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I b D a K S C a a a b a a a a b a a a a b a OECD a a .[1].

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

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

1 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*

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

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

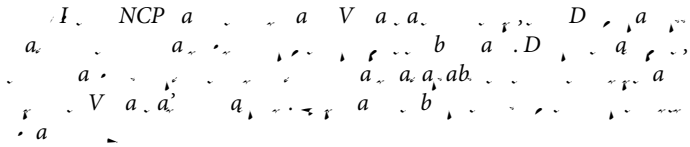
D a K a a b I a. a N a H O a, a J a a, a a b a a a a a , N a D a , a a D a K a a N a H …" [1].

e Niyamgiri hills in Southern Odisha is the home of roughly 8,000 indigenous Dongria Kondh people, spreading over 90 tribal communities around the mostly undeveloped hills [4]. e Dongria Kondhs (or simply "Dongrias") is a sub-group of the Kondha people,

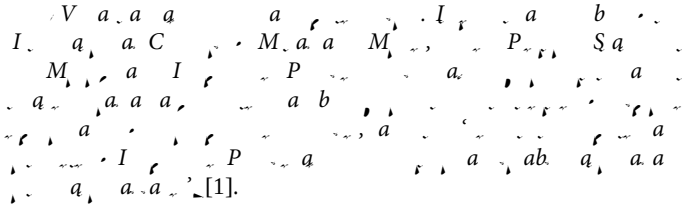
mining in Niyamgiri should not be allowed, and that were it not for administrative peculiarities the re nery may never have been allowed to be built.[28]

Meanwhile, Vedanta continued its mining project with full speed. In 2005, Vedanta began the construction of its bauxite re nery on the Niyamgiri foothills, and the plant became operational in 2006.[29] Orissa State Pollution Control Board (OSPCB) had documented widespread water and air pollution caused by the Lanjigarh re nery since it opened in 2006. Reports also suggest that those living near the Lanjigarh re nery in Orissa breathed polluted air and were afraid to drink from or bathe in local rivers.[30]

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



Although the complaint document revolves around allegations of "human rights violations" and the breach of "international law", its claims are problematic in as the [1] OECD NCP structure formally provides no legal remedies; [2] violations of socio-economic and cultural rights are o en 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 di culties, the document framed its language in ways that would be more recognizable and identi able in relation to the global legal consciousness.



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

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

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

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

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

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

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

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

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

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

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

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

44 See Amartya Sen, , "Human Rights and Asian Values," *The New Republic*, July 14-July 21, 1997.

45 AMNESTY INTERNATIONAL ñDOCUMENT - UNITED NATIONS: GENERAL ASSEMBLY MAKES PROGRESS ON THE HUMAN RIGHTS TO WATER AND SANITATION, BUT ONLY SO FAR AS THE USA PERMITSò, 26 November 2013 IOR 40/005/2013 Available: http://www.amnesty.org/en/library/asset/IOR40/005/2013/en/91fa9086-8b80-4f95-a8ab-e0a178062816/ior400052013en.html
ñThe USAís view that the deýnition of the rights set out by the Human Rights Council is ìexpansiveî cannot be sustained. That deýnition of these rights is in fact limited and relates to essential elements without which they would only be hollow

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

O en, cases of indigenous population being deprived from their "means of subsistence" due to development projects without their FPIC[51] 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. is seemingly trivial terminology distinction carries major legal and semantic implications—consider the di erence betwixt "economic disputes b. Vedanta and Dongrias", and "rights violations committed by Vedanta a a .. Dongrias". It is evident that the use of the term "economic dispute" o en masks the underlying power disparity between the parties involved. Furthermore, the phrase "economic dispute" in itself only signi es the presence of .. between negotiating parties; it does not suggest any damages or injuries su ered. Whereas the invocation of "rights violation" implies underlying damages and injuries, it does not refer to any speci c rule framework for addressing and disciplining the alleged violations. e 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 dra ed in such a way that frames e Guidelines as "international law". Such framing e ort, a a , appears to be paradoxical. International laws are recognized as such because they embody general principles of law and customs"[52] that transcend state and institutional boundaries, and are widely recognized by the citizens of the world. e OECD Guidelines on the other hand can almost be

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

50 Complaint, p. 7-8.

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.

Citation: