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International Organizations and Participatory Global Citizenship: Civic Education beyond Territoriality

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**Abstract:** The purpose of this essay is to examine civic education through the lens of global citizenship. Contemporary globalization has fractured the idealization of citizenship in relations to states, and postsecondary institutions are now in a position not only to promote, but also project globalized values through civic education and engagement. This paper argues that civic engagement needs to be reassessed in light of global transformations. Through a complex system of assessment regimes, international organizations (IOs) such as the OECD are now projecting norm-based transnational human rights enforcement systems that may guide the discursive parameters of civic education curriculum. Due to these IOs’ ability to confer prestige, and promote stratification, they then have the ability to extraterritorially impose a set of regulatory mechanics onto foreign institutions themselves. They now have the *ethos* to construct a regulatory apparatus based on the *logos* of those transnational legal systems they construct, and thus promote. The emphasis is not on any fixed forms of disciplinary structure per se, but on a discursive democratic process that allows for substantive and legitimate participation of transnational legal structures by all civil society actors. The case of Survival International further provides an excellent educational artifact that opens the possibility for a civic pedagogy of participatory global citizenship. Overall, this article concludes that regulatory power has not only seeped away from states, but IOs and civil society actors are now wielding an immense amount of regulatory power that demands knowledge, curriculum, and education policy to shift towards the transnational level. This paper concludes by arguing that civic engagement needs to be reassessed in light of global transformations. This, of course, advances the idea of global citizenship in the hope of expanding the possibility of catalyzing civic engagement that transcends clearly defined borders, while respecting the pluralistic experiences of a diverse world.

# Introduction

Civic education has always been a pejorative of the state. The notion of citizenship has also been grounded within the architecture of the state as well, where civic engagement has been confined within national borders. Civic engagement tends to ascribe to concepts of statehood-- where various rights, privileges, and responsibilities are attributed to, and by, the state. Yet, with the onset of contemporary globalization, this notion of civic engagement is becoming increasingly fractured, especially considering the convergence of domestic and transnational governance regimes. Contemporary globalization has affected the U.S. university system in a myriad of ways.[[1]](#footnote-1) U.S. universities for example, have increasingly internationalized their institutional presence, with satellite campuses developed around the world. There has been an increase of a large presents of international students at U.S. universities.[[2]](#footnote-2) Not only are universities a part of the process off globalization, but are unique to it. Educational institutions, as Fernando Reimers reminds us:

…are a public space, and consequently also a globally public space, in ways in which families and religious institutions are not. If schools actively engage in teaching hatred or intolerance, or if they fail to prepare students adequately for global civility, these failures can be noted by international institutions that can potentially mobilize resources to support national and local efforts to prepare students for global citizenship. There is not a similar network linking national and transnational institutions, public and private, governmental and non-governmental, that attends to the dynamics of families and other ‘‘private’’ spaces.[[3]](#footnote-3)

Modern universities are centers for cosmopolitanism. This is a shared notion of the citizen of the world, which transcends cultural, social, or territorial, boundaries. This Kantian notion suggests that there is one moral community that encompasses all citizens of the world. In this paper, we seek to expand on the current discourse surrounding civic education by examining civic engagement from a global perspective, and focusing specifically on the relationship of higher education and public advocacy. Tocqueville captured what civic education is within this contest: “Town meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it.” The paper, then, begins with a brief historical overview of the concept of citizenship by drawing on the problematic relationship between “citizenship” and “states”. The paper will then contextualize the concept of global citizenship within the discourse of cosmopolitanism, polycentricity and extraterritoriality, and delineate the historical shift from "the citizen of a state" toward "the citizen of the world". Following a historical and theoretical overview on the concept of global citizenship, this paper then examines the Organization for Economic Co-operation and Developments (OECD)’s human rights agenda represented through its “Guidelines for Multinational Enterprises”, and explore the ways that OECD has influenced human rights policy through the projection of soft-law. This paper finds that the OECD has moved beyond its traditional parameter as a global economic forum, but has now taken on the form of global regulator, with the ability to wield an extraordinary amount of regulatory power in the domain of global human rights enforcement. Furthermore, the paper concludes that the OECD Guidelines for Multinational Enterprises provides the crucial antecedent that frames the global discourse on socio-economic rights and signals the possibility for a participatory global citizenship. This paper concludes by arguing that civic engagement needs to be reassessed in light of global transformations. This, of course, advances the idea of global citizenship in the hope of expanding the possibility of catalyzing civic engagement that transcends clearly defined borders, while respecting the pluralistic experiences of a diverse world.

# State-Centric Citizenship and the Ossification of Civic Education

The notion of civic education is deeply rooted in the democratic ideals that sprung out of the Age of Enlightenment. Traditionally, civic engagement seemed to also implied statehood, that people are either born or migrated into a territory that was clearly demarcated by boundaries, from where various rights, privileges and responsibilities are ascribed to the people by the state, normatively grounded within the “social contract”[[4]](#footnote-4) The social contract conception of citizenship is grounded on the contradictory narratives concerning the hypothetical “State of Nature”. On one hand, as Hobbes have argued, the “solitary”, “brutish” and “nasty” nature of ungoverned individuals must subject themselves under a commonwealth that commands them in all things, so that the violence consequences of the “State of Nature” can be avoided.[[5]](#footnote-5) Hobbes’s social contract theory provided the critical account for the legitimization of the state sovereignty—for the purpose of delivering us from an endless state of “war of all against all.” This view, of course, suggests that a state structure is always preferable to the conditions of the “state of nature.” Rousseau, on the other hand, framed the social contract in more positive terms, arguing that the social contract was made in the name of the common good and collective security, and people with “enlightened self-interest” would willingly give their consent to the rule of law. Rousseau’s notion of social contract provided an account of popular sovereignty, but which such sovereignty nonetheless presupposes the ordering of all citizens under a single moral community of the state.[[6]](#footnote-6)

The modern Realist conception of the world emerges from these two seemingly contradictory narratives of social contract: that a nation-state is bound by an indivisible moral community in its interiority, whereas in its exteriority exists an anarchic world of “war of all against all” among nations, where individual states are bound by no higher authority but their own national-interest. To be a citizen in this sense involves a commitment to a set of values, norms and practices that are organized around the state sovereignty, which in turn imposes order and rule of law that operates within the physical boundary of the state. The citizenship therefore ceases to exist beyond the scope of the state, as there is supposedly no higher sovereign power or rule of law beyond the state structure.

This traditional conception of citizenship grounded in the notions of state solidarity and international realism, however, is becoming increasingly disjointed with the functional realities of national and global affairs. With the globalization process and the rapid increase in the free movement of goods, services, capital, and knowledge across state borders (but not so much people), the vertical state-centric construct is being gradually displaced by the polycentric web of global governance frameworks. The globalization process, then, along with the formation of supranational/transnational entities (e.g. EU, IMF) has compelled us to consider the possibility of citizenship beyond state borders, which led to the emergence of contemporary cosmopolitan discourse that incorporates discussions on “economic (neoliberal) liberalism, political extraterritoriality, and transnational law.”[[7]](#footnote-7) This discursive development is also accompanied by the development of substantive value frameworks that extend beyond national borders, such as human rights norms, corporate social responsibility, and the neo-liberal notion of “free-trade”.

However, against this backdrop of substantive globalization, the concept of “citizenship” remains largely ossified within the traditional state-centric narrative structure. For instance, American historian and foreign policy analyst Robert Kagan recently highlighted this disjointedness of the idea citizenship by making the critical observation that Americans, when compared to their European counterparts, “generally see the world divided between good and evil, between friends and enemies… They favor coercion over persuasion, seek finality in international affairs.”[[8]](#footnote-8) Unfortunately, against this growing practical need for an imaginative framework of global citizenship, a coherent educational response to this future necessity “has barely begun to emerge”.[[9]](#footnote-9)

Thus, what we have got into the habit of calling “civic engagement” in fact implies a homogenous political order grounded in the notion of nation-states. The rise of modern democratic society is accompanied by the dissolution of rural community life, where internally-oriented small rural communities are transformed into externally-oriented modern megacities or cosmopolitans. Democratic society therefore presupposes exteriority in relationships, and that “society” only starts “where in-group bonding through kinship and totemic figures or myths ceases.”[[10]](#footnote-10) The challenge of modern society, as Jean-Luc Nancy points out, is that the externalized interrelation of individuals motivated by interest and power displaces the symbolic meaning or truth of being-together as a community. Organizing individuals under the *mythos* of a sovereign state therefore restores a sense of symbolic communal solidarity, transforming individuals into fellow citizens, thus internalizes the exterior relations for “the good of the governed.”

It is then possible to give an account of democratic life that transcends the totality of the state? The paper would argue that such vision is possible when we let go the static-centric foundationalist view of democracy and civic engagement. It follows that the “truth” of our existence is not grounded in some immutable prior design or collective destiny, but rather comes about “within the plurality of individuals into which dissolves any postulate of the unity of ‘being’”.[[11]](#footnote-11) It is important to note that this non-foundationalist notion of social solidarity does not render our existence meaningless; rather, it opens us to the infinite possibilities of meanings, invites us to converse with others, circulate, exchange or share possibilities of experience. This intersubjective commonality (*le commun*) signals the “possibility of an opening onto the infinitude”,[[12]](#footnote-12) the cosmopolitan state of existence marked by the circulation of meanings. The “commonality” here is not homogenous—it comprises multiples approaches to the order of meanings, “as in the diversity of the arts, thought, desire, the affects, and so on.”[[13]](#footnote-13) “Democracy” in this sense signifies the “admission without any heavenly assumption” of all diversities which does not seek to unify them. Likewise, politics and perhaps civic engagement also “must give the form of access to openness of the other forms: it is the antecedent of a condition of access, not a foundation of determination or of meaning.”[[14]](#footnote-14) It is in this sense that “global citizenship” resonates with Hannah Arendt’s notion of the “worldly” experience of human beings in their plurality sharing a “common world”.[[15]](#footnote-15)

# State System in the World of Polycentrism: Cosmopolitanism and Global-Citizenship

The idea of “global citizenship” in fact can be traced back to the classical Western tradition, when Diogenes referred to himself as “a citizen of the world”—a *kosmou polites* in Greek, from which we derive our word “cosmopolitan”.[[16]](#footnote-16) The ideal of “global citizenship” is hardly a new concept; rather, it is an ideal that is rooted in the classical Hellenistic tradition. We may credit Diogenes as the early visionary of being “a citizen of the world—a *kosmou polites* in Greek”, from which we derive our word “cosmopolitan”. It is important to note that for the concept of “world citizen” does not presuppose a world state (or *kosmopolis*). The metaphor of global citizenship does not imply the ordering of all individuals under a single political monolith; instead, “cosmopolitan” simply suggests that “we should care about the fate of all our fellow human beings”, even for those that exist beyond our own immediate political community.[[17]](#footnote-17)

While Diogenes’ vision of a “citizen of the world” might be disjointed from the political realities of classical Greece, this ancient cosmopolitan ideal was made relevant by the process of globalization. The notion of “citizenship”, according to Appiah, is reified through two key conditions: “knowledge about the lives of other citizens, on the one hand, and the power to affect them, on the other.”[[18]](#footnote-18) As discrete human communities are gradually being drawn into an interconnected web of global commerce and information, we have arrived to a point where we can realistically imagine contacting and conversing with any other human being in the world. The awareness of our potentiality in conversing with distant others would is also accompanied by the growing awareness of our potential power to affect them, for better or worse.

The notion of cosmopolitanism is resisted by two kinds of social forces: those who reject the legitimacy of commonality, and those who deny the legitimacy of difference.[[19]](#footnote-19) The former often reject the notion of all humans being-together in a common world in the name of individual and national interests, whereas the latter often unwilling to embrace different others who do not share their own conceptions of Truth and Universality. In this light, Appiah distinguishes “benign” and “malign” forms of universality. The key difference between “benign” and “malign” universalists is that the former is marked by their commitment to *pluralism* (expectation of difference) and to *fallibilism* (expectation of imperfect knowledge), whereas the latter takes the fundamentalist conception of a global totality (e.g. a global Islamic nation).[[20]](#footnote-20)

The global civil society, therefore, is a product of growing social awareness when individuals are becoming increasingly aware of their relative social and historical position, as well as awareness on the indirect consequences of the actions of others. The management of social consequences does not imply physically eliminating other individuals, rather, to reform and manage their actions through the production of knowledge. Thus arise various institutions, plans, techniques and mechanisms to secure consequences which are liked and eliminate those which are found undesirable. On the other hand, institutions of power are also trapped in a contradiction: given the globalization process and the pervasive sustained gaze of the public, one’s own culture is being continuously brought to visible light with rapid and frequent encounters with others. This global interconnectedness creates opportunities and challenges in various spheres of our lives—social, political, economic, environmental, military etc., and also allows all of us to have the potential capacity to affect one another, for better or worse, through the circulation of meanings.

Instead of “a new phenomenon”, it is perhaps more helpful to think consider the concept of global citizenshipas a contemporary recapitulation of a governance structure that appeared in a variety of different guises over the centuries. In terms of global government, one can understand traditional mode of polycentricity[[21]](#footnote-21) as the primordial antecedent to global citizenship--the simultaneous application of multiple governing or governance systems to a particular object or transaction. It is important to note that the notion of multiple differentiated systems of laws and customs that applied simultaneously is a quite ancient one. Consider the pre-modern Europe, when medieval decentralization represented a historical form of this multiple and complex mosaic of governance at the time—the law of the Roman Catholic church, the law of the monarchs, the law of the lesser feudal lords, the customs of the country, the customs of the particular ethnic groups within the place.[[22]](#footnote-22)

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

All of this is then redone and reorganized and the world starts changing rapidly since the end of World War II, when the international community sought to build a supranational edifice for the purpose of managing the commerce and the use of force among nations,[[23]](#footnote-23) which then crystalized into series of aspirational frameworks of security, commerce, rule of law constraints.[[24]](#footnote-24) This process gives rise to the U.N. structure and the structure of public and international organizations, some of which also had legislative authority as well. Initially, the pre-existing vertical state construct remained relatively intact—the newly formed supranational framework merely functioned as the representation of the community of states creating a set of law through conventional treaty law and international law, and the law of nation states retained its privilege over everything else. Both national and international programs for the advancement of human rights have proceeded from the presumption that all regulation must be grounded on state legal systems. The state system, introduced by the Peace Treaty of Westphalia in 1648[[25]](#footnote-25) and strengthened by the UN architecture, was meant to not only maintain, yet preserve the state based system. The primacy of this system created forms of international stability, due to the legitimacy of self-determination and autonomy, and as a result, allowed states to turn their attention at their own populations.

With the globalization process and the rapid increase in the free movement of goods, capital, and investments across state borders, the vertical state-centric construct is being gradually displaced by the polycentric web of global governance framework. Globalization does something very strange—on the substantive level, it softens and eliminates the state-centric structures (such as national borders) and triggered the need to develop structures of rules that would govern objects and transactions that are no longer containable within a state as they’re moving across these borders. Suddenly, to this vertically-ordered arrangement, this “skyscraper,” we have now added huge blocks of birds and geese and sheep that are walking through the building horizontally, up and down, and every which way, without anything in the building controlling it. As a consequence, there arose a need for polycentricity, because of the transnational nature of the operations of these objects and transactions across borders, across states, and through markets, for the creation of governance forms for their own self-governance. You have, for example, the rise of what Gunther Teubner calls “societal constitutionalism,”that is, the rise of a polycentric *legal consciousness* of the world society, among groups that are tied together by the externally-oriented relationship to each other.[[26]](#footnote-26) The *legal consciousness* of the world society is not homogenous—it comprises multiples approaches to the order of law, and resonates with Hannah Arendt’s notion of the “worldly” experience of human beings in their plurality sharing a common world.[[27]](#footnote-27)

Theoretical abstractions aside, there are substantive institutional developments that support the hypothesis on the emergence of the global civil society. The institutionalization of transnational spaces initially took off after the end of World War II, when the international community sought to build a supranational edifice for the purpose of managing the commerce and the use of force among nations,[[28]](#footnote-28) which then crystallized into series of aspirational frameworks of security, commerce, rule of law constraints.[[29]](#footnote-29) This process gives rise to the U.N. architecture and the structure of public and international organizations, some of which also had legislative authority as well.[[30]](#footnote-30) Initially, the pre-existing vertical state construct remained relatively intact—the newly formed supranational framework merely functioned as the representation of the community of states creating a set of law through conventional treaty law, and the law of nation states retained its privilege over everything else. Both national and international programs for the advancement of human rights have proceeded from the presumption that all rights protections must be grounded on state legal systems.[[31]](#footnote-31) Of course human rights did not emerge from a vacuum—many of its core principles have long been encoded in the legal architecture of states as civil-political rights or constitutional rights. But the post-WWII global system also led to the transnationalization of Western civil-political rights into universalizing human rights, expressed initially through the adoption of the Universal Declaration of Human Rights in 1948.

Globalization, and the expansion of the powers of non-state actors, especially multinational enterprises (MNEs) and international organizations (IOs), have given rise to the need and expectation that these enterprises have responsibilities that parallel those of states, especially with respect to the protection of economic, social, political and cultural rights of individuals.[[32]](#footnote-32) At the same time, the enforcement of global human rights is problematic because supranational entities (such as multinational corporations) often operates beyond the jurisdiction of any single state, and that socio-economic and cultural rights are yet to be fully recognized as “universal human rights”. Although notion of human rights, as an outgrowth of Western notions of civil-political rights and the reflection from the tragedies that savaged the world during World War II, has become an anchor of international legal system.[[33]](#footnote-33) However, there is lack of global consensus on the parameter of human rights standards, and whether socio-economic and cultural rights are protected by any prevailing formal frameworks of international law.[[34]](#footnote-34)

The foundations for human rights pedagogy have been built into the human rights architecture since its creation in 1948.[[35]](#footnote-35) Indeed, in the preamble to the 1948 Universal Declaration of Human Rights (UDHRs), it stated that there needs to be “a common understanding” of human rights and individual freedoms which, it argues, “is of the greatest importance for the full realization” of achieving universal human rights. It further stresses that nation-states “shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.” [[36]](#footnote-36)

More recent international developments have spoken to these admonitions. For example, Bill Bowing has noted that various international initiates have included these notions of integrating “education” and “human rights.”[[37]](#footnote-37) This integration has evolved in two distinct ways: the first has been represented in the right to an education, embodied within article 26 of the UDHR, stating that universal access to education is indeed a human right;[[38]](#footnote-38) and the second has been human rights education (HRE). HRE has been grounded on the constriction of structures coupled with the harmonization of norms within preexisting systems that allow the integration of a human rights curriculum. In this chapter, we tend to focus on the latter, while still providing credence to the former, which, are in fact, interlinked. The second model has been echoed my many international initiatives. UNESCO, for example, had created The UNESCO Recommendation, which is concerned with education for an international understanding, co-operation and peace and education relating to human rights and fundamental freedom. The UNESCO Recommendation has expanded the framework for pedagogical human rights.[[39]](#footnote-39) For instance, article 5 has stated that this form of human rights education should be, in fact, expanded to include “solidarity with less privileged groups” in order to integrated “conditions which perpetuate major problems affecting human survival and well-being” (Article 18).[[40]](#footnote-40)

Human Rights Education, similarly, has been situated within the state-centric structure; yet, non-state actors have been playing a more substantial role in recent years. While Ken Booth and Tim Dunne [[41]](#footnote-41) have pointed out that the UN structure has increased the prospects of brining human rights values within education, we are less focused on those systems then we are on sub- and non-state systems. More specifically, the emerging sector of nongovernmental organizations (NGOs) have impacted and altered the global terrain in regards to political actor and law creator.[[42]](#footnote-42) And the discussion of integrating human right cannot be discussed without paying attention to this growing sector.[[43]](#footnote-43)

Indeed, the burgeoning discussions on human rights education have included the implications of NGOs. [[44]](#footnote-44) NGOs have been an active partner in widening the scope of human rights education, and, in fact, integrating a bottom ups approach,[[45]](#footnote-45) or what we call a vertical approach. While “nearly all formal literature associated with HRE [Human Rights Education] will mention the importance of using participatory methods,” as Felisa Tibbitts notes,[[46]](#footnote-46) we take this further and suggest that the organizational foundations should be founded on a vertical framework. We also argue that this view is associated with the idealities discussed by Amnesty International: “Human rights education is a deliberate, participatory practice aimed at empowering individuals, groups, and communities through fostering knowledge, skills, and attitudes consistent with internationally recognized principles.”[[47]](#footnote-47) As Tibbitts has suggested:

Human Rights Education “can no longer be characterized as a singularly understood practice. Furthermore, the varied ideological content of these programs appears to reflect where such programs locate themselves in relation to local, national, and international sites of power—not geography or nationhood understood in any simple, homogenous sense. An elite private school and a school serving a marginalized indigenous community in the same neighborhood may both offer human rights education, but their approaches may vary widely based on the material realities of each group, the manner in which HRE is introduced, and the anticipated outcome.”[[48]](#footnote-48)

And indeed, this suggests that one should incorporate a holistic approach to integrating human rights education in any dimension, especially when considering heterogeneity in cultures and norms. Notwithstanding these rising calls for an updated global civic education framework, substantive notions of a participatory global citizenship remain elusive.

Therefore, it is imperative to locate instances of global civic actions that can be seen as crucial antecedents to the possibility of participatory global citizenship. Over the last few decades, independent non-state actors have been playing increasingly important role in framing the substantive components of human rights principles, especially in terms of bridging the recognition gap between human rights (traditionally understood as individual civil-political rights) and social, economic, and cultural rights. In response to alleged cases of rights violations by MNEs, local communities and global civil society actors have been engaging in organized human rights campaigns that seek to discipline corporate social responsibility through the strategic framing of their messages. The recent successful indigenous rights campaign by Survival International in Southern India, through the OECD Guidelines for Multinational Enterprises, serves as an excellent example on ways which IOs and NGOs deploy strategically framed “global civic rhetoric” for mobilizing international support and gaining access to broader political opportunities.

# IOs as Antecedents to Global Citizenship – the Case of Vedanta Mining Controversy

Regulatory power has traditionally been reserved as a state-based disciplinary tool. Yet, contemporary globalization has altered the privileging of the state-based system, allowing the mechanics of regulatory power to seep toward non-state actors, and in this case, international organizations (IOs). IOs are now in an extraordinary position to project transnational governing systems, based on the harmonization of norm-based structures. Through a complex system of metric regimes and discourse producing bodies, IOs are now becoming substantial players in guiding the discursive parameters of human rights principles globally.

In recent years, substantial efforts have been made to bridge the systematic gap between the state-centric legal system and those emerging human rights rule framework of non-state actors operating in transnational socio-political and cultural space. Among the most significant recent development is the articulation of a series of “Guiding Principles for Multinational Enterprises” by the Organization for Economic Cooperation and Development (OECD).[[49]](#footnote-49) The first version of the OECD Guidelines for Multinational Enterprises (The Guidelines) was introduced in June 21st 1976 during the Meeting of the OECD Council. The Guidelines was adopted by the OECD member states as one of four instruments of the 1976 OECD Declaration on International Investment and Multinational Enterprises, a policy commitment “by adhering governments to provide an open and transparent environment for international investment”, and to encourage multinational corporations to make positive contributions to economic and social progress.[[50]](#footnote-50) From 1976 to 2011, The Guidelines have been updated five times in order to ensure that they “remain at the forefront of the global responsible business conduct agenda and a leading tool in the ever-changing landscape of the global economy.”[[51]](#footnote-51)

The Guidelines represents one of several supranational efforts to create soft law frameworks for developing a customary consensus and culture of appropriate corporate behavior. One of its unique features is its enforcement procedures, which provides the possibility for the creation of quasi-judicial organs whose purpose is to enforce The Guidelines to the actions of multinational corporations. These panels, known as OECD National Contact Points (NCPs), are constituted whenever there is a complaint lodged. These complaints may be lodged by civil society actors, including non-governmental organizations (NGOs).[[52]](#footnote-52)

To better demonstrate role IOs and civil society actors play in the emergent collective efforts to advance human rights norms and enforce corporate social responsibilities within the context of the global civil society, let us turn toward the recent case of the human rights campaign waged by a British NGO Survival International against the alleged rights violations of a multinational mining corporation:

“A primitive Indian tribe which worships its remote jungle mountain as a living god has inflicted a humiliating defeat on one of Britain's wealthiest billionaires over his plans to open a vast aluminium ore mine on their land.”[[53]](#footnote-53)

The above excerpt, taken from the headline of a *Telegraph* front-page news article on August 9th, 2013 recapitulated the improbable victory of a small indigenous tribe over a multinational mining conglomerate. The battle of the Dongria Kondh people was the kind of fight that has been dubbed as “the real-life Avatar” by the western media,[[54]](#footnote-54) where a few thousand forest-dwelling indigenous people in Eastern India have united in their fight against the planned mining operations of a global mineral giant in their ancestral lands.[[55]](#footnote-55) On April 18th, 2013, after nearly ten years of protesting and challenging against the plan for an open-pit bauxite mine on their sacred Niyamgiri hills, the Indian Supreme Court ruled against the controversial mining proposal, and handed the local indigenous communities the right to have a decisive say on future mining proposals in the area.[[56]](#footnote-56)

The Dongria Kondhs (or simply “Dongrias”) is a sub-group of the Kondha people, an *adivasi* (indigenous) tribal group in the remote regions of Eastern India. The Kondha communities are collectively classified as a “Scheduled Tribe” under Article 342 (25) of the Indian Constitution[[57]](#footnote-57)—a special legal destination reserved for the most “primitive” and isolated ethic groups in India.[[58]](#footnote-58) Scheduled Tribes constitute roughly 8.2 percent of India’s total population,[[59]](#footnote-59) and like the rest of the groups within this category, the Dongrias for the most part live in exclusive wilderness areas like hills and forests, with their livelihood based on subsistence economy.[[60]](#footnote-60) They have marginal degree of contact with other cultures and people, and have developed their own distinctive culture, language and religion.[[61]](#footnote-61)

One of the India’s most remote tribes, the Dongria Kondh people are both linguistically and geographically isolated. Dongrias predominately speak Kui, a Dravidian language with fewer than one million speakers.[[62]](#footnote-62) Kui is officially classified as a threatened language in India, with few outside of Odisha (formally Orissa) can understand.[[63]](#footnote-63)  What separates the Dongrias from the rest of the Kondh people is their cultural and spiritual connection with the Niyamigiri hills. The Niyamgiri hills in Southern Odisha is the home of roughly 8,000 Dongrias, spreading over 90 *adivasi* communities around the mostly undeveloped hills.[[64]](#footnote-64) To be a Dongria Kondh is to live in the Niyamgiri hills– they do not live anywhere else.[[65]](#footnote-65) Dongria Kondh people consider the Niyamgiri hills to be holy, with each mountain representing a deity. Among the hills in Niyamgiri, the Niyam Dongar Mountain is the holiest of the holy—it is the seat of their supreme god, Niyam Raja.[[66]](#footnote-66) The Dongrias do not cultivate on the Niyam Dongar hill top out of respect, and the hill is worshipped by them.[[67]](#footnote-67)  The Dongrias believe that Niyam Raja, the “maker of all things”, has created the Niyamgiri hills as the homeland for the Dongria Kondh people.[[68]](#footnote-68)

The significance of Niyamgiri hills for Dongrias is not only spiritual, but also material. For centuries, Dongrias have based their agrarian livelihood on the rich ecosystem offered by the densely forested hills. “We get everything from the jungle like the fruits we take to the market. This is like our source of life for our Dongria Kondh people.”[[69]](#footnote-69) Niyamgiri forests are historically recognized for its rich wildlife population.[[70]](#footnote-70)  Since 2004, this area has been designated as an Elephant Reserve by the state of Orissa. It contains elephants, sambars, leopards, tigers, and various species of endemic birds and other endangered species of wildlife.  More than seventy-five percent of the hills are covered by thick primitive forests. The Niyamgiri forest has more than 300 plant species, including about 50 species of valuable medicinal plants; six of the plant species are listed in the IUCN Red Data Book.[[71]](#footnote-71) But it is not the plants and the wildlife that are attracting outsiders. The Niyamgiri hills are also rich in bauxite—the raw material for producing Aluminum. And it was this inconvenient fact that brought British mining company Vedanta Resources to the Dongria Kondh homeland in 2003, where it made plans to open a large open-pit mine on top of the sacred Niyam Dongar Mountain.

“Vedanta has come to destroy the Dongria Kondh and the Niyamgiri mountains, so all Dongrias and our supporters have got together to drive Vedanta out of this place.”[[72]](#footnote-72)

Vedanta Resources Plc. is a British metals and mining corporation founded and owned by Indian business magnate and billionaire Anil Agarwal.[[73]](#footnote-73) Vedanta is primarily engaged in copper, zinc, silver, aluminum, iron ore mining and refining, as well as power generating business. Although headquartered in London, Vedanta is a large multinational conglomerate with most of its assets and operations located in the high growth markets of India, Zambia, Namibia, South Africa, Liberia, Ireland and Australia.

In recent years, Vedanta Resources has come under growing international scrutiny. The company’s safety record was questionable and has generated much public outcry. It included reports of 1,247 injuries and 26 deaths in 2007. [[74]](#footnote-74) According to an analysis of deaths of workers at FTSE 100 mining companies during the year 2009*,* Vedanta had the highest death toll among all 12 London-listed firms.[[75]](#footnote-75) In April, 2009, a construction accident at a Vedanta power plant in Korba, India caused at least 40 deaths.[[76]](#footnote-76) Vedanta is also criticized of having caused environmental damage and contributed to human rights violations, especially with respect to socio-economic and cultural rights.[[77]](#footnote-77) Accusations include repeated breaches of national environmental legislation, illegal production expansions, irresponsible handling of hazardous waste, deplorable wages and hazardous working conditions, and involvement in bribery and corruption.[[78]](#footnote-78)

In October, 2003, one of Vedanta’s subsidiaries, Orissa Mining Corporation (OMC) signed a Memorandum of Understanding with the Orissa state government regarding the establishment of a joint venture company for bauxite mining from Niyamgiri hills. Included in the plan is establishment of a large open-pit mine on top of the sacred Niyam Dongar Mountain, in order to extract more than two billion USD worth of bauxite deposit inside that mountain. Vedanta also indicated its plans to construct a bauxite refinery for alumina production and a coal-based power plant in Lanjigarh on the Niyamgiri foothills.[[79]](#footnote-79)

In 2004, an Indian human rights organization, Peoples Union for Civil Liberties[[80]](#footnote-80) filed a public interest suit against Vedanta to the Indian Supreme Court sub-committee Central Empowered Committee (CEC), raising concerns regarding the potential environmental impact of the proposed mining project. Subsequent CEC investigations have found inadequate environmental clearance for the alumina refinery project,[[81]](#footnote-81) as well as evidence of forcible eviction of local inhabitants of the proposed project site.[[82]](#footnote-82) According to the CEC Report, members of the Dongria Kondh tribe have been displaced from their houses through physical eviction by Vedanta employees, with the help of local government in preparation for the mining project:

“Many were beaten up by the employees of M/s Vedanta.  The National R&R policy requires that land for land should be given after due process of consultation, particularly in the case of the tribals.  Contrary to the above cash compensation was offered to them and which was not acceptable to many.  The tribal people living on the plant site are mainly Kondhs who are illiterate and depend completely on their agricultural lands and forest for their subsistence…”[[83]](#footnote-83)

The 2005 CEC Report provided shocking revelations on the mistreatment Dongria Kondh people by Vedanta and local authorities, and shed the first public light on the collective struggle by Dongrias against the proposed bauxite mine:

“… [T]hey (the Dongrias) have deep spiritual and cultural attachment to their ancestral lands and settlements. The displacement was opposed vehemently by them despite being offered large cash compensation by M/s Vedanta.  In the face of resistance, the District Collector and the company officials collaborated to coerce and threaten them… An atmosphere of fear was created through the hired goons, the police and the administration. Many of the tribals were badly beaten up by the police and the goons.  After being forcibly removed they were kept under watch and ward by the armed guards of M/s Vedanta and no outsider was allowed to meet them.  They were effectively being kept as prisoners....”[[84]](#footnote-84)

The CEC recommends that mining in Niyamgiri should not be allowed, and that were it not for administrative peculiarities the refinery may never have been allowed to be built.[[85]](#footnote-85)

Meanwhile, Vedanta continued its mining project with full speed. In 2005, Vedanta began the construction of its bauxite refinery on the Niyamgiri foothills, and the plant became operational in 2006.[[86]](#footnote-86) Orissa State Pollution Control Board (OSPCB) had documented widespread water and air pollution caused by the Lanjigarh refinery since it opened in 2006. Reports also suggest that those living near the Lanjigarh refinery in Orissa breathed polluted air and were afraid to drink from or bathe in local rivers.[[87]](#footnote-87)

Despite CEC’s recommendation against the proposed mining projects,[[88]](#footnote-88) in 2007, India's Supreme Court ruled in favor of Vedanta by allowing its subsidiary to reapply for a license. One year later, the Supreme Court approved Vedanta’s mining activities at Niyamgiri hills, including the large open-pit bauxite mine at the top of Niyam Dongar.[[89]](#footnote-89)

Up till this point, given the geographical and linguistic isolation of the Dongria Kondh people, their collective struggle is virtually unknown outside of India. The kairotic movement arrived in 2008, when the Dongria Kondh people received a “professional advocator” for their cause, whose actions effectively trusted the Niyamgiri mining controversy into the global discourse. Survival International (SI), a UK based indigenous rights SMO has launched a global campaign targeting Vedanta’s mining activity at Niyamgiri.[[90]](#footnote-90) Survival International refers to itself as the organization “representing the movement for tribal peoples worldwide.”[[91]](#footnote-91) Founded in 1969, Survival International gained international recognition during the 1990s for its indigenous campaigns in South America, when the organization played a crucial role in catalyzing the establishment of Yanomami reservations in Brazil.[[92]](#footnote-92)

Survival International functioned as professional “litigators” for the Dongria Kondh people. Although the Dongrias have already exhausted their domestic legal options, SI nonetheless sought means to discipline Vedanta through emerging transnational legal frameworks. In December 2008, Survival International filed a complaint to the UK National Contact Point for violations of provisions of the OECD Guidelines for Multinational Enterprises[[93]](#footnote-93) concerning Vedanta’s planned mining activities in Niyamgiri.[[94]](#footnote-94) SI has also posted its 31-page long official complaint on its website.[[95]](#footnote-95) Specifically, Survival International claims that Vedanta has breached the OECD Guidelines for Multinational Corporations Vedanta Resources in that: [1] it has failed to respect the human rights of those affected by its activities (Part II, paragraph 2); [2] it has also failed to develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate (Part II, paragraph 7); and [3] it’s failure as well as to engage in adequate and timely communication and consultation with the communities directly affected by its environmental, health and safety policies (Part V paragraph 2(b)). Additionally, Survival International accused Vedanta failed to respect are the rights of the Dongria Kondh to enjoy their own culture and to profess and practice their own religion (Articles 18 and 27 of the Civil and Political Rights Covenant; Article 12 of the UN), and their right to be consulted about any project affecting their lands or other resources (Article 8j of the Convention on Biological Diversity; Article 5(e) ofthe Race Convention; Articles 19 and 32 of the Declaration of Indigenous Rights).[[96]](#footnote-96)

It is important to note that the OECD Guidelines are entirely non-binding in a strict legal sense. Technically, the system is not “hard law”—it is neither binding on states and corporations, nor incorporated into their domestic; but they could affect the judgment of individuals and investors that might persuade either state or private entities to adhere to these customary human rights norms. The Guidelines represents one of several supranational efforts to create a customary consensus among OECD member states for developing a standard of appropriate corporate behavior. One of its unique features is its “enforcement” procedures, which provides the possibility for the creation of quasi-judicial organs whose purpose is to response to the allegations on The Guidelines to the actions of multinational corporations. These panels, known as OECD National Contact Points (NCPs), are constituted whenever there is a complaint lodged. These complaints may be lodged by civil society actors, including non-governmental organizations (NGOs) such as Survival International.[[97]](#footnote-97)

Thus, the complaint filed by Survival International faces three major challenges: [1] OECD NCP structure formally provides no legal remedies; [2] violations of socio-economic and cultural rights are often considered outside of the purview of “human rights”; and [3] human rights themselves are not part of the traditional international law structure. To overcome these intrinsic difficulties, the document framed its language in ways that would be more recognizable and identifiable in relation to the global legal consciousness.[[98]](#footnote-98) To overcome these difficulties, SI strategically framed the complaint document by drawing from various differentiated norm systems concurrently in a unified fashion, transforming parochial norms into authoritative global rules, effectively elevating the otherwise non-legal document into a functional legal complaint.

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

The strategic framing is evident from the very first page of the document, when SI decided to use the word “complaint” in the document title “Complaint to the UK National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises”. It is well-understood that observance of the Guidelines by enterprises is voluntary and not legally enforceable. Consequently, according to the filing procedure of The Guidelines, reports of guideline violations should not be called “complaints”. Rather, the report should be filed as “inquiries” in “specific instances” seeking “clarification of the Guidelines”.[[99]](#footnote-99) Although it is no longer the case, for many years the OECD even prohibited “inquiries” from naming the corporations whose conduct gave rise to the allegation of guideline violations.[[100]](#footnote-100) The term “complaint” is commonly recognized as a legal term, which carries the connotation of allegations pertaining to legal violations—the nonobservance of rules that expect strict observance. By titling the document as a “complaint” rather than an “inquiry”, this seemingly minor deviation from OECD’s formatting requirement effectively (and scrumptiously) intensified the expectation of observation with regard to the alleged violations, and helped to set the legal-sounding tone for the rest of the document.

More importantly, the complaint document deals with the recognition difficulty associated with socio-economic and cultural rights by simply grouping all alleged rights violations under the widely-recognized umbrella term of “human rights”. Note that traditional (Western) understanding of human rights only includes individual natural rights (e.g. religious freedom) and civil-political rights (e.g. equality before the law)[[101]](#footnote-101), whereas the rights of “means of subsistence” and “to be consulted and to give or refuse their FPIC (Free, Prior and Informed Consent) of an indigenous people typically belong to the contested domain of socio-economic and cultural rights. Against this inconvenient rights-fragmentation, the document unproblematically presented all of its references socio-economic, cultural, and civil-political rights as fundamental “human rights” that are equally protected under international law. Likewise, under the “Summary of complaint” section, the document listed its allegation of rights violation in a similar unified narrative framework. [[102]](#footnote-102)

Often, cases of indigenous population being deprived from their “means of subsistence” due to development projects without their FPIC[[103]](#footnote-103) is framed as “economic or contractual dispute” rather than “rights violations”, despite the grossly asymmetric balance-of-power between small native tribes and multinational enterprises. This seemingly trivial terminology distinction carries major legal and semantic implications—consider the difference betwixt “economic disputes *between* Vedanta and Dongrias”, and “rights violations committed by Vedanta *against* Dongrias”. It is evident that the use of the term “economic dispute” often masks the underlying power disparity between the parties involved. Furthermore, the phrase “economic dispute” in itself only signifies the presence of *difference* between negotiating parties; it does not suggest any damages or injuries suffered. Whereas the invocation of “rights violation” implies underlying damages and injuries, it does not refer to any specific rule framework for addressing and disciplining the alleged violations. The frame of “human rights violation”, however, triggers both the rhetorical exigency of underlying injuries, as well as situating the exigency within well-established normative framework of international law.

