

Dominic Liswaniso Lungowe

vs

Vedanta Resources and Konkola Copper Mines (KCM).

On 15 and 16 January 2019 UK Supreme Court will hear the case of 1,826 claimants, polluted farmers, from farming and fishing communities downstream the Kafue River, by KCM's mines and plants in Chingola, Zambia's Copper Belt.



Maiko Zulu: 'Hold Anil Agarwal to account for Zambian crimes before de-listing'

Maiko Zulu (Left), popular Zambian reggae artist and public figure, was arrested on Thursday 27 September 2018, outside the British High Commission in Lusaka, Zambia holding this banner. Zulu gave a statement to the media, referring to the Vedanta subsidiary KCM's pollution of the River Kafue:

"Vedanta is being de-listed from the London Stock Exchange following serious crimes against indigenous people of India and the pollution of our own Kafue River which is a source of livelihood for thousands of peasants. The inequality that multinationals are creating cannot be left unchecked and we will continue standing up and facing arrests for the good of our people. Our fellow protesters were shot at by police in India."

Over the years, CWEH Activists and Academia Forum members have heard chapters from the detailed case study, taken on by independent researchers from campaign group *Foil Vedanta*⁶, of multinational mining corporation Vedanta and its subsidiaries.

Vedanta has been the majority shareholder in KCM, Zambia, since 2004. This pollution case was shared with the CWEH forum by affiliated Senior Researcher Samarendra Das and colleague Miriam Rose, who back in 2013 reported on their visit to Zambia's Copper Belt region, where they met local communities, miners, union leaders and community activists, documenting testimonies and gathering evidence on living conditions, health and environmental degradation of farmland and drinking water brought about by KCM/Vedanta copper mining operations. Their report – Copper Colonialism – published later that year, was submitted to the Zambia High Commissioner in London, and was read by affected communities in Zambia and state officials of the highest level alike. Further visits to Zambia² to continue and monitor the situation there, resulted in legal firms filing court cases behalf the communities.

¹ *Foil Vedanta* is an independent grassroots solidarity organization focused on the British-Indian miner Vedanta Resources PLC. *Foil Vedanta* research teams have been following the company in London where it is registered since 2003, as well as recording testimonies from people's movements where Vedanta is operating in India, Sri Lanka, Zambia, Liberia and South Africa. [www.foilvedanta.org]

² *Foil Vedanta* detailed article following visits to the communities in 2015 includes scientific reports and testimonies from the victims:

<https://web.archive.org/web/20170204213118/http://www.foilvedanta.org/articles/how-kcm-is-killing-the-zambian-copperbelt-part-1-water-pollution/>

Judith's story from Shimulala village, one of thousands of villagers around Chingola in Zambia, sick and with diminished livelihoods because of contaminated water was recorded by Foil Vedanta team in one of those visits.



(Stills from) <https://www.youtube.com/watch?v=cv325JID1uo>

Writing about Zambia's copper industry in 2009, Jean-Christophe Servant³ observed that the Vedanta site "revealed a vision from Dante's Inferno: 3km from the mines, the pollution control dam was overflowing, spewing copper-coloured water, reeking of acid, into a tributary of the Kafue." The river flows through Chingola district, down towards Lusaka, joins the Zambezi further south.

On 6 November 2006 the Kafue River had turned turquoise! Vedanta discharged toxic waste into it. Two million inhabitants – with 100,000 who drink the water directly from the river – were deprived of drinking water for at least two days. Hundreds who drank River Kafue water were hospitalised, thousands went for hospital check-ups after eating fish from the river. Analyses of Kafue's water - source for 40% of Zambia's population - showed chemical concentrations of 10 times acceptable levels of copper, 770 times manganese and 100 times cobalt⁴. With a pH of 1.5, the Kafue had become a river of acid.

In a separate case in January 2008 acid waste from Chingola's mines reached the ground water at Mufulira, around 40km away. More than 800 people in the township adjoining the Mopani Copper Mines (MCM) complained of diarrhoea, abdominal pain and vomiting. The mine is co-owned by the Swiss group Glencore and the Canadian company First Quantum (a joint venture with the European Investment Bank)⁵.

