic September afternoon in Korba have each received Rs5 lakh (500,000 rupees or around £1,370) compensation from BALCO, as well as some monies from the Indian subcontractor, Gannon Dunkerley, and from the government. Nobody representing BALCO or its subcontractors is known to have contacted the families at any point to offer condolences or explanations.



Korba chimney disaster site.

In October 2010, Anil Agarwal himself was summoned to give evidence at the Korba District Court in answer to a charge of criminal trespass relating to the previous year's events. His lawyers successfully applied for a stay from the Chhattisgarh High Court, allowing him to remain in London.¹⁰⁴

Numerous official notices from various government departments have been sent to the BALCO offices over the last four years, ordering that various work should stop at the Korba site, each sounding a little more desperate and impotent than the previous one. Just five months after those 40 and more workers lost their lives, BALCO began constructing another chimney on the same spot where the earlier edifice had collapsed. A notice sent to the company by the Korba Municipal Corporation, dated 5 February 2010, declared: 'You have started construction without submitting the necessary papers. You have not obtained permission for construction, and we have told you repeatedly to please submit your papers or we shall have to file a case against you.'

Clearly there has been official procrastination in bringing Vedanta to book for its alleged corporate crimes in Korba. But arguably worse is the almost total neglect in calling the company to account on the part of UK authorities.

It is not the case that the appalling event of September 2009 was ignored by international media. There was substantial coverage on the BBC News channel and Al Jazeera. On 23 September 2009, Dow Jones Newswires filed notice that 'Chhattisgarh Chief Minister Raman Singh said in a statement that "a judicial probe has been ordered" into the accident' and that 'a police case had been filed against BALCO'.¹⁰⁵

The same day, Vedanta issued a curt statement in the form of an RNS alert

(an LSE Regulatory News Service note), which clearly sought to underplay the magnitude of the disaster.¹⁰⁶ Vedanta's executive chairman, Anil Agarwal, stuck to his self-exculpating version of events right through to a statement made to shareholders on 5 May 2010 (published in the company's annual report for 2010). Long before then, the 'act of God' defence had been demolished by India's National Institute of Technology (NIT). But Agarwal compounded earlier apprehension that he was deliberately downplaying the tragedy by describing it as 'an unfortunate accident'.¹⁰⁷

The British Safety Council (BSC) awarded BALCO two international safety awards in 2009. One of these was given to the company itself, just four months before the Korba killings, and a second to one of BALCO's captive power plants.¹⁰⁸ The awards were not withdrawn until almost a year after the disaster. Even then, the BSC admitted, this step was taken only because its attention had been drawn to the event by a London *Observer* analysis of the deaths of workers at all FTSE 100 mining groups, as recorded in their annual reports.¹⁰⁹

Although the BSC is a charitable association, it is actively supported by the UK Health and Safety Executive (HSE), the UK's official health and safety watchdog, and the two work closely together to sift safety-related data relating to UK-based companies. As a commentator with the International Trade Union Confederation (representing 175 million workers worldwide) put it at the time: 'Th[is] publicity is likely to be a source of embarrassment to both HSE and BSC. It would be remarkable if both organisations were unaware of the disaster in Korba, India, which was widely reported at the time, and any fatality in the award year automatically invalidates an application.'¹¹⁰

The independent research and advisory consultancy Pensions Investment Research Consultants (PIRC – ‘The voice of responsible shareholders’) issued a statement just before Vedanta’s 2010 AGM. Describing the Korba collapse as a ‘significant indicator of [the company’s] poor governance’, PIRC called on Vedanta shareholders to oppose the election of three of the company’s non-executive directors (including senior non-executive director Naresh Chandra, chair of its health, safety and environment committee, and its remuneration committee) ‘because of their role in the company’s poor handling of environmental, social, and governance issues’.¹¹¹

The Norwegian Government is not the only shareholder to sell its Vedanta stake, finding it incompatible with the responsible manner in which it should invest its clients’ (or citizens’) funds. When the Church of England sold its Vedanta shares in early 2010, the chairman of its Ethical Investment Advisory Group, John Reynolds, wrote: ‘I am a passionate advocate for engagement with companies when we have ethical concerns. We have an excellent track record of getting our concerns heard and acted upon by the companies in which the Church investing bodies hold shares. We are grateful to Vedanta’s senior management for making themselves available to meet us on a number of occasions. However, after six months of engagement, we are not satisfied that Vedanta has shown, or is likely in future to show, the level of respect for human rights and local communities that we expect of companies in whom the Church investing bodies hold shares.’¹¹²

A significant number of investment funds from the UK, Canada, USA, Sweden and the Netherlands have recognised the unacceptable reputational risks of bankrolling this company. There is steadily mounting public perception that Vedanta not only operates ‘outside the law’ but is content to do so, displaying disdain towards its critics.¹¹³

Why has only one UK Government body, the OECD National Contact Point, ever considered examining any one of Vedanta’s many overseas activities? Is it right that only cash-strapped voluntary organisations (not to mention individuals) research and present evidence of the company’s violations, rather than an official regulatory body?

The Vedanta case illustrates both the inadequacy of company reporting provisions under the FSA and the absence of binding rules to govern the conduct of this and other London-listed mining companies.

3.6 Glencore (FTSE 100 listed)

On 24 May 2011, the world’s largest commodities trader entered the London and Hong Kong stock exchanges with two IPOs following the priority issue of shares to its ‘cornerstone investors’ shortly before. Under its chief executive officer, the South African-born, Swiss-resident Ivan Glasenberg, Glencore leapt into the FTSE 100 list of the UK’s premier companies. With a market capitalisation of around £36 billion, it immediately became the fourth biggest mining company traded on the LSE’s Main Market.¹¹⁴

The IPO had tapped the pockets of many investors, including hedge funds, sovereign wealth funds, so-called tracker funds and pension funds. Pension portfolio managers would have felt duty-bound to buy a stake on behalf of their clients – despite any disquiet that the clients whose pensions their role is to safeguard might have expressed. Nonetheless, the hype, investor road shows and glut of media attention preceding this listing (the largest ever made in the UK) failed to work consistently in Glencore’s favour.

True, this secretive enterprise will now enjoy access to sizeable chunks of new capital. However, this sprawling conglomerate (‘a big Swiss cheese’ as one critic dubs it) was also forced to open its books to greater scrutiny than so far received in its 37-year history.

Of the 1,600-odd pages in Glencore’s pre-launch prospectus, three-quarters was devoted to ‘competent persons’ reports on the firm’s Colombian coal assets, on the Mutanda and Mopani mines in Zambia, and on Kazzinc, the rising Kazakhstan zinc, copper and gold miner. Nearly a fifth of what Glencore expected to raise (\$2.2 billion) had been earmarked to increase its stake in Kazzinc to 93%. In February 2012, the company announced plans to merge

with Xstrata,¹¹⁵ of which it already owned 34.4%. And rumours that Glasenberg had his sights on a more modest acquisition, ENRC (Eurasian Natural Resources) began circulating in June 2011.¹¹⁶

Don’t touch it with a bargepole

On 20 May 2011, The Times business editor Ian King voiced little doubt that ‘small’ investors at least should steer clear of taking a stake in this particular golden calf. In a robust comment, King damned Glencore as ‘a business with dubious morals. It trades grain amid food riots and has been accused of profiteering and environmental offences in numerous poor and war-torn countries.’ He went on: ‘Most of those signing up to buy shares in Glencore’s flotation are major Middle Eastern and Far Eastern investors. Few of the traditional City institutions will touch the shares with a bargepole. The question is, should you?’

Some nine hundred different accounts put out the boat for Glencore’s pre-IPO. According to Reuters IFR, orders were received from around the world including the UK, US, Asia, the Middle East and Brazil. ‘About 10 per cent went to high-net worth individuals and private banking clients, about a third to hedge funds and the rest to institutions and sovereign wealth funds. Hong Kong retail took just 2.67 per cent of the offering.’¹¹⁷

There was scepticism on the part of a few funds which would normally have been expected to join the scramble. The fund manager for Schroder’s UK equities team, along with Aviva Investors’ UK equity manager, warned investors to look to other mining companies with a long history as listed businesses. Commented Aviva’s Chris Murphy: ‘If we want exposure to the mining space we can buy Rio Tinto, where we know its track record and have visibility on management. We feel there is more value there than the likes of Glencore.’¹¹⁸

Old game over?

‘Why would a giant secret society like Glencore, with a dark past, want to come into the light of day and relinquish the private, backroom-dealing business model that made its partners and founder fabulously wealthy?’ This was the question raised by US investment guru Shah Gilani on 18 May, and his answer was a terse one: ‘Because the old game is over and commodities prices are about to break down – and in a big way ... By utilizing its newly tapped source of capital – its own stock – the [Glencore] partners will eventually be able to cash out (they have a lockup provision of four to five years).’¹¹⁹

Gilani added: ‘[T]he company will also be able to withstand the coming crash in commodity prices and then be perfectly positioned to buy at the bottom, which is what it is planning to do.’¹²⁰ This may or may not prove to be the case. The market price of copper and other base metals did turn downwards just a day before Glencore went public.

More importantly, we should ask whether the firm’s move on London and Hong Kong was not motivated by a somewhat different intent. This would be a reduction of its dependency on commodities trading per se, by increasing its vertical control over oil and mining companies beyond what it currently exercises. Owning minerals in the ground, and controlling related infrastructure, is arguably less risk-prone than sending them across oceans, or tying them down in warehouses.

As Australian financial commentator Stephen Bartholomeusz wrote a week before the IPO: ‘What has changed within Glencore in recent years has been the size and contribution of [its] industrial assets – its interests in mines, oil wells, logistics businesses and port facilities.’ Bartholomeusz anticipates the conglomerate will now transform

itself ‘from a trader with some resource production, to a mining house with some trading activities ... In fact it would look very much like a BHP Billiton, which might be the point.’¹²¹

Indeed, while Glencore’s foodstuffs trading is a key part of its global reach (attracting bales of criticism in recent years), the conglomerate’s biggest profits derive from its exploitation of oil and minerals.

Damage, dirt, deceit and death

On 19 and 20 May 2011, *The Times* lashed into Glencore with several exposés of the company’s current operations following a special investigation. (*The Guardian* followed suit with additional indictments.) *The Times* alleged that a Glencore subsidiary ‘had procured lucrative market-sensitive information from a European Union “mole”’, which, the paper argued, ‘threatens to undermine the EU’s Common agricultural policy’.¹²²

The paper went on to claim that Glencore’s Colombian subsidiary, Prodeco, has been operating on government-owned land ‘that was forcibly taken from its previous residents by paramilitaries; at least 18 people were murdered in a six month “campaign of terror” at El Prado, northern Colombia’.¹²³

In February 2007, residents close to Prodeco’s La Jagua de Ibirico coal mine in Colombia’s Cesar province set up barricades to protest at environmental damage and respiratory illnesses they claimed had been inflicted by these mining operations. In response, police attacked the demonstrators, reportedly killing one man.¹²⁴

Six months later, on 22 September 2007, Glencore was accused of implementing an aggressive anti-union policy at its Minera Los Quenuales

lead-zinc operation in Peru, where a month before a worker had died by being crushed under a heap of ore. The workforce began an ‘indefinite general strike’ to draw attention to their unmet demands, and another person was killed, with dozens reportedly injured, when it barricaded access to the mine site.¹²⁵ According to *The Times*, Glencore was guilty of causing river pollution at its operations in Bolivia. In addition, members of the Wutha Native (Aboriginal) Title Claimants Group in Australia had been ‘cheated of an agreement made with Glencore in 1996, under which the company guaranteed to employ some of them in return for mining nickel on their land. (The case was settled only recently out of court.)’¹²⁶

Century Aluminum of the USA – with Glencore at 44% its biggest shareholder – according to the paper, was ‘being pursued for damages caused by its operations, in a string of cases brought by environmental agencies, local residents and other companies’.¹²⁷

Pollution and tax evasion in Zambia

Glencore’s mining and smelting operations at its Mopani copper-cobalt complex in Zambia seem to have provoked the greatest ire during 2011. In a May 2011 article, entitled ‘Billionaire ignored children’s pleas to stop toxic pollution from mine’, *The Times*’s environment editor Ben Webster reported that Ivan Glasenberg had, a full year before, ‘received a bundle of letters from children at a school exposed on a daily basis to sulphur dioxide pollution from the nearby Mopani Copper Mines (MCM) complex’.¹²⁸

‘In the letters ... the children described how clouds of toxic particles made them choke, burnt their throats, poisoned the school’s fruit trees and forced teachers to close windows, leaving them sweltering in their classrooms.’

In 2009 the Environmental Council of Zambia (see also Vedanta, case study 3.5) reported that sulphur dioxide emissions from parts of the plant had reached up to 70 times the maximum health limit set by the World Health Organisation. Webster pointed out that a mineral expert’s report published in Glencore’s prospectus confirmed that sulphur dioxide emissions from MCM were ‘consistently exceeding’ environmental limits: ‘It said that the breaches were a “significant risk” because MCM had missed even the extended deadline for reducing the pollution. Three monitoring stations outside the plant repeatedly recorded breaches of air pollution limits.’

The report ‘described various illegal discharges of hazardous fluids into rivers, including an acid leak that had contaminated the town’s water supply and resulted in “hospitalisation and treatment of a number of people”’. Thus far, however, Mr Glasenberg has ignored the children’s plea, and his company has done virtually nothing to introduce stringent anti-pollution measures to the area.¹²⁹

MCM is co-owned by Glencore and another London-listed mining company, First Quantum Minerals.¹³⁰ In April 2011, five international NGOs filed a complaint against both companies, alleging they had violated the OECD Guidelines for Multinational Enterprises. The NGOs based their case on the results of a 2009 audit, performed at the request of the Zambian Government, with support from the Norwegian Government, by international accountants Grant Thornton and Econ Pöyry.

Among the anomalies revealed by the report, say the NGOs, were ‘an unexplained increase in the company’s operating costs in 2007 (+\$380 million); stunningly low reported volumes of extracted cobalt when compared to

similar mining companies operating in the region, and manipulations of copper selling prices in favour of Glencore which constitute a violation of OECD's "arm's length" principle ... The result of those various processes was to lower by several hundreds of millions of dollars MCM's net income for the 2003-2008 period.¹³¹

These actions, declared the NGOs, 'are all the more deplorable when one considers that the Mopani consortium operates in an already attractive fiscal environment, one highly favourable to foreign investment, and that Mopani also enjoys the effects of a 2000 development agreement with Zambia that provides massive financial and tax exemptions'.¹³²

Pollution and rights abuses in DR Congo

In March 2011, two Swiss NGOs, Bread for All and the Catholic Lenten Fund, accused Glencore of a range of human rights abuses, of employing child labour, causing pollution and evading taxes in the Democratic Republic of Congo. The accusations centred around Glencore's operations in the province of Katanga, where it has a \$250 million 77% share in Katanga Mining Limited (KML), a major copper and cobalt producer.