Lastly, while it is unlikely that Survival International is unaware of the non-binding nature of the OECD Guidelines, the document was nonetheless drafted in such a way that frames The Guidelines as “international law”. Such a framing effort at firstappears to be paradoxical. International laws are recognized as such because they embody general principles of law and customs” [[104]](#footnote-104) that transcend state and institutional boundaries, and are widely recognized by the citizens of the world. The OECD Guidelines on the other hand can almost be seen as the antithesis of internal law—it is a set of newly introduced intra-organizational recommendations that receives little widespread recognition. However, it is also important to note that the subsistence and substance of international law is the global legal framework is manifested through the intersubjective recognition of individuals living-in-the-world. There is no international law *a priori* recognition, and there is no recognition *a priori* the exchange and circulation of meanings. Many foundational principles of international law today were once little more than neologistic jargons articulated by those Enlightenment philosophers, in the hope of persuading people to adopt and extend those obscure ideas into common values.[[105]](#footnote-105) In this sense, the emergent global civil society is in party the result of individuals and groups attempting to interpellate[[106]](#footnote-106) others, through the circulation of meanings, into seeing the new and different meanings of the relations in the world, hopefully breaking out of the ossified limitations that bind the transaction of meanings. Though the transformation and proliferation of meanings are in part driven by historical and social forces that are outside of the manageable domain of any single individual or organization, there is nonetheless a practical need for organizations like SI to catalyze knowledge creation by strategically frame neologistic expressions as an integral part of a larger set of well-accepted value framework.

As the complaint document orderly presents the summary of its claims against Vedanta,[[107]](#footnote-107) it juxtaposes the invocation of “international law”[[108]](#footnote-108) after the statements of specific demands,[[109]](#footnote-109) implying that the demands are clearly backed by well-established principles of international law. The introduction therefore gives the appearance that from the very beginning the document was drafted within the context of international law, and expects an interpellated reader whom is already a subject to the normative recognition of international law. Throughout the rest of the document, the complaint did not address the fundamental question of whether those alleged violations really in fact pertain to international law—as such question should be already “evident” from the beginning of the document. The theme of international law is further reinforced through the frequent highlighting of “human rights” violations throughout the document, without separating those rights that are less recognized under traditional international law from the “human rights” frame. Finally, all the alleged violations of international law listed in the document refer back to the singular body of OECD Guidelines, which in turn implicitly frames the OECD Guidelines an inseparable and integral Part of the international law cosmos.

Nine months later, UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises responded positively to Survival International’s complaint.[[110]](#footnote-110) The UK NCP affirmed all three charges of OECD guidelines violations lodged against Vedanta by Survival International. The UK NCP concluded that Vedanta failed to properly inform the affected Dongria Kondh people on the construction of the bauxite mine; it did not adequately consider the impact of their proposed mining project on the rights and freedoms of the Dongria Kondh, and made little effort to mitigate the impact of its activities in the region.[[111]](#footnote-111)

It is important to note that the OECD Guidelines are “soft law” with limited legal effect, and the UK NCP’s response does not have binding legal force. But rhetorically speaking, the NCP’s opinions generated significant effect in Great Britain and beyond. Immediately after the NCP’s opinions were released, the British government issued follow up statements reaffirming the NCP’s conclusions.[[112]](#footnote-112) In response to the UK NCP’s findings,Amnesty International, one of the largest international human rights NGOs,released a report on February 9 2010 condemning Vedanta’s activities at Niyamgiri, where it highlighted Vedanta’s breach of the OECD Guidelines, and framed the breach as “violations” of international law. [[113]](#footnote-113)

The mounting international pressures have compelled the Indian government to reconsider its previous position. In summer, 2010 the Indian Ministry of Environment and Forests commissioned a special committee to reevaluate the mining activities in Niyamgiri region. The special committee released a report raising concerns over Vedanta’s planned projects in Niyamgiri: “…allowing mining in the proposed mining lease area by depriving two Primitive Tribal Groups of their rights over the proposed mining site in order to benefit a private company would shake the faith of tribal people in the laws of the land which may have serious consequences for the security and well-being of the entire country.”[[114]](#footnote-114) The report further claims suggested several potential violations of law committed by Vedanta in its mining projects in the area, which include violation of Forest Conservation Act,[[115]](#footnote-115) violation of the Environment Protection Act,[[116]](#footnote-116) as well as non-implementation of the Panchayats Extension to the Scheduled Areas Act.[[117]](#footnote-117)

In August, 2010, in response to the special committee’s report, India’s Environment Minister Jairam Ramesh has said that Vedanta shown a “shocking and blatant disregard for the rights of the tribal groups”, and has announced the move by the Ministry to block Vedanta’s controversial mining plan at the Niyam Dongar Mountain.[[118]](#footnote-118) In October, the Environment Ministry rejected Vedanta’s plan to expand the Lanjigarh refinery below the Niyamgiri hills, and demanded immediate improvements to environmental conditions of the existing plant.[[119]](#footnote-119)

Vedanta moved quickly to file an appeal to the Indian Supreme Court against Environment Ministry’s ministerial decision.[[120]](#footnote-120) As the functioning of the Lanjigarh aluminum refinery is dependent on the establishment of the bauxite mines on nearby Niyamgiri hills, in September 2012, Vedanta announced that it will close its Lanjigarh refinery by December 2012 unless the Supreme Court grant Vedanta the permission to mine Niyamgiri hills once again.[[121]](#footnote-121) This time around, in addition to supports from international SMOs, an alliance of local tribes has formed around the Dongria Khondhs for the common purpose of defending their socio-economic and cultural rights.[[122]](#footnote-122) In April, 2013, the Indian Supreme Court today rejected an appeal to allow Vedanta Resources to mine the Niyamgiri hills. The court further held that those indigenous people affected by the proposed mine should have a decisive say in whether it goes ahead, that all issues concerning religious and cultural rights of the indigenous people must be heard in the decision-making process. Additionally, the court recognized the Dongria Kondh tribe’s right to worship their sacred mountain, and held that their right to worship must be protected and preserved.[[123]](#footnote-123)

The case study of Survival International’s indigenous rights campaign organized on behalf of the Dongria Kondh people demonstrates the possibility for a framework through which standards of human rights and corporate social responsibility could be applied directly to private entities through the organized discursive efforts of global civil society actors. The case of Survival International is especially important because it points to a tangible global civic space through which non-state actors could bring “complaints” against multinational entities for violations of socio-economic and cultural rights—rights that are often unprotected under traditional human rights standards. It follows that global civic rhetoric not only involves the universalization of provincial narratives for broader recognition, but also requires the particularization of general messages for specialized audiences. By strategically framing its campaign narrative through the creative deployment of both specialized and cosmopolitan perspectives, non-state actors such as Survival International may be able to facilitate the externalization of its messages to the global public society, as well as brining substantive material changes to the ground.

More significantly, the mechanisms of OECD Guidelines as a transnational civic framework may have legal effect, regardless of whether to not they conform to the classically understood notions of “law”. The Survival International case also demonstrates an effective process of operationalizing global civic rhetoric to produce the “hard law” effects beyond national borders without directly challenging state authority. The output of quasi-judicial and interpretive narratives, like those from the Survival International case discussed below, will continue to contribute to the institutionalization of transnational systems of human rights enforcement, and provide a key rhetorical antecedent to participatory global citizenship. This is not only instructive for civil society actors that seek to enforce corporate social responsibility beyond state-centric frameworks, but may also contribute to those projects of corporate governance that are currently being developed, such as the United Nations Guiding Principles on Business and Human Rights.[[124]](#footnote-124)

# Conclusion

Non-state actors are now in an extraordinary position to influence education systems globally especially in developing and underdeveloped countries by harmonization of educational standards for global civic engagement. Contemporary globalization has fractured the regulatory order that once privileged states, which has allowed the legitimate mechanics of power to seep toward non-state actors. Through a complex system of assessment regimes, international organizations (IOs) such as the OECD are now projecting norm-based transnational human rights enforcement systems that may guide the discursive parameters of civic education curriculum. The case of Survival International further provides an excellent educational artifact that opens the possibility for a civic pedagogy of participatory global citizenship. Overall, this article concludes that regulatory power has not only seeped away from states, but IOs and civil society actors are now wielding an immense amount of regulatory power that demands knowledge, curriculum, and education policy to shift towards the transnational level.

Indeed, IOs, especially those branded as leading authorities within policy discourse and with the help of civil society actors, are in an extraordinary position to construct new educational standards based on the harmonization of educational norms and teaching practices. Due to these IOs’ ability to confer prestige, and promote stratification, they then have the ability to extraterritorially impose a set of regulatory mechanics onto foreign institutions themselves. They now have the *ethos* to construct a regulatory apparatus based on the *logos* of those transnational legal systems they construct, and thus promote. The emphasis is not on any fixed forms of disciplinary structure per se, but on a discursive democratic process that allows for substantive and legitimate participation of transnational legal structures by all civil society actors.