³ Jean-Christophe Servant, Mined out in Zambia - <https://mondediplo.com/2009/05/09zambia>

⁴ Das, S and Rose, M, January 31st 2014, Copper Colonialism: British miner Vedanta KCM and the copper loot of Zambia, Foil Vedanta, London.

⁵ Jean-Christophe Servant, Mined out in Zambia - <https://mondediplo.com/2009/05/09zambia>



Vedanta KCM, Chingola, sources of pollution into river Kafue
 (Stills from) <https://www.youtube.com/watch?v=ORXYFFtMkHk>

With this track record of Zambia’s copper industry under multinational ownership, frustrated from unanswered complains, 2,001 claimants took KCM to court in Zambia in 2007 and the Zambian High Court awarded them a landmark \$2 million fine in 2011. KCM appealed, and in 2015 the Supreme Court upheld the guilty verdict but removed all compensation, after a nine year legal battle. As a result the victims took their case to UK lawyers.

George Mumbi and Esson Simbeye from Chingola, long term campaigners in the case, recently issued this joint statement:

"Villagers along the River Kafue as well as Chingola residents have suffered severe pollution of water sources ever since Vedanta took over the mines. People used to think British mining companies were better than others, but Vedanta is one of the worst foreign investors Zambia has ever had. After twelve years of criminal pollution, it is time that justice came home to roost in Britain."

In April 2016 a UK High Court ruling granted the claimants jurisdiction to have their case against KCM and Vedanta heard in the UK, citing KCM’s uncertain and opaque finances as one reason they may not be able to get justice in Zambia⁶. The Court of Appeal upheld this

⁶ Justice Coulson's 2016 judgment exposed the opaque nature of Vedanta subsidiary KCM, revealing that the company has not filed any annual accounts in accordance with the Zambian Companies Act. The court had explored the reasons KCM might want to hide its financial position and Justice Coulson refers to the case of Konkola Copper Mines Plc v U&M Mining Zambia Ltd heard in the London Court of Arbitration in 2014 in which Justice Eder found that KCM was close to bankruptcy and ‘may not be good for the money’ (in that case \$55 million owed to their contractor U&M). The case cited reports by Grant Thornton and the Auditor General of Zambia which sought to reconcile Vedanta boss Anil Agarwal’s private claims that KCM made \$500 million per year, with KCM’s loss making claims in Zambia. The reports found evidence of multiple tax evasion and capital flight devices used by Vedanta-KCM along with asset stripping and failure to invest any CAPEX as claimed. Alongside other evidence including ‘ministerial statements about the threat of insolvency, bankruptcy or receivership facing KCM and the existence of at least one debt of \$30million which went unpaid’ Justice Coulson concluded that:

‘I would be wrong to ignore the possibility that, if the litigation was conducted in Zambia, Vedanta/KCM could seek to strike it out, or if they lost at trial, Vedanta might put KCM into liquidation in order to avoid paying out to the claimants. The history of the U&M case demonstrates that these are possibilities which cannot be ignored.’

verdict in July 2017.^{6a}

The claimants, represented by UK law firm Leigh Day, are from farming and fishing communities downstream of KCM's mines and plants. They claim to have suffered continual pollution since UK firm Vedanta Resources bought KCM in 2004, including the major incident in 2006 which turned the River Kafue blue with copper sulphate and acid, and poisoned drinking water sources.

This coming Supreme Court hearing will see Vedanta's second attempt to overturn courts rulings (previously held in the High Court and Court of Appeal) in the case of **Dominic Liswaniso Lungowe vs Vedanta Resources and Konkola Copper Mines**, which held that the case of 1,826 polluted farmers against the company and its subsidiary Konkola Copper Mines (KCM) could be heard in the UK instead of Zambia.

If a **'duty of care'** is found to be owed by Vedanta towards the claimants, this would be the first reported case in which a parent company would have been held to owe a 'duty of care' to a person affected by the operations of a subsidiary who is not an employee of the subsidiary⁷. This would be a precedent in UK law, which may have major implications for British multinational corporations' liability⁸.

Caroline Lucas (Green Party MP) welcomed this:

"When British corporations like Vedanta cause toxic pollution overseas, it's absolutely right that they pay for the damage. I stand in solidarity with all those whose drinking water has been poisoned and livelihoods damaged by Vedanta's irresponsible pursuit of profit, and all those campaigning for justice."