According to the NGOs, mining is 'driving the locals away from their traditional farming activities, which in turn has led to less food on the market ... There are often no safety measures in KML sites. Miners are not protected from uranium radiation.' (The radiation allegedly persists in local streams from earlier mining operations.) 'Many have short-term contracts and less training, so the accident risk increases.'¹³³

Houses were reportedly damaged by explosive charges and the air polluted by emissions from the mining operations. 'And all this in total impunity,' declared the report. The NGOs say they contacted

Glencore both before and after the report's publication 'but to no avail'.

On being contacted by swissinfo.ch (part of the Swiss Broadcasting Corporation), Glencore denied the allegations. Its spokesperson, Simon Buerk, reportedly argued that 'Some of the environmental problems revealed in the report are inherited from Gecamines, a company active in the region for more than 50 years.'¹³⁴

'Glencore won't change the way it operates' Glasenberg

There is a great deal of 'unfinished business' associated with Glencore's past and continuing operations, only some of which can be dealt with here. Many issues, along with the questions they raise, were neglected in the company's pre-IPO prospectus, despite its being one of the longest on record.

To give one further example: in late 2009, four men were convicted by a French court of supplying weapons to Angola in the midst of its 27-year civil war, and in defiance of an arms embargo imposed by the United Nations. Pierre Falcone, Arcadi Gaydamak, Jean-Christophe Mitterrand (son of the former president) and Charles Pasqua were all found guilty, but it was Falcone and Gaydamak who had played the dominant roles. Falcone was jailed for six years.¹³⁵

Ken Silverstein of the US magazine *In These Times* reports that, in November 1993, 'Falcone and Gaydamak helped arrange the sale to Angola of \$47 million in small arms. A second deal for \$563 million worth of weapons, including tanks and helicopters, got under way early the following year ... Angolans paid for the weapons with oil, which Falcone and Gaydamak sold with the help of Glencore.'¹³⁶ No response to this serious allegation appears to have been made by the company.

There are certainly checks and balances which Glencore is supposed to observe under recently 'tightened' UK rules aimed at improving corporate governance.¹³⁷ But they will not, of themselves, prevent future irresponsible, if not criminal, behaviour such as that recorded here. So long as Glencore remains a gigantic, globally spread commodities trader, rooted in the wheeling and dealing of a close clique of highly paid managers, along with thousands of its proprietary online traders, manifold opportunities for graft and corruption will present themselves.

On 15 April 2011, five weeks before the IPO, the *Financial Times* (FT) commented: 'The ... financial heft that will result from [Glencore's] initial public offering ... will allow the company to vertically integrate through acquisitions, becoming a bigger producer in markets in which it trades.'

The paper went on to warn: 'This makes an oligopolistic market structure likely ... [whose] cost is borne by consumers the world over.'

When interviewed by the FT, Glencore's Glasenberg had no scruples about defending his conglomerate's past practices, nor boasting that business would remain the same after the flotation. 'Unfortunately, God put the minerals in different parts of the world,' he said. 'We took the nice, simple, easy stuff first from Australia, we took it from the US, we went to South America and we dug it out of the ground there. Now we have to go to more remote places.'

Glasenberg added: 'We are not going to change the way we operate. Any talk that going public will hinder us is not true. It will not affect us at all ... Being public will have absolutely no effect on the business.'¹³⁸



Photo: JACSES

3.7 GCM Resources (AIM listed)

In October 2011, International Accountability Project (IAP), a respected US-based human rights organisation, published a spectrum of disturbing allegations and concerns relating to the Phulbari Coal Project in northwest Bangladesh. The Phulbari project is 100% owned by UK-listed GCM Resources (formerly Global Coal Management), and IAP's publication took the form of an open letter requesting that banks and investors holding shares in GCM divest and 'cease provision of all financial and technical services associated with the project'. Among the many organisations and individuals endorsing the open letter were the Hong Kong-based Asian Human Rights Commission, national branches of Friends of the Earth International, and civil society groups, campaigners and academics from around the world.¹³⁹

IAP's online letter presents strong evidence of a host of human rights violations and risks arising from the Phulbari Coal Project. Large-scale public protests against the project have reportedly been going on since 2006, and protestors have experienced 'intimidation, repression, and violence that includes public beatings of project opponents by the police, death threats, arbitrary arrest and detention'. Twice during the past year, the Bangladesh Government is said to have deployed its notorious Rapid Action Battalion (RAB) to demonstrations against the project. RAB's extrajudicial executions of human rights defenders and use of torture in custody have been documented by Human Rights Watch and Amnesty International.¹⁴⁰

Other incidents reported by IAP include that, on 26 August 2006, the paramilitary Bangladeshi Rifles 'indiscriminately fired into a crowd of over 50,000 people

gathered in Phulbari to demonstrate against the project. Three people were killed, including a fourteen-year old boy, and over 100 people were injured.' And in February 2007, a leader of those opposing the project, Mr S.M. Nuruzzaman, was arbitrarily arrested and allegedly tortured. Members of the Bangladesh Government, says IAP, have publicly denounced people opposing the project as 'foreign agents and spies', contributing to the criminalisation of legitimate protest.

Criticising GCM for failing to consult adequately with or address concerns of affected communities, IAP reports that the company has failed to disseminate a draft environmental impact assessment, resettlement plan or indigenous peoples development plan to community members, either in the Bangla language or in a form accessible for non-literate people. The company is thereby flouting the project investment provisions of the widely accepted Equator Principles – despite the fact that GCM has pledged to comply with all Equator Principles in implementing the Phulbari Coal Project.¹⁴¹

Bangladesh's National Indigenous Union (Jatiya Adivasi Parishad, JAP), IAP states, estimates that the Phulbari project would 'displace or impoverish 50,000 indigenous people' belonging to 23 tribal groups. Requested by JAP to help halt the project, the US-based human rights NGO Cultural Survival concluded that the project would mean 'ethnocide' for those affected.¹⁴²

Implementation of the Phulbari project would involve acquisition of '14,660 acres of land in Bangladesh's most fertile and productive agricultural region', of which 'roughly 80 percent is comprised of verdant rice fields and fertile farmlands, which serve as the nation's rice bowl'.¹⁴³ Yet, despite the area's importance as a food-producing region, no information or study is



Long March rally for Phulbari
Photo: Taslima Akhtfer



Protest against the Phulbari project.
Photo: Anha F. Khan

available that specifically assesses the impacts on the future food supplies of affected households or consequences for food security in Bangladesh, where nearly half the population live below the nutrition poverty line.

Nearly half the people living in the Phulbari township are said to lack water to meet their daily needs.¹⁴⁴ However, 'GCM's dewatering operations at the Phulbari coalmine would lower the water table by 15-25 meters' across a large area extending more than 10 kilometres beyond the mine's footprint. The *Summary of the Report of the Expert Committee (REC) to Evaluate Feasibility Study Report and Scheme of Development of the Phulbari Coal Project*¹⁴⁵ (hereafter the REC) estimates that 220,000 people would lose access to water as wells and irrigation canals run dry and IAP cites expert warnings of 'potential desertification of the entire northwest region'¹⁴⁶ and of acid mine drainage being 'likely to contaminate a network of rivers extending far beyond the project area, poisoning water resources and soil for centuries to come'.¹⁴⁷

GCM is said to expect the Phulbari project to 'displace and resettle at least 50,000 people',¹⁴⁸ although there are indications that much larger numbers would be displaced. The REC gives 'the actual number of affected people for this area' as '1,29,417' [sic] instead of the 40,000 it says GCM's own feasibility study mentions. This figure would be rendered '129,417' in western usage; but the same summary also states that 'A high risk of social unrest and conflict is involved in the relocation of about a million people' (emphasis added), indicating that there is some confusion as to the number of people to be displaced. Assuming that the lower figure is correct, it is nonetheless huge.¹⁴⁹

In seeking to corroborate the displacement figures by checking online for the original 163-page *Report of the Expert Committee* of September 2006, LMN found that the Bangladesh Government's energy division 'has "lost" the report of a government-formed expert committee which found that the ... agreement with the government for Phulbari coal field was illegal and an open pit mine at the field would not be viable'.¹⁵⁰ The original expert committee displacement estimate now seems to be unavailable.