1. Altbach P. G. (2004). Globalization and the university: Myths and realities in an unequal world. Tertiary Education and Management, 10, 3-25. [↑](#footnote-ref-1)
2. Institute of International Education. (IIE) (2013a). "International Students by Field of Study, 2011/2012 - 2012/13." Open Doors Report on International Educational Exchange. Retrieved from http://www.iie.org/opendoors [↑](#footnote-ref-2)
3. Fernando Reimers, “Citizenship, Identity And Education: Examining The Public Purposes Of Schools In An Age Of Globalization” *Prospects,* vol. XXXVI, no. 3, September 2006 at p.276. [↑](#footnote-ref-3)
4. Peters, Michael, Britton, Alan,Blee, Harry. “Introduction” in *Global citizenship education: Philosophy, theory and pedagogy*. Rotterdam: Sense Publishers, 2008, 1-2 [↑](#footnote-ref-4)
5. Thomas Hobbes, *Leviathan: Or the Matter, Forme, and Power of a Common-Wealth Ecclesiasticall and Civill*, ed. by Ian Shapiro (Yale University Press; 2010), Part I. [↑](#footnote-ref-5)
6. Peters et al., Peters, 1-3. [↑](#footnote-ref-6)
7. Peters et al., 4. d [↑](#footnote-ref-7)
8. Peters et al., 9-10. [↑](#footnote-ref-8)
9. Peters et al., 10. [↑](#footnote-ref-9)
10. Jean-Luc Nancy, “Finite and Infinite Democracy” in Democracy in What State? (New York: Columbia, 2010), 58-75, at 67. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. Jean-Luc Nancy, 71. [↑](#footnote-ref-12)
13. Jean-Luc Nancy, 72. [↑](#footnote-ref-13)
14. Ibid. [↑](#footnote-ref-14)
15. Fanghanel, Joëlle (2012). "'Worldly' pedagogy: a way of conceptualising teaching towards global citizenship". *Teaching in higher education,* 17 (1), 2013, 39-50. [↑](#footnote-ref-15)
16. Appiah, Kwame. “Chapter 6: Education for Global Citizenship.” *The Yearbook of the National Society for the Study of Education* 107, no. 1, 83-99 (April 01, 2008), at 1-2. [↑](#footnote-ref-16)
17. Appiah, 86. [↑](#footnote-ref-17)
18. Ibid., 87. [↑](#footnote-ref-18)
19. Ibid., 94-95. [↑](#footnote-ref-19)
20. Ibid., 95-96. [↑](#footnote-ref-20)
21. The concept of “polycentic globalization” is shared by diverse camps of scholars in the globalization discourse, “neo-institutionalist” perspective on “global culture (e.g. JW Meyer, J Boli, GM Thomas and FO Ramirez, "World Society and the Nation-State", 103 American Journal of Sociology 1997, 144-181) , and the systems theory perspective of differentiated global society (e.g. R Stichweh, *Die Weltgesellschaft:*

*Soziologische Analysen.* Frankfurt: Suhrkamp, 2000), as well as the “post-modern” notion of global legal pluralism (e.g. BdS Santos, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*, New York, Routledge, 1995). *See also,* Larry Catá Backer, “The Structural Characteristics of Global Law  for the 21st Century: Fracture, Fluidity,  Permeability, and Polycentricity,” Tilburg Law Review 17 (2012) 177–199. [↑](#footnote-ref-21)
22. See generally, Backer, Larry C. and Keren Wang and Nabih Haddad and Tomonori Teraoka, “Democratizing International Business and Human Rights by Catalyzing Strategic Litigation: The Guidelines for Multinational Enterprises and the U.N. Guiding Principles of Business and Human Rights from the Bottom Up” (September 14, 2013). Available at SSRN: [http://ssrn.com/abstract=2325994](http://ssrn.com/abstract%3D2325994) [↑](#footnote-ref-22)
23. See, e.g., History of the United Nations, Available<http://www.un.org/en/aboutun/history/index.shtml> (with links to source documents).  For the official United States version see,  United States Department of State, Office of the Historian, Milestones 1937-45, The Formation of the United Nations 1945.  Available<http://history.state.gov/milestones/1937-1945/UN>. [↑](#footnote-ref-23)
24. United States Department of State, Office of the Historian, Milestones 1945-52, The Formation of the United Nations 1945.  Available<http://history.state.gov/milestones/1937-1945/UN>. [↑](#footnote-ref-24)
25. See Treaty of Westphalia, Art.II on the recognition of general sovereignty:

 “That there shall be on the one side and the other a perpetual Oblivion, Amnesty, or Pardon of all that has been committed since the beginning of these Troubles, in what place, or what manner soever the Hostilitys have been practis'd, in such a manner, that no body, under any pretext whatsoever, shall practice any Acts of Hostility, entertain any Enmity, or cause any Trouble to each other; neither as to Persons, Effects and Securitys, neither of themselves or by others, neither privately nor openly, neither directly nor indirectly, neither under the colour of Right, nor by the way of Deed, either within or without the extent of the Empire, notwithstanding all Covenants made before to the contrary: That they shall not act, or permit to be acted, any wrong or injury to any whatsoever; but that all that has pass'd on the one side, and the other, as well before as during the War, in Words, Writings, and Outrageous Actions, in Violences, Hostilitys, Damages and Expences, without any respect to Persons or Things, shall be entirely abolish'd in such a manner that all that might be demanded of, or pretended to, by each other on that behalf, shall be bury'd in eternal Oblivion.”

Available: <http://avalon.law.yale.edu/17th_century/westphal.asp> (accessed 4-27-2014) [↑](#footnote-ref-25)
26. For more on “societal constitutionalism”, see generally, Gunther Teubner, *Breaking Frames: The Global Interplay of Legal and Social Systems*, 45 AM. J. COMP. L. 149, 162–65 (1997); Gralf-Peter Calliess and Peer Zumbansen, Rough Consensus and Running Code:  A Theory of Transnational Private Law (Oxford: Hart Publishing, 2010). *See also,* Gunther Teubner, “Societal Constitutionalism: Alternatives to State-centered Constitutional Theory”, Sorrs Lectures 2003/04 Yale Law School. Available: [https://fhi.duke.edu/sites/default/files/Teubner,%20Societal%20constitutionalism.pdf](https://fhi.duke.edu/sites/default/files/Teubner%2C%20Societal%20constitutionalism.pdf) [↑](#footnote-ref-26)
27. Hannah Arendt, *Between Past and Future*. New York: Viking Press, 1961. Revised edition, 1968 at 221. [↑](#footnote-ref-27)
28. See, e.g., History of the United Nations, Available<http://www.un.org/en/aboutun/history/index.shtml> (with links to source documents). For the official United States version see, United States Department of State, Office of the Historian, Milestones 1937-45, The Formation of the United Nations 1945. Available<http://history.state.gov/milestones/1937-1945/UN>. [↑](#footnote-ref-28)
29. United States Department of State, Office of the Historian, Milestones 1945-52, The Formation of the United Nations 1945. Available<http://history.state.gov/milestones/1937-1945/UN>. [↑](#footnote-ref-29)
30. Backer, Larry C., Nabih Haddad, Tomonori Teraoka, and Keren Wang . “Democratizing International Business and Human Rights by Catalyzing Strategic Litigation: The Guidelines for Multinational Enterprises and the U.N. Guiding Principles of Business and Human Rights from the Bottom Up” (September 14, 2013). Available at SSRN: http://ssrn.com/abstract=2325994 [↑](#footnote-ref-30)
31. Ibid. [↑](#footnote-ref-31)
32. Kenneth Roth, *Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization*, 26(1) Human Rights Quarterly 63-73 (2004); Larry Catá Backer, *The Role of Companies in Privatizing Socio-Economic Rights in India and China Under Emerging Global Regulatory Frameworks*, 45(4) The George Washington International Law Review -- (forthcoming 2013). [↑](#footnote-ref-32)
33. Alexandra R. Harrington, Don’t Mind the Gap: The Ride of Individual

Complaint Mechanisms Within International Human Rights Treaties, 22 DUKE J. COMP. &

