

To the Ministry of Finance

Recommendation of 15 May 2007

Contents

1	Introduction	1
2	Sources	2
3	The Council's considerations	3
4	About Vedanta Resources	4
5	Accusations of severe environmental damage and human rights violations	6
5.1	Sterlite Industries - Tuticorin	7
5.1.1	The accusations against Sterlite's Tuticorin complex	8
5.1.2	More details on the operation at Tuticorin	8
5.1.3	Illegal production expansion	8
5.1.4	Health and environmental damage	12
5.2	Madras Aluminium Company Ltd (Malco)	15
5.2.1	The accusations against Malco	15
5.2.2	The refinery at Mettur Dam	15
5.2.3	Environmental and health effects	17
5.3	Bharat Aluminium Co	19
5.3.1	Forced eviction of tribal peoples	20
5.4	Vedanta Alumina Ltd	21
5.4.1	Accusations against Vedanta Alumina	22
5.4.2	Mining in the Niyamgiri Hills	23
5.4.3	The refinery at Lanjigarh	24
5.4.4	Misinformation and breaches of laws and procedures	25
5.4.5	Expected environmental impact of the refinery	27
5.4.6	Involvement in human rights violations	27
6	The company's response	32
7	The Council's assessment	33
7.1	Severe environmental damage	33
7.2	Human rights violations	36
7.3	Conclusion	38
8	Recommendation	38

1 Introduction

At a meeting on 2 October 2006 the Council on Ethics for the *Government Pension Fund – Global* decided to assess whether the investments in the company Vedanta Resources Plc. may imply a risk of the Fund contributing to unethical acts under the Ethical Guidelines, point 4.4.

As of 31 December 2006 the *Government Pension Fund – Global* held shares worth some NOK 81 million in the company, amounting to an ownership share of 0.16 per cent.

Vedanta Resources is a British metals and mining company. Its core business is linked to mining and production of copper, aluminium, and zinc in India. The company also has operations in Australia, Zambia and Armenia. Vedanta Resources is accused of having caused environmental damage and contributed to human and labour rights violations. Other accusations include repeated breaches of national environmental legislation, illegal production expansions, irresponsible handling of hazardous waste, violations against tribal peoples, deplorable wages, and dangerous working conditions in the mines and factories. The company is also criticized for being involved in bribery and corruption.

The Council has assessed the risk of the Fund, through its investment in Vedanta Resources, contributing to two breaches of the Ethical Guidelines – severe environmental damage and human rights violations. In this context, the Council has examined four Vedanta subsidiaries that operate in India: Sterlite Industries, Madras Aluminium Company, Bharat Aluminium Company, and Vedanta Alumina. Vedanta Resources holds a controlling interest in all these companies.

In accordance with the Guidelines, point 4.5, the Council has contacted Vedanta Resources through Norges Bank requesting the company to comment on the aforementioned accusations and their basis. A letter was written to the company on 15 March 2007 soliciting comments on the draft recommendation by 10 April. At the same time, the company was informed that the Council would recommend its exclusion on 15 May if the company did not respond to the Council's enquiry. Following a request from Vedanta on 2 April, the deadline was extended to 20 April. Being contacted again on 23 April, the company indicated that a reply would be sent within a few days. As of 15 May 2007, the company has not responded to the Council's enquiry.

In order to establish whether there is a risk of complicity in severe environmental damage, a direct link must exist between the company's operations and the violations. The Council takes as its point of departure that the environmental damage must be extensive. Great importance must be placed on whether the damage causes irreversible or long-term effects, and whether it has considerable negative impact on human life and health. Moreover, there should be an assessment of the extent to which the company's acts or omissions have caused the damage, including whether the damage is a result of violations of national legislation or international norms; whether the company has failed to act in order to prevent the damage, or failed to sufficiently make amends for the scope of the damage. There must also be a probability that the company's unacceptable practice will continue in the future.

The question of whether the company contributes to gross or systematic human rights violations is assessed on the basis of whether there is an actual link between the company's operations and the alleged offences, and whether these violations have been perpetrated

with a view to serving the company's interests or facilitating operational conditions. The company must have contributed to the violations or been aware of them, but been remiss about attempting to prevent them.