Regardless of the potentially vast numbers of people affected – and if so, totally misrepresented by GCM's own feasibility study – and the suspicious 'disappearance' of the official government report, which are in themselves matters of real concern, there would be major worries even with numbers of people displaced 'only' in the tens of thousands. 80% of all households in the project area depend on subsistence farming, yet the company's draft resettlement plan states that 'most households will become landless', with no guarantees of livelihood restoration in one of the world's most densely populated countries.

Given the lack of potential replacement lands available, IAP says, the displaced households are likely to experience 'further impoverishment and serious risks to physical and mental health'. As noted above, the Bangladesh Government's expert committee warned of 'a high risk of social unrest and conflict' if GCM seeks to evict and relocate affected communities.¹⁵¹

In 2007, the Swiss-based World Organisation Against Torture (OCMT) issued emergency appeals and expressed concern that 'police and security forces may again employ violence to deal with public opposition' to the project, warning that 'further violence, ill-treatment and even deaths may ensue'.¹⁵²

Despite all the documented human rights violations and major future risks associated with the Phulbari Coal Project, GCM and the Bangladesh Government appear determined to continue with the project. And the UK listing authorities appear not to have raised the least concern.



3.8 Bumi (LSE Main Market listed)

In June 2011, after a 'reverse takeover'¹⁵³ with Vallar plc – a shell company set up by the financier Nat Rothschild¹⁵⁴ – an Indonesian coal company arrived on the LSE through a deal with the Bakrie business empire.¹⁵⁵ A year previously, Indra Bakrie, the chair of newly named Bumi plc, had declared an intention that Bumi should become the world's biggest exporter of power station coal by 2013.¹⁵⁶ Ambition and rhetoric were not in short supply.

This venture was the outcome of the meeting of two powerful business families from West and East: Nat Rothschild, corporate financier and scion of the Rothschild family, and Indra Bakrie, youngest of four siblings, owners of the Indonesian business group PT Bakrie & Brothers.

The Bakrie Group has business interests in agriculture (including palm oil), property, media, insurance, banking, trade, shipping, construction, manufacturing and mining.¹⁵⁷ Aburizal Bakrie, the eldest son, is currently chairman of Golkar, the political party of the Suharto regime, and a potential presidential candidate for the Indonesian elections in 2014. In 2006, one of the companies controlled by the Bakrie Group, PT Lapindo Brantas, was responsible for an oil drilling disaster in East Java. This caused a mud-volcano that has engulfed thousands of homes and displaced some 30,000 families, is blamed for the death of 14 people, and continues pouring out mud to this day.¹⁵⁸ In what could be seen as an attempt to avoid paying compensation to the thousands of victims of this ongoing disaster, Energi Mega Persada, the Bakrie-owned company controlling the majority of shares in PT Lapindo Brantas, twice attempted to sell this company for US\$2 to an offshore company.

In the political arena, the Bakrie family's record is disturbing also. The family is linked with cases of bribery and tax evasion, most notably in relation to an investigation into the activities of the Kaltim Prima Coal (KPC) mine and its parent company Bumi Resources.¹⁵⁹ In 2010, attempts were made by Indonesian Government officials to investigate the tax dealings of both KPC and Bumi Resources. This process has been stayed by the courts thanks to interventions by company lawyers.

Recently, an official from the Indonesian tax office has claimed that he was bribed by Bakrie-owned companies to help them with their tax affairs.¹⁶⁰ More worrying has been the resignation in May 2010 of Finance Minister Sri Mulyani after a long political vendetta by Bakrie.¹⁶¹ Sri Mulyani was noted for her anti-corruption campaigning. Two days after her departure, Bakrie was appointed 'managing chairman' of a joint secretariat to determine government policy.¹⁶² Politics and business continue to be very closely linked. In an article about the partnership between Bakrie and Rothschild, the head of research of a foreign brokerage company is quoted as advising investors to avoid too powerful business groups in Indonesia as they are often 'too big and risky to challenge'.¹⁶³

For Nat Rothschild, it appears that the risks and challenges of doing business with the Bakries are (or were) outweighed by the potential profits that Indonesian coal offered. Indonesia is currently the world's largest exporter of thermal coal, and demand for coal from China and India is prompting more growth.¹⁶⁴ The business model employed by Rothschild has been to create London-listed shell companies as investment vehicles for mining companies and oil and gas companies around the world. In July 2010, the IPO for Vallar raised US\$1.1 billion.¹⁶⁵ Since then, Rothschild has launched a

similar enterprise under the name of Vallares to invest in oil and gas projects in Kurdistan, together with former BP CEO Tony Hayward.

A *Financial Times* article about the Bumi coal deal highlights Rothschild's hunger for making money above all other considerations. 'You have to make hay while the sun shines,' he said on his initial visit to Indonesia to look at the Kalimantan coal mines he was about to buy.¹⁶⁶ Given the rapidly disappearing rainforests of Borneo and the livelihoods they provide for local people, there is a certain irony to this remark. Rothschild's 'hay-making' is unlikely to benefit Kalimantan's forests and the people whose lives depend on them.

Much has been written in financial columns about the arrival of Bumi plc on the LSE. This process has been rapid and subject to minimal oversight. It took little over six months from the initial announcement of the US\$3 billion deal in Jakarta to Bumi's LSE listing.¹⁶⁷ A further six months on from this listing, the tangled web of business intrigue is already becoming evident, throwing up serious questions about the effectiveness of the 'due diligence' process undertaken prior to the company's launch on 28 June 2011.¹⁶⁸ On 8 November 2011, a letter from Rothschild in the *Financial Times* surprisingly denounced the corporate governance of Bumi Resources, the Indonesian partner company of Bumi plc, and called for the repayment of debts by connected parties.¹⁶⁹

Whether Rothschild is genuinely concerned about the corporate governance of Bumi Resources and its debts has been much debated in the financial media. Most ascribe more cynical reasons for the letter. The Bakries are reported to be investigating their new partner for trying to manipulate the price of shares in order to gain a bigger stake in the company. Indeed, soon after the letter was published,

Rothschild spent UK£1 million buying more shares in the company.¹⁷⁰ The fact that both Bumi Resources and the Bakries are heavily indebted is old news, which Rothschild would have known before embarking on any business deals with them. In the Asian financial crisis of the late 1990s, the Bakries' empire nearly collapsed because of debt.¹⁷¹ A recent Reuters report describes the Bakrie Group as being 'known for its acquisitions funded through debt that is linked to shares in its firm', commenting that this is a 'strategy that backfires when global financial crises hit equity and debt markets'.¹⁷²

In the rush to take advantage of Indonesia's vast natural resources and the world's hunger for energy, both parties appear to see only money and profit and to give little consideration to impacts on local communities and the environment, let alone the world's climate, of bulldozing the forests of Borneo for coal. The LSE and financial institutions are now playing a key part in enabling and encouraging this to happen. In this connection it also appears that the LSE's reputation is starting to be questioned abroad. In reference to a *Jakarta Globe* article about the Bumi deal, one commentator wrote: 'A question to ask is why very many of the world's oligarchs are based in UK ... Arab, Russian, Indian, Chinese, etc. Mainly because in the City of London anything goes.'¹⁷³

Have the regulators simply given up? The head of the UKLA was quoted last autumn as saying: 'We don't see our role as one to ensure or underwrite best practice in relation to the combined code, nor do we have powers to do so.' He continued weakly: 'The role of shareholders is greatly underestimated.'¹⁷⁴ Does this mean that the UKLA is expecting Indra Bakrie and Nat Rothschild to regulate themselves?

ENDNOTES //

1. <http://londonminingnetwork.org>
2. Available on the HM Treasury website on page 80 of the pdf file at http://www.hm-treasury.gov.uk/d/consult_finregresponses_jm.pdf and page 127 of the pdf file at http://www.hm-treasury.gov.uk/d/condoc_finreg_blueprint_responses_ip.pdf.
3. On companies' duty to respect human rights, and states' duty to protect, see the UN 'Protect, Respect and Remedy' Framework for Business and Human Rights, and its Guiding Principles, <http://www.ohchr.org/en/Issues/TransnationalCorporations/Pages/SRSGTransCorpIndex.aspx>. Respect for environmental standards implies that companies:
 - Not undertake activities which have a negative impact upon any of the protected areas covered by the IUCN I-IV categories, UNESCO World Heritage and the Ramsar Convention;
 - Ensure that their activities will not have a negative impact on the community or population level of any species identified on the IUCN Red List;
 - Ensure that activities will not lead to the illegal trade of any species listed as endangered under CITES;
 - Not produce or trade in any living genetically modified organism except with the approval of the importing country and as otherwise required under the Cartagena Protocol;
 - Provide assessments of the cumulative biodiversity impacts upstream and downstream (including impacts on ecosystems, species and genetic resources);
 - Provide and make public ongoing monitoring and reporting of impacts, at least consistent with the guidelines found in the Global Reporting Initiative for reporting on biodiversity, land use and air-and water-pollution, emissions and discharges.
 - Agree to sustainably manage all living natural resources used in its operations, such as forests, plants and animals;
 - Ensure that activities will not involve the introduction, intentional or unintentional, of invasive alien species;
 - Meet the consent and benefit-sharing requirements found in the UN Convention on Biological Diversity regarding activities involving access to genetic resources;
 - Identify, in consultation with communities, NGOs and scientists, what are to be treated as "no-go zones", such as HCVA, endangered forests, biodiversity hotspots, river watersheds, fish spawning grounds and spiritual sites, and where necessary exclude activities in those areas from development.
4. European Commission, 'Disclosure of Payments to Governments', http://ec.europa.eu/internal_market/accounting/other_en.htm; see also Hong Kong Stock Exchange listing rules, http://www.hkex.com.hk/eng/rulesreg/lstrules/mbrules/Documents/consol_mb.pdf, chapter 18, 'Equity securities - mineral companies'; and US Dodd-Frank Act 2010, <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>, section 1504.
5. The case studies cite companies which have listed in London from 2003 onwards.
6. The Dodd Frank Wall Street Reform and Consumer Protection Act 2010 addresses the need to stem the trade in 'conflict minerals' and in coal and other minerals from operations which pose a substantial danger to their workforces. The Act's 'bad actor' provisions concern financial fraud and related criminal activity, some of which will apply to foreign private issuers of securities.
7. Xstrata, 34.5% controlled by Glencore, declares that it is the 'world's biggest exporter of thermal coal'. Glencore has a marketing agreement with Bumi for the purchase of the latter's Indonesian coal.
8. Letter to Hong Kong Stock Exchange, 3 March 2011, http://www.foe.org/sites/default/files/Letter%20to%20HKSE%20re_Zijin.pdf
9. Reuters, 15 March 2011; Bloomberg 14 March 2011.
10. 'British mining company faces damages claim after allegations of torture in Peru', Ian Cobain, *Guardian*, 18 October 2009. In addition, Richard Ralph, the former chair of Monterrico Metals, was found guilty of insider trading in Zijin shares: 'Corporate fraud: former UK envoy fined for insider dealing', Julia Kollewe, *Guardian*, 14 November 2008.
11. *Mining Journal*, 6 May 2011.
12. Prof. Anthony Bebbington PhD et al, *Mining and Development in Peru: With Special Reference to The Rio Blanco Project*, Piura, Peru Support Group, March 2007, <http://www.perusupportgroup.org.uk/files/fckUserFiles/file/FINAL%20-%20Mining%20and%20Development%20in%20Peru.pdf>
13. 'Peru: communities say "no" to mining company in vote', Milagros Salazar, IPS, 18 September 2007.
14. HKEx listing rules, http://www.hkex.com.hk/eng/rulesreg/lstrules/mbrules/Documents/consol_mb.pdf, pp. 391-7, particularly point 18.05: LSE, *A Guide to Listing on the London Stock Exchange*, 2010, <http://www.londonstockexchange.com/home/guide-to-listing.pdf>. Even basic reporting of company carbon emissions is not yet mandatory in the UK. In May 2011, a study by the UK Environment Agency of 500 FTSE All-Share companies showed that only a minority currently provide environmental statistics in line with government guidance: http://www.environment-agency.gov.uk/static/documents/Business/Environmental_Disclosures_summary_report.pdf
15. This does not mean that the big global mining companies – many of which are listed on the LSE Main Exchange – always manage to adhere to the guidelines. In its 2010 annual report, the world's second largest mining company, Rio Tinto, admits to several 'serious' breaches. It also mentions, for the first time, that the Norwegian Government disinvested from Rio Tinto in 2008 on the grounds of the company's complicity in grave environmental and human rights abuses at the Grasberg copper-gold mine in West Papua.
16. During 2005-8, several banks that were invested in Vedanta despatched advisory notes to clients in which they recognised that delays to this project and the proposed adjacent Niyamgiri mine were partly due to legal action taking place in India. In one such note Citigroup advised investors to hold on to their Vedanta shares, despite recognising that the company might be refused legal permission to proceed with the project. Citigroup considered that since 'this is India' a way would most likely be found around the problem.
17. *Directors, Human Rights and The Companies Act: Is the new law any different?*, Hannah Ellis and Kate Hodgson, CORE, 2011, <http://corporate-responsibility.org/directors-human-rights-the-companies-act-is-the-new-law-any-different/>
18. One of the most recent examples of such a failure to conform to the UK Corporate Governance Code is Gerald Holden at GCM Resources. Former head of Barclays Capital metals and mining, who still holds a substantial number of shares in the Bangladesh-focused mining company, while purportedly being even-handed as the company's non-executive Chairman. This failure is acknowledged by the company on page 21 of its Annual Report and Accounts 2011.
19. <http://www.minesandcommunities.org/article.php?a=10063>; http://moneytometal.org/index.php/Rajawali_Corp
20. Agarwal's deputy executive chairman at Vedanta Resources is his brother, Navin. The company's CEO, M.S. Mehta, was the CEO of Hindustan Zinc, which was incorporated into Sterlite in 2000 and which listed as Vedanta Resources in December 2003; Narish Chandra, a non-executive director, was observed at the company's 2010 AGM taking over the meeting on behalf of Agarwal and hectoring the critical audience. Aman Mehta could be described as independent; the only non-Indian on the board is Euan Macdonald.
21. Vedanta Resources, annual report 2010, p. 65.
22. *Financial Times*, 19 February 2010.
23. *Financial Times*, 15 October 2010.
24. Foster Wheeler, 20 January 2011.
25. *Financial Times*, 15 October 2010.
26. *Levels of Heavy Metals and Cyanide in Soil, Sediment and Water from the Vicinity of North Mara Gold Mine in Tarime District, Tanzania*, report to CCT, Manfred F. Bitala, Charles Kweyunga and Mkabwa L.K. Manoko, 2009, <http://www.Pambazuka.org/images/articles/450/ERROR%20FREE%20NORTH%20MARA%20REPORT%20-%20FINAL.pdf>
27. 'Tanzania: killings and toxic spill tarnish Barrick Gold', Zahra Moloo, Pambazuka, 19 May 2011.
28. Ibid.
29. Ibid.
30. Bloomberg, 8 March 2011.
31. 'Seven dead in clash at African Barrick mine', *Toronto Star*, 17 May 2011.
32. 'Black eye for Barrick taints Canada critics say', Lisa Wright, *Toronto Star*, 18 May 2011. This tarnished image was hardly improved when ABG allegedly refused permission for the families of the five killed men to hold a memorial service at the mine site: 'Memorial for dead banned at Canadian gold mine in Africa', Jocelyn Edwards, *Toronto Star*, 23 May 2011.
33. 'Shooting gold diggers at Barrick African mine coincides with record prices', Cam Simpson, Bloomberg, 23 December 2010.
34. http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf
35. 'Shooting gold diggers at Barrick African mine coincides with record prices', op. cit.
36. http://www.regjeringer.no/upload/FIN/etikk/recomendation_barrick.pdf
37. The appointment of a 'competent person', although recommended by the UKLA, is not mandatory for a Main Market listing, although it is for AIM: <http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/rules/guidance-note.pdf>
38. *International Mining*, May 2007, p. 39.
39. Ibid.
40. *Financial Times*, 17 September 2007.
41. *Mining Journal*, 21 August 2009. In December 2010, what was left of Brinkley was acquired by Australia's Eurogold, which valued the UK company at only a little over £4 million: Reuters, 8 September 2010. By April 2011, Eurogold had apparently sold Brinkley and gone out of business itself.
42. The Cadbury Report was unequivocal in warning of the risks of failing to make a clear division of responsibilities at the top level of UK businesses. Cadbury argued that the position of chairman of the board should be separated from that of chief executive, or else that there be a strong independent element on the board: <http://www.ecgi.org/codes/documents/cadbury.pdf>. On leaving Barclays in 2005, as well as taking the helm at Brinkley, Holden was instrumental in putting together another controversial AIM-listed company,