INT'L L. 153, 177 (2012). [↑](#footnote-ref-33)
34. See Katharine Young, “The Minimum Core of Economic and Social Rights: A Concept in Search of Content”, THE YALE JOURNAL OF INTERNATIONAL LAW Vol. 33 p.113 [↑](#footnote-ref-34)
35. Bowring, Bill [↑](#footnote-ref-35)
36. <http://www.un.org/rights/50/decla.htm>; Also see, Baxi, U. (1994, December). Human rights education: The promise of the third millennium? Paper presented at the Conference of the United Nations Member States and Non-Governmental Organisations, New York. Retrieved December 14, 2010, from http://www.pdhre.org/dialogue/third\_millennium.html; Bowring, Bill, Human Rights and Public Education (June 15, 2012). Cambridge Journal of Education, 42:1, 53-65, 2012. Available at SSRN: [http://ssrn.com/abstract=2085039](http://ssrn.com/abstract%3D2085039) ; [↑](#footnote-ref-36)
37. Bowring, Bill [↑](#footnote-ref-37)
38. See Article 26 of the UDHR [↑](#footnote-ref-38)
39. Article 1(a) of UNESCO’s recommendation states” The word education implies the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge.” [↑](#footnote-ref-39)
40. Quotes from Bowring, Bill [↑](#footnote-ref-40)
41. Dunne, Timothy, and Nicholas J. Wheeler. *Human Rights in Global Politics*. Cambridge: Cambridge University Press, 1999. [↑](#footnote-ref-41)
42. Teegen, Hildy, Jonathan P. Doh, and Sushil Vachani. "The importance of nongovernmental organizations (NGOs) in global governance and value creation: an international business research agenda." *Journal of International Business Studies* (2004): doi:10.1057/palgrave.jibs.8400112. [↑](#footnote-ref-42)
43. Felisa Tibbitts, *Human Rights Education*, *in* Encyclopedia of Peace Education 99 (Monisha Bajaj ed., 2008) [↑](#footnote-ref-43)
44. Bajaj, Monisha. "Human Rights Education: Ideology, Location, and Approaches." *Human Rights Quarterly* (2011); Nancy Flowers, *What is Human Rights Education?*, *in* A Survey of Human Rights Education (Bertelsmann Verlag ed., 2003); Garth Meintjes, *Human Rights Education as Empowerment: Reflections on Pedagogy*, *in* Human Rights Education for the Twenty First Century 134 (George J. Andreopoulos & Richard P. Claude eds., 1997); Norma Tarrow, *Human Rights Education: Alternative Conceptions*, *in* Human Rights, Education and Global Responsibilities 21, 22 (James Lynch, Celia Modgil & Sohan Modgil eds., 1992); [↑](#footnote-ref-44)
45. Bajaj, Monisha. "Human Rights Education: Ideology, Location, and Approaches." *Human Rights Quarterly* (2011) [↑](#footnote-ref-45)
46. Felisa Tibbitts, *Transformative Learning and Human Rights Education: Taking a Closer Look*, 16 Intercultural Educ. 107, 107 (2005) [↑](#footnote-ref-46)
47. Amnesty International, Human Rights Education, *available at* <http://www.amnesty.org/> en/human-rights-education. [↑](#footnote-ref-47)
48. Felisa Tibbitts, *Human Rights Education*, *in* Encyclopedia of Peace Education 99 (Monisha Bajaj ed., 2008) p.489 [↑](#footnote-ref-48)
49. See OECD Guidelines for Multinational Enterprises (2011), available: http://www.oecd.org/document/28/0,3746,en\_2649\_34889\_2397532\_1\_1\_1\_1,00.html;  “The OECD's Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating in or from forty three (43) adhering governments, representing most developed states. "The Guidelines provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. However, the countries adhering to the Guidelines make a binding commitment to implement them in accordance with the Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises.” [↑](#footnote-ref-49)
50. Organization for Economic Co-operation and Development, “Guidelines for Multinational Enterprises National Treatment International Investment Incentives and Disincentives Consultation Procedures”, June 21st, 1976. Available at:<http://www.oecd.org/daf/inv/mne/50024800.pdf> [↑](#footnote-ref-50)
51. See “2011 Update of the Guidelines,” at OECD Guidelines for Multinational Enterprises Website:<http://mneguidelines.oecd.org/text/> [↑](#footnote-ref-51)
52. See Backer et al., supra at note 13. [↑](#footnote-ref-52)
53. Nelson, Dean. “Indian villagers defeat British billionaire over plans to mine sacred mountain.” *The Telegraph,* last modified Aug 09, 2013. <http://www.telegraph.co.uk/news/worldnews/asia/india/10234314/Indian-villagers-defeat-British-billionaire-over-plans-to-mine-sacred-mountain.html> [↑](#footnote-ref-53)
54. Jason Burke, “Indian tribe's Avatar-like battle against mining firm reaches supreme court,” *The Guardian,* last modified April 08, 2012. <http://www.theguardian.com/world/2012/apr/08/indian-tribe-avatar-supreme-court> See also, Kathryn Hopkins, “Indian tribe appeals for Avatar director's help to stop Vedanta,” *The Guardian,* last modified Feb 08, 2010. <http://www.theguardian.com/business/2010/feb/08/dongria-kondh-help-stop-vedanta>; and “Real ‘Avatar’ tribe deals fatal blow to Vedanta mine,” *Survival International,* posted 19 August 2013: <http://www.survivalinternational.org/news/9478> [↑](#footnote-ref-54)
55. Ibid. [↑](#footnote-ref-55)
56. See note 1 above. See also, Santosh Patnaik, “Dongria Kondhs have shown the way,” *The Hindu,* last modified August 21, 2013. <http://www.thehindu.com/news/national/other-states/dongria-kondhs-have-shown-the-way/article5044669.ece> [↑](#footnote-ref-56)
57. See The Constitution of India, Art. 24. Available: <http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm> [↑](#footnote-ref-57)
58. “REPORT ON SOCIO-ECONOMIC CONDITIONS OF SCHEDULED TRIBES

LABOUR AT VAPI, VALSAD, NAVSARI AND SACHIN (GUJARAT) (2006-07)” Labour Bureau, Government of India, Chapter I: “A well-established criterion being followed is based on certain attributes such as:

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

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

Distinctive culture, language and religion - They have developed community wise their own distinctive culture, language and religion.

Shyness of contact – they have margin degree of contact with other cultures and people.”

Available: <http://labourbureau.nic.in/SE_Gujarat%2006-07_Contents.htm> [↑](#footnote-ref-58)
59. Ibid. [↑](#footnote-ref-59)
60. “Subsistence economy” typically refers to forms of non-monetary economic systems that rely on natural resources to provide for basic needs -- usually through hunting and gathering, pastoralism, and small scale agriculture. [↑](#footnote-ref-60)
61. Ibid. See also, Aparajita, Upali. *Culture and development: Dongrias of Niyamgiri.* (New Delhi, India: Inter-India Publications, 1994). [↑](#footnote-ref-61)
62. Bhadriraju Krishnamurti, *The Dravidian languages,* (Cambridge: Cambridge University Press, 2003) at p. 56.  [↑](#footnote-ref-62)
63. Ibid., see also, Kui reference at *Ethnologue* (17th ed., 2013), <http://www.ethnologue.com/language/kxu> [↑](#footnote-ref-63)
64. “India: Generalisations, omissions, assumptions: The failings of Vedanta’s Environmental Impact Assessments for its bauxite mine and alumina refinery in India’s state of Orissa (Executive Summary),” *Amnesty International,* (London: Amnesty International UK, 2011) at page 8, available: <http://www.amnesty.org/en/library/asset/ASA20/037/2011/en/6006600c-8be3-4495-917f-00584b3efc19/asa200372011en.pdf> [↑](#footnote-ref-64)
65. See “The Dongria Kondh”, *Survival International*  <http://www.survivalinternational.org/tribes/dongria> [↑](#footnote-ref-65)
66. Damian Grammaticas, “Tribe takes on global mining firm,” *BBC News,* last updated 17 July 2008: <http://news.bbc.co.uk/2/hi/south_asia/7486252.stm> [↑](#footnote-ref-66)
67. The Central Empowered Committee (CEC) 2005: *Report in IA no. 1324 regarding the alumina refinery plant being set up by m/s Vedanta Alumina Limited at Lanjigarh in Kalahandi district, Orissa*, 21.09.05. Available at <http://www.indiaresource.org/issues/globalization/2005/CECSep2005cancellicense.html> [↑](#footnote-ref-67)
68. Ibid., see also, supra note 14. [↑](#footnote-ref-68)
69. Quote from Jitu Jakeskia, a young Dongria Kondh activist during a BBC interview. See Damian Grammaticas, “Tribe takes on global mining firm,” *BBC News,* last updated 17 July 2008: <http://news.bbc.co.uk/2/hi/south_asia/7486252.stm> See also, supra note 14. [↑](#footnote-ref-69)
70. See The Central Empowered Committee, supra note 16, available at <http://www.indiaresource.org/issues/globalization/2005/CECSep2005cancellicense.html> [↑](#footnote-ref-70)
71. Ibid. [↑](#footnote-ref-71)
72. Quote from a Dongria villager during a video interview by Survival International, see: <http://www.survivalinternational.org/films/handfulsoil> at 1:20. [↑](#footnote-ref-72)
73. See <http://www.vedantaresources.com/who-we-are.aspx> [↑](#footnote-ref-73)
74. See Vedanta Annual Report 2007, available:

<http://www.vedantaresources.com/uploads/VedantaRA07.pdf> [↑](#footnote-ref-74)
75. Simon Bowers, “Vedanta stripped of safety awards in light of Indian site disaster,” *The Guardian,* posted 28 August 2010:

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

Available: <http://www.theguardian.com/business/2010/aug/29/vedanta-safety-awards-stripped> [↑](#footnote-ref-75)
76. Ibid. [↑](#footnote-ref-76)
77. See “Recommendation of 15 May 2007, To the Ministry of Finance,”by the Council on Ethics,The Government Pension Fund of Norway, available: <http://www.regjeringen.no/Upload/FIN/Statens%20pensjonsfond/RecommendationVedanta.pdf> [↑](#footnote-ref-77)
78. See report by Amnesty International, supra note 13. [↑](#footnote-ref-78)
79. The Central Empowered Committee (CEC) 2005: *Report in IA no. 1324 regarding the alumina refinery plant being set up by m/s Vedanta Alumina Limited at Lanjigarh in Kalahandi district, Orissa*, 21.09.05, p.7 and p. 50. Available at <http://www.indiaresource.org/issues/globalization/2005/CECSep2005cancellicense.html> [↑](#footnote-ref-79)
80. See <http://www.pucl.org/history.htm> [↑](#footnote-ref-80)
81. See CEC Report, supra note 28, at section 32:

“The CEC is of the considered view that the use of the forest land in an ecologically sensitive area like the Niyamgiri Hills should not be permitted.  The casual approach, the lackadaisical manner and the haste with which the entire issue of forests and environmental clearance for the alumina refinery project has been dealt with smacks of undue favour/leniency and does not inspire confidence with regard to the willingness and resolve of both the State Government and the MoEF to deal with such matters keeping in view the ultimate goal of national and public interest.” [↑](#footnote-ref-81)
82. Ibid., at section 3, under “Forcible eviction and rehabilitation package” [↑](#footnote-ref-82)
83. Ibid., at section 3, xvi. [↑](#footnote-ref-83)
84. Ibid. [↑](#footnote-ref-84)
85. The Central Empowered Committee (CEC) 2005: Report in IA no. 1324 regarding the alumina refinery

plant being set up by m/s Vedanta Alumina Limited at Lanjigarh in Kalahandi district, Orissa, 21.09.05, p.7 and p. 50.

“The agreement signed between the Orissa Mining Corporation (OMC) and M/s Vedanta for

establishment of a joint venture company for bauxite mining from Niyamgiri Hills, Lanjigarh and another mine provides that though the mining lease will be in the name of the OMC and it will be responsible for securing and complying with all the statutory approvals and legal requirements, M/s Vedanta will be de facto managing the mines and will be the principal beneficiary on payment of development charges, royalty and other statutory dues”;

available at: <http://assets.survivalinternational.org/static/files/behindthelies/CEC_report_smaller.pdf> [↑](#footnote-ref-85)
86. “India refinery 'threatens health of local community,'” *BBC News,* last updated 9 February 2010: <http://news.bbc.co.uk/2/hi/south_asia/8505250.stm> [↑](#footnote-ref-86)
87. Ibid. [↑](#footnote-ref-87)
88. Ibid., at sections 32-33. [↑](#footnote-ref-88)
89. “Vedanta Resources caught in web of allegations,” *The Economic Times,* posted Feb. 8, 2010. <http://articles.economictimes.indiatimes.com/2010-02-08/news/28391260_1_niyamgiri-mine-bauxite-vedanta-resources> [↑](#footnote-ref-89)
90. “New Survival campaign targets British company Vedanta – mine set to destroy remote tribe”, Survival International, 29 April 2008

 <http://www.survivalinternational.org/news/3272> [↑](#footnote-ref-90)
91. “About us”, <http://www.survivalinternational.org/info> [↑](#footnote-ref-91)
92. Napoleon A. Chagnon, *Yanamamo: Case Studies in Cultural Anthropology.* Wadsworth Publishing, 2009. p. 231–232. [↑](#footnote-ref-92)
93. See “UK National Contact Point for the Organisation for Economic Co-operation and Development (OECD) guidelines for multinational enterprises,” UK Department for Business, Innovation & Skills: “

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

Available: <https://www.gov.uk/uk-national-contact-point-for-the-organisation-for-economic-co-operation-and-development-oecd-guidelines-for-multinational-enterprises> [↑](#footnote-ref-93)
94. See “Follow up to Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises”, UK National Contact Point for the OECD Guidelines for Multinational

Enterprises. 12 March 2010. Available: <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/10-778-survival-international-against-vedanta-resources.pdf> [↑](#footnote-ref-94)
95. See “Complaint to the UK National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises,” Survival International, 19 December 2008: <http://assets.survivalinternational.org/documents/96/Survival_complaint_VEDANTA.pdf> [↑](#footnote-ref-95)
96. Ibid. [↑](#footnote-ref-96)
97. Backer et al., supra at 13. [↑](#footnote-ref-97)
98. Katharine Young, “The Minimum Core of Economic and Social Rights: A Concept in Search of Content**”,** THE YALE JOURNAL OF INTERNATIONAL LAW Vol. 33 p.113 [↑](#footnote-ref-98)
99. Backer et al., supra at 53. [↑](#footnote-ref-99)
100. Ibid., see also, MNE Guidelines. [↑](#footnote-ref-100)
101. See “The Universal Declaration of Human Rights,” Article 2:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

Available: <http://www.un.org/en/documents/udhr/index.shtml> [↑](#footnote-ref-101)
102. Complaint, p. 7-8. [↑](#footnote-ref-102)
103. FPIC stands for “Free, Prior and Informed Consent”. [↑](#footnote-ref-103)
104. See Statute of the International Court of Justice, Article 38.1. [↑](#footnote-ref-104)
105. Paul Patton, “Concept and Politics in Derrida and Deleuze,” *Critical Horizons,* 02/2010, Volume 4, Issue 2, p. 157:

“…philosophy helps to make the future different from the past by providing new means of description for social and political events and states of affairs. As a result, pragmatic philosophers are those who ‘specialize in redescribing ranges of objects or events in partially neologistic jargon in the hope of inciting people to adopt and extend that jargon.’ Redescription rather than argument is the only appropriate method of criticizing an existing vocabulary.” [↑](#footnote-ref-105)
106. Louis Althusser, "Ideology and Ideological State Apparatuses (Notes towards an Investigation)". *Lenin and Philosophy and Other Essays*, translated from the French by Ben Brewster, Monthly Review Press: 1971: “…the individual is interpellated as a (free) subject in order that he shall submit freely to the commandments of the Subject, i.e. in order that he shall (freely) accept his subjection, i.e. in order that he shall make the gestures and actions of his subjection ‘all by himself’. There are no subjects except by and for their subjection. That is why they ‘work all by themselves’.” [↑](#footnote-ref-106)
107. Complaint, pp. 2-7 [↑](#footnote-ref-107)
108. Ibid., indents 9, 15 [↑](#footnote-ref-108)
109. Ibid., indents 8, 14 [↑](#footnote-ref-109)
110. “Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises,” UK National Contact Point for the OECD Guidelines for Multinational

Enterprises. 25 September 2009. Available: <http://www.berr.gov.uk/files/file53117.doc> [↑](#footnote-ref-110)
111. Ibid:

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

The UK NCP upholds Survival International’s allegation that Vedanta has not complied with Chapter II(7) of the Guidelines. It concludes that Vedanta failed to engage the Dongria Kondh in adequate and timely consultations about the construction of the mine, or to use other mechanisms to assess the implications of its activities on the community such as an indigenous or human rights impact assessment. Vedanta therefore failed to develop and apply effective self-regulatory practices to foster a relationship of confidence and mutual trust between the company and an important constituent of the society in which it was operating.

The UK NCP also upholds Survival International’s allegation that Vedanta has not behaved consistently with Chapter II(2) of the Guidelines.  The UK NCP concludes that Vedanta failed to engage the Dongria Kondh in adequate and timely consultations on the construction of the bauxite mine; it did not consider the impact of the construction of the mine on the rights and freedoms of the Dongria Kondh, or balance the impact against the need to promote the success of the company. For these reasons, Vedanta did not respect the rights and freedoms of the Dongria Kondh consistent with India’s commitments under various international human rights instruments, including the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous People. [↑](#footnote-ref-111)
112. See UK Department for Business, Innovation & Skills, “UK National Contact Point for the Organisation for Economic Co-operation and Development (OECD) guidelines for multinational enterprises” <https://www.gov.uk/uk-national-contact-point-for-the-organisation-for-economic-co-operation-and-development-oecd-guidelines-for-multinational-enterprises#more-like-this> [↑](#footnote-ref-112)
113. Amnesty International, “Don’tmineus Outof Existence: Bauxitemine And Refinery Devastate Lives In India.” London: Amnesty International Publications, 2010. Available: <http://www.amnesty.org/en/library/asset/ASA20/001/2010/en/0a81a1bc-f50c-4426-9505-7fde6b3382ed/asa200012010en.pdf> [↑](#footnote-ref-113)
114. N C Saxena, S Parasuraman, Promode Kant, Amita Baviskar, “REPORT OF THE FOUR MEMBER COMMITTEE FOR INVESTIGATION INTO THE PROPOSAL SUBMITTED BY THE ORISSA MINING COMPANY FOR BAUXITE MINING IN NIYAMGIRI,” Ministry of Environment & Forests,

Government of India. August 16, 2010. Available: <http://moef.nic.in/downloads/public-information/Saxena_Vedanta.pdf> [↑](#footnote-ref-114)
115. Ibid., p.71: “The company is in illegal occupation of 26.123 ha of village forest lands enclosed within the factory premises…This is an act of total contempt for the law on the part of the company and an apalling degree of collusion on the part of the concerned officials. For the construction of a road running parallel to the conveyor corridor, the company has illegally occupied plot number 157(P) measuring 1.0 acre and plot number 133 measuring 0.11 acres of village forest lands. This act is also similar to the above although the land involved is much smaller in extent.” [↑](#footnote-ref-115)
116. Ibid., p.73: “The company M/s Vedanta Alumina Limited has already proceeded with construction activity for its enormous expansion project that would increase its capacity six fold from 1 Mtpa to 6 Mtpa without obtaining environmental clearance as per provisions of EIA Notification, 2006 under the EPA. This amounts to a serious violation of the provisions of the Environment (Protection) Act.” [↑](#footnote-ref-116)
117. Ibid., p.73: “The concerned area is a schedule V area where PESA is applicable. Thus, in addition to the implementation of FRA, the state government also has to ensure the compliance of the following provisions of PESA:

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

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

section 4(m) (iii), according to which Gram Sabha has the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.” [↑](#footnote-ref-117)
118. “David v. Goliath: Indian tribe in ‘stunning’ victory over mining giant,” Survival International, 24 August 2010: <http://www.survivalinternational.org/news/6385> [↑](#footnote-ref-118)
119. “Troubled Vedanta loses appeal for controversial refinery,” Survival International, 21 October 2010: <http://www.survivalinternational.org/news/6605> [↑](#footnote-ref-119)
120. Jason Burke, “Indian tribe's Avatar-like battle against mining firm reaches supreme court,” *The Guardian,* posted April 8, 2012. <http://www.theguardian.com/world/2012/apr/08/indian-tribe-avatar-supreme-court> [↑](#footnote-ref-120)
121. “Victory: Vedanta to close Orissa refinery.”Survival International, 13 September 2012:

<http://www.survivalinternational.org/news/8670> [↑](#footnote-ref-121)
122. See note 77 above. [↑](#footnote-ref-122)
123. Dean Nelson, “Indian villagers defeat British billionaire over plans to mine sacred mountain.” *The Telegraph,* last modified Aug 09, 2013. <http://www.telegraph.co.uk/news/worldnews/asia/india/10234314/Indian-villagers-defeat-British-billionaire-over-plans-to-mine-sacred-mountain.html> [↑](#footnote-ref-123)
124. See “UN ‘Protect, Respect and Remedy’ Framework Guiding Principles”, Business & Human Rights Resource Centre. Available: <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples> [↑](#footnote-ref-124)