

To: The Honorable Chief Justice of India K.G.Balakrishnan,  
Arijit Pasayat and S.H.Kapadia, the Forest Bench, Supreme Court of India, Tilak Marg, New Delhi 110001, India

**Appeal to protect Niyamgiri and the Dongria Kondh Adivasis from bauxite mining by Sterlite-Vedanta**

Honorable Sirs,

We are deeply concerned about the case of Niyamgiri, where Sterlite Industries, a Vedanta owned corporation, tries to get mining clearance through a Special Purpose Vehicle (SPV), waiting now a new judgement of the Supreme Court (related to the earlier judgment of 23.11. 2007 in I.A. Nos. 1324 & 1474)

We appeal You to ensure that Sterlite will not be allowed to mine bauxite in Niyamgiri through a SPV.

Severe setback for the environmental protection and indigenous people's rights, for the implementation of legal and international commitments and for the credibility of Supreme Court would result if a company like Sterlite would be accepted to mine bauxite in biodiversity-rich Niyamgiri sanctuary-plan area, because:

1. Sterlite with many other corporations of Vedanta group and Vedanta/Sterlite type of mining in Niyamgiri have been verified as non-accountable by the recommendations of the Council on Ethics for the Norwegian Government Pension Fund, as the illegal measures and environmental violations of the mining and related industrial activities of these corporations have endangered the environment and people's health and safety. (Council's recommendation of 15.5.2007 to the Norwegian Ministry of Finance).

That the Fund through ownership in the Vedanta Resources group would run "the risk of contributing to unethical acts", was assessed by this Council on Ethics for the Government Pension Fund – Global through its survey on Vedanta subsidiaries like Sterlite Industries Ltd., which advertises itself as "the flagship company of the Vedanta Group".

What was verified as non-accountable by the survey, was indeed the mining related industrial activity of Vedanta subsidiaries like Sterlite and VAL (which has built the refinery in Lanjigarh), both in equal terms:

"The Council has deemed it right to also recommend exclusion of the subsidiaries" like Sterlite or VAL from the sphere of investment "due to an unacceptable risk of ... severe environmental damage and systematic human rights violations": (Norwegian Council on Ethics for the Government Pension Fund – Global)

2. As Special Purpose Vehicles (SPV) are often used to hide such non-accountable/illegitimate nature of company's business, it would be odd if the Supreme Court of India transfers the tribal sanctuary forest area to become exploited for bauxite mining by a corporation like Sterlite through SPV. Supreme Court should not involve in hiding such non-accountable business of Sterlite-Vedanta, which uses already too many masks.

Sterlite and Niyamgiri mining violate the basic environmental and human rights conditions of sustainable tribal development and poverty reduction, the rights to health, water and safe work conditions, hazardous and toxic (including carcinogenic) substances; the emissions of fluorides, green house gases & sulphur, the disposal of cathode waste; heavy metals emissions (mercury etc.) (see Annex 1)

3. To allow Sterlite mining in Niyamgiri would violate also various legal provisions and international commitments of :

a) UN Convention on Biological Diversity and UN Declaration on Rights of Indigenous People (see Annex 2).

Regarding the rich biodiversity of the area and the indigenous communities adapted to live through the natural regeneration of that biodiversity, India has legal commitments to ensure the conservation and sustainable use of the biodiversity, especially by supporting sustainable traditional practices and livelihoods of the local indigenous communities. These legal commitments are violated if Niyamgiri's biodiversity-rich natural forest and livelihood sources adapted to its natural regeneration are destroyed by mining, which displaces indigenous tribal communities without their prior informed consent from their ancestral home forests, which they have protected as sacred.

**b)** Tribal Forest Rights Act - now notified and in force -, various UN human rights commitments, which it implements in respect to indigenous people and the constitutional PESA Act (see Annex 3) which require:

- Protection and official validation of the traditional and customary rights and practices of the indigenous forest communities on forest lands they have traditionally occupied, used or conserved.
- Authority of the local indigenous communities to decide about the sustainable use and conservation of the areas where they have lived and to forbid non-sustainable use or exploitation of the area
- Such rights of the indigenous communities to their ancestral forest lands that they and their traditional livelihoods shall not be displaced from these lands without their prior approval.

**4.** The commitments of sustainable development, poverty reduction, health or cultural rights do not support such vast mining in the biodiversity rich area of indigenous Niyamgiri mountain forest communities.

Legal judgement on sustainable development should be based on human rights and environmental protection commitments of sustainable development and poverty reduction concerning the indigenous forest communities - not on a business facilitating declaration to allow a mining contractor to define 'tribal development' or 'conservation of environment' for the purposes of the mining business.

How could a 'wildlife management plan' or 'tribal development' of Niyamgiri mountain be trusted to be owned and managed by a mining contractor, which aims to convert forest for mining profits and to displace mountain's indigenous communities who should be able to manage the protection and sustainable use?

According to the UN biodiversity commitments, local indigenous communities – rather than mining corporations - have crucial role and authority in planning, decisions, management and implementation of how can the biodiversity of their ancestral home mountain forest be conserved and sustainably used. By declaring as conservation or tribal health or development the use of some 5 % of such profits which are made by damaging tribal livelihood, health, human rights, environment and culture, the Niyamgiri mining by Sterlite does not become accountable or sustainable option of nature protection, promotion of tribal health or development nor of poverty reduction.

**5.** It is thus not coherent for a Supreme Court to give to a mining contractor who has interest to exploit a mountain for commercial profit, a crucial role in planning and determining what shall be called and practised as biodiversity conservation or tribal development in the area.

Sterlite does not have adequate competence on protection of environment or tribal culture to plan or manage the Niyamgiri tribal development, the requirements for health, education, communication, recreation, livelihood and cultural lifestyle, nor to undertake rehabilitation of displaced or affected families. Sustainable development of the forest and mountain ecosystems and of the indigenous communities living in Niyamgiri requires due respect to the legal commitments of the UN Convention on Biological Diversity regarding forest and mountain ecosystems and to UN Declaration on Rights of Indigenous People also in defining what is meant by development needs of those indigenous mountain forest communities.

The expanding forced displacement of tribals from their sustainable natural livelihood sources and habitats is not accountable nor sustainable tribal development, poverty reduction, neither protection of the environment. What is development, poverty reduction, decent work, adequate housing or protection of health and environment in the Niyamgiri mountain forest communities, must be determined in cooperation with these indigenous communities and as compliant to their internationally recognised human rights and rights of the environment and biodiversity of such mountain forests.

India is to prevent "the displacement of persons as a result of development projects" and "to ensure... the rights to land, housing and livelihood", particularly in respect to "the provisions of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of December 2006, and the mechanisms for its effective enforcement". (UN Committee on Economic, Social and Cultural Rights. 21-25. May 2007, paragraphs 1 and 5-6 and 33-34 of the "List of issues to be taken up in connection with the consideration of the second to fifth periodic reports of India concerning the rights covered by articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/IND/5)" )

24.1.2008, Turku, Finland



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