- Asia Energy, later renamed GCM Resources (case study 3.7), of which he is currently non-executive chairman. As noted in the Vedanta case study (3.5), Anil Agarwal has also played both roles – a position he defends as in the interests of the company in which he and his family trust control 62.21% of the equity. See also footnote 18.
43. ‘Congo purge puts Brinkley deal in doubt’, Ben Laurance, *Sunday Times*, 20 September 2007.
44. Ibid.
45. ‘Brinkley hits back in DRC uranium fracas’, miningmx.com, 18 September 2007.
46. ‘Wikileaks reveals a uranium scandal’, 11 January 2011, <http://www.minesandcommunities.org/article.php?a=10634>
47. In the light of Lord Adair Turner’s claim of October 2008 that the days of FSA ‘light-touch regulation’ were over, the following year Timis acquitted the FSA of being responsible for damning his Regal scam. He told the *Evening Standard* that the FSA had ‘made a full investigation. I spent eighteen hours with them, answering their questions, and I am in the clear.’ But Timis had no such charity for AIM, saying: ‘Then AIM looked at it and held a fucking kangaroo court’: *Evening Standard*, 10 January 2010.
48. *Awareness Times*, Sierra Leone, 22 July 2005.
49. By 2005, Timis controlled three firms registered in London, though not on the London Stock Exchange: Regal Petroleum, European Goldfields and Sierra Leone Diamond Corporation (SLDC), in the last of which he was the majority shareholder. Timis became the non-executive chairman of SLDC in 2004, when African Minerals Ltd was SLDC’s main subsidiary. As of February 2009, SLDC was still listed as an operational company, although ownership and management had by then (after August 2007) passed into the hands of African Minerals plc.
50. *Financial Times*, 19 July 2010.
51. *Financial Times*, 19 July 2010.
52. http://www.african-minerals.com/Corporate/Operations/Tonkolili_Iron_Ore_Project/default.aspx?id=726
53. ‘Merely empty promises?’, 17 December 2010, http://www.madam-sl.org/?Projects:Right_to_Food:Massive_iron_ore_project_brings_mining_tensions_back_to_Sierra_Leone, Paige McClanahan, *Christian Science Monitor*, 12 December 2010; ‘After diamonds, iron foments Sierra Leone tensions’, Simon Akam, Reuters, 8 December 2010.
54. Hemscott Premium, accessed 12 April 2011.
55. Dow Jones Newswires, 24 February 2011.
56. ‘After diamonds, iron foments Sierra Leone tensions’, Simon Akam, Reuters, 8 December 2010.
57. *Mining Journal*, 22 October 2010.
58. <http://www.minesandcommunities.org/article.php?a=10732>
59. *Forbes* magazine, 5 May 2011, <http://www.minesandcommunities.org/article.php?a=10891>
60. In 2009, Mr Agarwal also expressed the desire for a public listing of his company’s Indian aluminium subsidiary (VAL) on LSE or another global stock market. However, during the succeeding year he failed to secure Indian Government permission to mine bauxite from Orissa’s Niyamigiri mountain and to start a fivefold expansion of the neighbouring Lanjigarh alumina refinery. These setbacks received significant attention in the UK.
61. Vedanta’s late-December 2003 LSE IPO was the second largest of the year and marked the first time an Indian company was admitted to the exchange.
62. On 25 May 2011, the US Securities and Exchange Commission (SEC) ‘proposed a rule to deny certain securities offerings from qualifying for exemption from registration if they involve certain ‘felons and other bad actors’: <http://www.sec.gov/news/press/2011/2011-115.htm>. As of December 2011, the SEC had still not implemented this provision of the Dodd-Frank Act – a supposed deadline of July 2011 for implementation having passed without it being fulfilled.
63. <http://www.regjeringen.no/Upload/FIN/Statens%20pensjonsfond/RecommendationVedanta.pdf>; <http://www.minesandcommunities.org/article.php?a=8260>
64. Personal communication from Norwegian Council of Ethics, August 2010.
65. <http://www.minesandcommunities.org/article.php?a=8291>; <http://www.minesandcommunities.org/article.php?a=8291>. In a quixotic decision, the Indian Supreme Court promptly endorsed handing control of the mine project to Vedanta’s Indian-registered subsidiary, Sterlite Industries, and the state-owned Orissa Mining Corporation, provided certain conditions were met.
66. <http://www.minesandcommunities.org/article.php?a=7777>
67. <http://www.minesandcommunities.org/article.php?a=7769>; <http://www.minesandcommunities.org/article.php?a=7773>
68. The vociferous presence of Kondh representatives and their Indian and UK supporters at successive London AGMs of the company played a significant role in highlighting its unacceptable activities in Orissa.
69. ‘GUILTY: UK government blasts Vedanta in unprecedented attack’, Survival international press release, 12 September 2009.
70. <http://www.minesandcommunities.org/article.php?a=9543&highlight=Survival,International>
71. http://www.amnesty.org.uk/uploads/documents/doc_20144.pdf
72. India’s Forest Conservation Act, Forest Rights Act and Environment Protection Act.
73. <http://www.minesandcommunities.org/article.php?a=10322>
74. <http://www.minesandcommunities.org/article.php?a=10346>
75. <http://www.minesandcommunities.org/article.php?a=10928&l=1>
76. A ‘show cause notice’ allows a person or body corporate the opportunity to provide evidence as to why an administrative action should not be taken against them; ‘India: toxic sludge leak from Vedanta’s red mud pond threatens rural communities’, Amnesty International statement, Delhi, 1 June 2011; <http://www.minesandcommunities.org/article.php?a=9388>
77. http://www.youtube.com/watch?v=i_8Tp2skbNM
78. ‘India: Toxic sludge leak from Vedanta’s red mud pond threatens rural communities’, op. cit.
79. <http://www.youtube.com/watch?v=cwicLF7s1tE>
80. <http://www.vedantaaluminium.com/location-jharsuguda.htm>
81. Design output of the smelter is currently set at half a million tonnes per annum (mtpa); however Vedanta’s original plan was for full operational capacity more than three times this, at 1.75 mtpa.
82. ‘Petition submitted by Mr Samantara to the Chairman, Orissa State Pollution Control Board, Nilakanthanagar, Bhubaneswar, Orissa, June 5 2006 ... drawing your attention about the illegal construction work undertaken by M/S Vedanta ltd for its proposed smelter plant and captive power plant at Jharsuguda without getting environmental clearance’: <http://www.freewebs.com/epgorissa/vedantasmelter.htm>
83. <http://www.minesandcommunities.org/article.php?a=9245>
84. *New Indian Express*, 23 July 2009.
85. ‘No pollution clearance, Vedanta runs 10 units’, Priya Ranjan Sahu, *Hindustan Times*, 9 September 2010.
86. Ibid.
87. http://moneytometal.org/index.php/Zambia_Copper_Investments_Ltd/ZCI:‘Copper_in_Zambia:_charity_for_multinationals’_Khadija_Sharife,_Pambazuka,_2_June_2011, <http://Pambazuka.org/en/category/features/73742>
88. *The Limitations of Corporate Social Responsibility on Zambia’s Copperbelt*, Patricia Feeney, Oxfam, November 2001, <http://www.minesandcommunities.org/article.php?a=244>. Patricia Feeney is now Executive Director of RAID (Rights and Accountability in Development, an Oxford-based research and advocacy NGO).
89. ‘Zambia: KCM negligence blamed for Kafue river pollution’, *Times of Zambia* (Ndola), 15 November 2006; <http://www.minesandcommunities.org/article.php?a=7489>
90. *For Whom the Windfalls: Winners & Losers in the Privatisation of Zambia’s Copper Mines*, 2007, <http://www.liberationafrique.org/IMG/pdf/Minewatchzambia.pdf>
91. *Undermining Development? Copper Mining in Zambia*, joint report by ACTSA (Action for Southern Africa), Christian Aid and SCIAF, 29 October 2007. The NGOs accused KCM of ‘short changing’ Zambia, paying royalty fees of just 0.6% on production, as opposed to the 5% to 10% industry average in developing countries. It estimated that in 2006-7 the Zambia Government would have received mineral royalties of only US\$6.1 million from KCM, although the company extracted copper ore worth over US\$1 billion. The report quoted claims by some of KCM’s subcontracted skilled labourers that they were paid as little as £37 per month when the average Zambian family is judged to require at least £151 per month to meet basic needs.
92. <http://www.minesandcommunities.org/article.php?a=10613>
93. Ibid.
94. http://en.wikipedia.org/wiki/Precautionary_principle
95. ‘4 KCM miners die’, *Lusaka Times*, 29 March 2011.
96. *Undermining Development?*, op. cit.
97. LMN is grateful to Simon Chambers for researching much of the material used here; he visited Korba in early 2011, conducting interviews and examining numerous documents which are not available in electronic form.
98. Due to the turmoil following the collapse of the chimney, and the destruction of employee records (where these existed), no firm figure of the number of victims is likely to be forthcoming. Pravin Patel, an NGO coordinator in India, visited the site soon after the collapse and reported that bulldozers had moved into the area, clearing and compounding the debris, effectively burying any bodies not recovered by then.
99. BALCO was 51% privatised by the Indian Government in 2001, the same year the Zambia Government sold the Konkola Copper Mine to Anglo American, and which was acquired by Vedanta three years later. Anil Agarwal’s Sterlite Industries took charge of BALCO’s previously state-owned assets, assuming management of the company. In 2007, four years after Sterlite had been incorporated as Vedanta Resources, BALCO began sacking former employees and resorted to employing contracted labour. A report published that year by Delhi’s respected V.V. Giri National Labour Institute found that, under Vedanta/Sterlite’s control, BALCO had failed to honour virtually all the undertakings made previously to its labour force: <http://www.minesandcommunities.org/article.php?a=3876>
100. <http://www.minesandcommunities.org/article.php?a=9501>
101. BALCO apparently did not keep its own records of the subcontracted labourers. This, in itself, is a matter of concern. Under Indian law a company that hires a subcontracting firm is also accountable for the behaviour of that firm in regard to the treatment of its employees.
102. Chairman’s statement, Vedanta Resources annual report 2010, p. 9.