The Council finds that the allegations levelled at the company regarding environmental damage and complicity in human rights violations, including abuse and forced eviction of tribal peoples, are well founded. In the Council's view the company seems to be lacking the interest and will to do anything about the severe and lasting damage that its activities inflict on people and the environment. As described in Chapter 5, the violations against the environment and human rights that have been revealed are recurrent at all the subsidiaries subject to investigation and have taken place over many years. In the Council's view, they indicate a pattern in the company's practices where such violations are accepted and make up an established part of its business activities. Such a pattern of conduct constitutes an unacceptable risk that the company's unethical practices will continue in the future. After an overall assessment the Council finds that the criteria for severe environmental damage and gross or systematic human rights violations have been met in this case.

The Council has reached the conclusion that the Ethical Guidelines, point 4.4, second clause, provide a basis for recommending the exclusion from the Government Pension Fund – Global of the company Vedanta Resources Plc., as well as the individually listed subsidiaries Sterlite Industries Ltd. and Madras Aluminium Company Ltd., due to an unacceptable risk of complicity in present and future severe environmental damage and systematic human rights violations.

2 Sources

The Council on Ethics places great importance on substantiating the recommendations for exclusion with ample and varied source material. In this case the Council has drawn on surveys and investigations conducted or commissioned by Indian authorities, reports from national and international non-governmental organisations, articles in Indian and international newspapers, and documentaries.

The Council will make specific mention of the reports from the *Indian Supreme Court Monitoring Committee on Hazardous Wastes* and the *Indian Supreme Court's Central Empowered Committee*. Both committees are appointed by the Indian Supreme Court. The *Supreme Court Monitoring Committee on Hazardous Wastes (SCMC)* was created in November 2003 to monitor the implementation of the regulations on hazardous waste and a series of orders issued by the Indian Supreme Court since 1995. The SCMC is an expert committee on waste and the environment, which reports to the Indian Supreme Court four times a year.¹ The *Central Empowered Committee (CEC)* was established by the Supreme Court in May 2002 to investigate complaints relating to the *Indian Forest Conservation Act* and the *Environmental Protection Act*. The committee is made up of former judges and civil servants with special competence in the environmental field. The CEC shall give recommendations to the Supreme Court regarding violations of the law in specific cases. To date the CEC has submitted recommendations in 400 cases to the Supreme Court, all of which have been accepted.

¹ <http://www.scmc.info/index.htm>

In addition to this, the Council has commissioned its own reports and studies by external Norwegian, British, and Indian consultants. Representatives from the Council's secretariat have visited India and had several meetings with local organisations and individuals who have in-depth knowledge of Vedanta's operations. Furthermore, the Council has gained access to letters and orders from Indian authorities to the company. The sources are referred to in footnotes throughout the document.

3 The Council's considerations

The Council has assessed whether the *Government Pension Fund – Global*, through its ownership in the British company Vedanta Resources Plc., runs the risk of contributing to unethical acts. In this context four Vedanta subsidiaries have been subject to the Council's survey: Sterlite Industries, Madras Aluminium Company, Bharat Aluminium Company, and Vedanta Alumina.

The Ethical Guidelines, point 4.4, second clause state:

” The Council issues recommendations on the exclusion of one or more companies from the investment universe because of acts or omissions that constitute an unacceptable risk of the Fund contributing to

- Gross or systematic human rights violations such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other exploitation of minors*
- Grave breaches of individual rights in war or conflict situations.*
- Severe environmental damage*
- Gross corruption*
- Other particularly serious violations of ethical norms”*

In particular, the Council has assessed whether Vedanta Resources causes severe environmental damage, but it has also evaluated the accusations of involvement in human rights violations. In previous recommendations the Council has elaborated on and exemplified these criteria.²

The Council must make a concrete assessment of what is to be considered *severe environmental damage* in each case, basing itself on an overall evaluation with particular emphasis on whether:

- *the damage is significant;*
- *the damage causes irreversible or long-term effects;*
- *the damage has considerable negative impact on human life and health;*
- *the damage is a result of violations of national laws or international norms;*
- *the company has neglected to act in order to prevent the damage;*
- *the company has not implemented adequate measures to rectify the damage;*

² See recommendations regarding Total S.A., Wal-Mart Stores Inc., Freeport McMoRan Inc., and DRD Gold Ltd.; available at www.etikkradet.no