In a further development Vedanta Resources de-listed from the London Stock Exchange on 1 October 2018, amid global protests following the killing of 13 people, shot by police during protests against the company's copper smelter in Tuticorin, Tamil Nadu, India.

Commentators (including *Foil Vedanta* in their comprehensive report on the company's global operations entitled **'Vedanta's Billions: Regulatory failure, environment and human rights'**)⁹ claimed the company were fleeing regulation in the UK. However, Vedanta remains potentially liable in the UK for damages arising from the Zambian case.

Nnimmo Bassey - a close associate of Nigerian activist Ken Saro Wiwa who was hanged by Nigeria's military rulers in 1995 while campaigning to stop pollution by oil multinational Shell - made this comparison to the long campaigns against pollution in the Niger Delta:

"The Vedanta case mirrors the Niger Delta situation and underscores the critical need for solidarity between communities impacted by mining across the continent, indeed across the world. International oil corporations operating in Nigeria are deft at utilizing loopholes in the legal system to ensure that cases are often never decided within the short lifespan of the litigants. When they are found guilty, they can shrug the sentence off as they are sure the government would be unable to force compliance since they are literally in bed together due to the business partnerships that are rigged against the people and the environment. Litigation in the home countries of the offending companies has been the option that offers a ray of hope for justice for the poor and for Mother Earth."

Communities in Zambia demand for an immediate stop of air and water pollution, including closing down of the plant until pollution control measures are replaced and upgraded, and

^{6a} Dominic Liswaniso Lungowe and others vs Vedanta Resources Plc and Konkola Copper Mines Plc. (13 Oct, 2017)

⁷ <http://www.nortonrosefulbright.com/knowledge/publications/158040/emlungowe-v-vedantaem-appeal-highlights-important-points-regarding-parent-company-liability>

⁸ Elena Merino Blanco & Ben Pontin, 'Vedanta: a new landmark in litigating extraterritorial torts'

⁹ Download the full report at <http://www.foilvedanta.org/news/vedantas-billions-regulatory-failure-environment-and-human-rights-report-released/>

restoration of clean water provisions to villages by tankers or pipes. In addition, they call for de-silting of the Mushishima stream and Kafue River and removal of contaminated waste, so that the entire polluted area will be made safe to live, farm and fish again. Local people demand compensating affected people for loss of health and livelihood, with all medical costs paid by KCM/Vedanta in future.

Samarendra Das from *Foil Vedanta* says:

"Vedanta's remorseless pollution of the River Kafue since 2005 continues the colonial legacy of environmental racism which made the Zambian Copperbelt a global pollution hotspot. While the financial and material gains from copper have been allowed to flow seamlessly out of the country, justice risks being restricted by economic and institutional barriers of territoriality. We very much hope that the court will enable the fight for justice to continue."¹⁰



What makes Vedanta's case so significant?

Vedanta is owned by an Indian billionaire Anil Agarwal and up until October 2018 was registered in the London Stock Exchange (LSE), thus a British company. *Foil Vedanta* research teams have built over 20 years one of the most forensic profile of any mining corporate entity, and shed light on its structure and operations, impact on human, nature and climate change. This complex study uses LSE material to produce first rate financial analysis, expert knowledge for material flow analysis of metals, looks into historical geological surveys records, maps and photographs, including from British colonial era and East India Company, Environmental Impact Assessments; researchers collect testimonies of eye-witnesses from effected communities through field work, study legal documents and judiciary cases, all gathered and analysed in relation to the company, trace its ever-changing complex ownership and financial structure, document illegal levels of pollution of land, rivers, air and nature, gather contested human rights records, scrutinise CSR projects, follow up activities of land grab, ignoring state injunctions against mining operation, company responsibility for its employees in cases of industrial accidents.

CWEH activists and academia network newsletter was put together by Zuky Serper - CWEH artist in residence. For more information please contact actacdforum@sussex.ac.uk

¹⁰ Please see interviews with affected people on:

'Rivers of Acid' in Zambian villages - 8 September 2015 - <https://www.bbc.co.uk/news/world-africa-34173746>
and: CCTV Africa in 2016 - <https://www.youtube.com/watch?v=3isPdcR6Qe4&feature=youtu.be>