103. <http://www.minesandcommunities.org/article.php?a=9500>
104. This summons was issued against the 'owner of Bharat Aluminium Company Limited (BALCO) and others'. J.N. Chandra, deputy director of prosecution, representing the Chhattisgarh Government, said: 'The order does not mention the owner's name since the company's ownership deed was not available to the court, but it is well known that the owner of BALCO is Anil Agarwal, the London-based chairman of Vedanta group.' According to a report in *The Times of India*, 31 October 2010, 'other legal experts suggested the ownership could be vested in the board of directors and not the chairman alone'.
105. Dow Jones Newswire, 23 September 2009.
106. Headlined 'Incident at the BALCO construction site', the note read: 'Vedanta Resources plc's subsidiary Sterlite Industries India Limited ('Sterlite') regrets to announce that a power plant chimney under construction at BALCO, Korba collapsed today. The chimney was being constructed by Gannon Dunkerley & Co. Ltd for the 1,200 MW CPP, associated with the 325 ktpa aluminium smelter project. The relief and rescue operations are in full swing with the involvement of the company and the government resources. Activities in the particular area were temporarily suspended, while the existing operations remain unaffected. A probable reason for the incident appears to be the excessive rains and lightning at Korba. The exact cause for this will however be ascertained only after a detailed investigation is concluded': RNS No. 5734Z, Vedanta Resources, LSE, 23 September 2009.
107. Vedanta Resources, annual report 2010, p. 9.
108. A search of the BSC's website reveals no information about either award. The second was almost certainly made to one of two functioning BALCO captive power plants at Korba, not to the plant under construction when the September 2009 deaths occurred.
109. *Observer*, 29 August 2010. The newspaper recorded that, among the FTSE 100-listed mining companies, Vedanta was responsible for by far the highest number of workplace deaths (67), followed by Anglo American with 20, Kazakhmys with 17 and ENRC with 12: <http://www.minesandcommunities.org/article.php?a=10358&highlight=British,Safety,Council>. The deaths continue: in November 2011 a contract worker died, and another was seriously injured, after being sucked into a duct at Vedanta's highly polluting Tuticorin (Thoothukudi) copper smelter in Tamil Nadu: <http://www.minesandcommunities.org/article.php?a=11313>.
110. 'Hey they are only workers, have an award', *Hazards magazine*, ITUC, Brussels, 3 September 2010.
111. Dow Jones Newswires, 20 July 2010. PIRC also found that Vedanta's failure 'to engage with explicit investor led concerns over the impact of group activities on the Niyamgiri region' was evidence of the company's 'lack of competent oversight'. The UK's largest insurance provider, Aviva, responded to PIRC's call at Vedanta's 2010 AGM by voting against resolutions on accepting the annual report and accounts and the remuneration report, and on the reappointment of Naresh Chandra as chair of the health, safety and environment committee: Reuters, 23 July 2010.
112. <http://www.minesandcommunities.org/article.php?a=9871>
113. A group of European NGOs organised a one-day seminar for investors in Vedanta at Amnesty International UK's London offices on 22 September 2009. Investors were invited to hear personal testimony about much of the evidence of the company's violations contained in this case study. Around nine leading funds and banks were represented. Vedanta was invited by letter and in several phone calls to attend and to respond to the presentations. The company did not deign to reply, marking yet another occasion on which it has been discourteous and dismissive towards its critics. Our report has already noted a similar attitude displayed by Vedanta to the UK Government's OECD National Contact Point, just two weeks before; and its failure to respond in any meaningful fashion to the accusations against it contained in the Norwegian Council of Ethics 2007 report.
114. On 23 May 2011, BHP Billiton's market capitalisation was £127 billion, Rio Tinto's £78.76 billion, Xstrata's £40 billion and Anglo American's £34 billion.
115. <http://www.bbc.co.uk/news/business-16907816>
116. Reuters, 13 June 2011; CITY AM, 14 June 2011.
117. Thomson Reuters, *International Financing Review*, 19 May 2011.
118. Reuters, 23 May 2011. Aviva also voted against three resolutions at Vedanta's 2010 AGM: on accepting the annual report and accounts, on the remuneration report, and on the reappointment of the board member chairing the health, safety and environment committee. Aviva's representative, Steve Waygood, insisted that the board should 'open up lines of communication with investors and begin a dialogue with organisations that raise important matters of social and corporate governance': *Guardian*, 28 July 2010. See also Vedanta, case study 3.5.
119. Those principally profiting from Glencore's newly tapped capital (primarily as a result of the London IPO) are its 485 owner-partners and 2,700 associated traders. In theory the partners are restricted from cashing out their shares for another five years. In the meantime, thanks to the flotation, several of them have become overnight millionaires, while CEO Ivan Glasenberg's private wealth was valued at \$8.8 billion according to a survey by Australia's *Business Review Weekly* in early May: <http://www.minesandcommunities.org/article.php?a=10948>. Australia's *Business Spectator* of 27 May 2011 noted that Glasenberg's 'right-hand-man, Steven Kalmin, has ... rocketed onto the [Australian] rich list with a fortune of \$560 million. Kalmin, who worked as a commodities trader in Sydney before heading for Switzerland in 2003, was appointed chief financial officer two years ago.'
120. *Money Morning*, 18 May 2011.
121. *Business Spectator*, 17 May 2011.
122. *The Times*, 19 May 2011.
123. Ibid.
124. Colombia's President Alvaro Uribe responded by ordering high-level officials of the ministries of Environment and Social Protection to visit the area and 'take charge of the issues that each are responsible for'. A civil society statement issued by labour, social and human rights organisations on 10 February 2007 denounced the attacks and called on Glencore to immediately desist from 'contaminating' the area and from contributing to an increase in respiratory diseases among the local population, including workers: 'Reparos a un megaproyecto carbonífero de Drummond en Cesar', Herminso Ruiz, *El Espectador*, 10 February 2007, <http://www.elsespectador.com/elsespectador>; also <http://www.minesandcommunities.org/article.php?a=150>
125. This mine is owned by Glencore Finance (Bermuda). The local branch of the Union of Mine and Metals Workers claimed on 22 September 2007 that 'some 190 workers work directly for the company and another 900 work through the contracting companies ... the company has unilaterally applied unusual work shifts of 14 x 7 (fourteen days straight working twelve hour shifts and then seven days rest). The workers must share rooms and beds [and] work in the mine under insecure conditions.' The union stated that the population of La Jagua de Iberico-Cesar 'has for several years been suffering from contamination produced by mining operations and transport of coal in the mines of Glencore A.G. and Drummond ... and from unemployment, pulmonary illnesses of children, misery and the military-paramilitary presence ... Because of this, two days ago the residents decided to carry out a peaceful protest to block the roads which enter and exit the town.'
126. *The Times*, 19 May 2011.
127. Ibid.
128. *The Times*, 20 May 2011.
129. *Guardian*, 20 May 2011.
130. MCM is 73.1% owned by British Virgin Islands-based Carlisa Investments, itself 81.2% owned by Bermuda-based Glencore Finance, a 100%-owned subsidiary of Glencore Switzerland. State-owned ZCCM owns 10%: 'Copper in Zambia: charity for multinationals', Pambazuka, Issue 532, 2 June 2011, <http://Pambazuka.org/en/category/features/73742>
131. 'Five NGOs file a complaint against Glencore International AG and First Quantum Minerals for violation of OECD guidelines', MiningWatch Canada press release, 12 April 2011, along with SHERPA (France), Center for Trade Policy and Development (Zambia), Berne Declaration (Switzerland) and l'Entraide Missionnaire (Canada).
132. Ibid.
133. 'Contrats, droits humains et fiscalité: comment une entreprise dépouille un pays. Le cas de Glencore en République Démocratique du Congo' ('Contracts, human rights and taxation: how a company exploits a country. The case of Glencore in the Democratic Republic of Congo'), Bread for All / Catholic Lenten Fund, March 2011, http://www.brotfueralle.ch/fileadmin/deutsch/2_Entwicklungspolitik_allgemein/C_Wirtschaft%20und%20MR/study_glencore_summary.pdf; the complete study is only available in French.
134. 'Glencore accused of rights abuses in DR Congo', Stefania Summermatter, *Swissinfo.ch*, 12 March 2011.
135. *Guardian*, 1 November 2009; *The Times*, 28 October 2009.
136. *In These Times*, 22 December 2010; http://www.gaucherepublicaine.org/lettres/respublique_lettre-655.htm
137. The UK Corporate Governance Code was updated and changed in eight 'key respects' in early 2011. The changes include: that a company board be now responsible for determining 'the nature and extent of the significant risks it is willing to take in achieving its strategic objectives'; 'more emphasis on the role of chairman'; an 'enhanced role for the senior independent director'; that 'Diversity, including gender ... be taken into account for new board appointments'; and that there be 'externally facilitated evaluations of the board at least every three years for FTSE 350 companies': http://www.grant-thornton.co.uk/pdf/corporate_governance.pdf
138. *Financial Times*, 15 April 2011.
139. 'Investors out of Phulbari', 19 October 2011, <http://accountabilityproject.org/article.php?id=668>, on which this case study is based. Led by experienced advocates, the International Accountability Project includes among its funders the Open Society Institute, the Sigrid Rausing Trust and the Wallace Global Fund.
140. 'Bangladesh: broken promises from government to halt RAB killings', May 2011, <http://www.hrw.org/news/2011/05/10/bangladesh-broken-promises-government-halt-rab-killings>; 'Bangladesh: UK-trained security forces must stop extrajudicial executions', January 2011, http://www.amnesty.org.uk/news_details.asp?NewsID=19210
141. Equator Principles, 'a financial industry benchmark for determining, assessing and managing social and environmental risk in project financing', <http://www.equator-principles.com>; GCM and the Bangladesh Government have equally failed to respect and protect indigenous communities' right to free, prior and informed consent under the UN Declaration on the Rights of Indigenous Peoples. For GCM's stated policies, see <http://www.gcmplc.com/corporate-responsibility>.

142. 'Cultural Survival's letter to GCM Resources', January 2011, <http://www.culturalsurvival.org/node/9711>
143. 'Investors out of Phulbari', 19 October 2011, <http://accountabilityproject.org/article.php?id=668>
144. Environmental and Social Impact Assessment (ESIA, Vol. 1, Chapter 8: 63), cited by Roger Moody (2008: 73), "Phulbari Coal: a Parlous Project," in *Phulbari Coal Project: Studies on Displacement, Resettlement, Environmental and Social Impact*, Samhati Publications, Dhaka, Bangladesh. (See also http://www.accountabilityproject.org/downloads/PhulbariCoal_ParalousProject_Nov08.pdf)
145. <http://www.accountabilityproject.org/downloads/Summary%20of%20Expert%20Committee%20Report.pdf>
146. 'Investors out of Phulbari', 19 October 2011, <http://accountabilityproject.org/article.php?id=668>
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