

22<sup>nd</sup> January 2008

**To:**

The Honourable Chief Justice of India K.G.Balakrishnan,  
Justice Arjit Pasayat, and Justice S.H.Kapadia,  
Supreme Court Bench, T.N.Godavarman v/s Union of India  
Supreme Court of India,  
Tilak Marg,  
New Delhi 110001  
India.

**Appeal to protect the rich biodiversity of Niyamgiri and the lives of the Dongria Kondh Adivasis (A Primitive Tribal Group) from being destroyed by bauxite mining**

**Honourable Sirs**

We write to you with reference to your judgment dated 23<sup>rd</sup> November 2007 in I.A. Nos. 1324 & 1474 related to the mining of bauxite by M/s Vedanta Alumina Limited (VAL) . We appreciate the fact that the forest bench of the court has taken a very clear decision not to allow VAL to mine bauxite from Niyamgiri in the light of the facts of the case and the report of the Norwegian Council of Ethics. However, we are deeply concerned by the concession that has been given to Sterlite Industries of India Limited (SIIL), which is clearly a subsidiary of VAL with the parent company having a substantial stake in it. Further the report of the Norwegian Council of Ethics also clearly refers to the SIIL in India as being a determining factor from them withdrawing funding from VAL. Therefore, we feel that allowing SIIL permission to mine, even with the conditions prescribed would mean indirectly permitting VAL. We are aware that SIIL has filed its affidavit before the court and the matter is scheduled to be heard by the Godavarman Bench in the near future.

Along with the fundamental legal contradiction within the judgment we believe that mining in Niyamgiri Hills will have far reaching consequences. It will not only have a critical impact on the lives of the Dongria Kondh tribals whose lives , culture and very existence are deeply linked with the Niyamgiri Hills but is also likely to set a negative precedence wherein extremely sensitive habitats will be allowed to go through irreparable change, despite alleged legal violations.

**1. The cost of mining the Niyamgiri**

The Niyamgiri Hills are home to a number of vulnerable **wildlife fauna species** including tigers, leopards, sloth bears, pangolins, palm civets, giant squirrels, mouse deer, langurs and sambhars. It is also a part of an elephant migration corridor and home to the Royal Bengal Tiger. Allowing mining in this area will cause irreparable loss to the already dwindling wildlife of our country.

The Niyamgiri Hills are home to **more than 300 plants species** of which 50 species are known to be medicinal plants. The Niyamgiri hilltops harboring these plants also act as a bridge for evolutionary migration of plant species from the Himalayas to the south and vice versa. Allowing mining will spell doom to the rich and pristine biodiversity of the area.

The Niyamgiri Hills are the birth **place of hundreds of streams** (most of which are perennial) which feed at least 2 large rivers namely the Vamsadhara River and the Nagavalli River. These rivers flow through Orissa and Andhra Pradesh and are the sources of drinking and irrigation

water to millions of people in both these states. Allowing mining in the Niyamgiri hills will dry up these streams and deny drinking water and irrigation water to millions of people in the states of Orissa and Andhra Pradesh.

The Niyamgiri hills are home to the **Dongria Kondh Adivasis – a Primitive Tribal Group** whose rights and way of life are protected under the Constitution of India and the Forest Rights Act 2006. The Dongria Kondhs have a rich and symbiotic relationship with the Niyamgiri hills. They conserve the area with their strong tribal wisdom, belief system and faith while the hills and forests support them in their daily sustenance and livelihood. The very identity of this Primitive Tribal Group is dependent on the hills and their life around it. The tribal group has made it clear that they prefer their way of life and do not want the area to be mined, their wish needs to be respected. Allowing mining in this area will result not only in the loss of home and livelihood of these gentle people but also result in the annihilation of the Primitive Tribal Group, their unique way of life, the resources they conserve and their associated traditional knowledge.

*All this clearly points to the fact that there is a major dispute on the issue as to whether the said mining should be allowed in this socially culturally and ecologically rich and sensitive area. However, the Honourable Court insisted in its earlier ruling that, ‘it is not in dispute that in this case the mining of bauxite deposit is required to take place on top of the Niyamgiri hills’. This is something that needs urgent review.*

## **2. The validity of the Environment and Forest clearances obtained**

The Central Empowered Committee (CEC) (*The advisory body constituted by the Supreme Court to advise it on environmental matters*) in its report to the Supreme Court has clearly indicated that the project has two components: Mining and Refinery. VAL has consciously concealed the need for forest land to be diverted for the project so that the environment clearance of the refinery is not revoked for want of forest clearance of the entire project. It is the mining component that entails diversion of forest land for non-forest use and requires environmental clearance as per the Forest Conservation Act .

VAL has also de-linked the two components (Refinery and mining) of the project, in their arguments before the CEC and later argued in Supreme Court that the mining is critical for their Refinery. At the time of the grant of the environmental clearance even the proposal for the use of the forest land for the Niyamgiri bauxite mines had not been filed with the MoEF.

VAL was in fact brought to court through three applications before the CEC indicating violation of the Forest Conservation Act, and had not applied for forest clearance by themselves as has been interpreted in the final judgment.

*All these and many other instances cited by the CEC clearly show that the law of the land has been undermined many times over by VAL to obtain mandatory clearances. Unfortunately, the Honourable Supreme Court in its judgment of the said case makes no reference to the manner in which the clearances were obtained and states that, ‘All requisite permissions have been obtained by the said applicant.’*

## **3. Supreme Court judgment critically influenced by the Norwegian Council of Ethics report**

The Honourable Supreme Court in its judgment referred to the report of the Norwegian Council of Ethics to deny Vedanta the clearance to mine the Niyamgiri Hills.

This report states that a number of linked companies – (VAL, SIIL were among them) have been investigated by the body and found guilty of severe environmental damage and involvement in

violations and forced dislocation of tribal people . The report also pointed out that the repetitive nature of the violations and damages inflicted on both the environment and human rights over a long period of time, **showed a pattern of behaviour where such violations are accepted and have become an integral part of the corporate practices of the said companies.**

In particular, **SIIL** was found guilty of irresponsible handling of hazardous waste, illegal production expansion, and repeated and severe violations of a series of environmental requirements systematically and over many years that have caused great damage to both the environment and human rights in India.

*The Norwegian government report clearly paints both Vedanta and Sterlite with the same colour and the Supreme Court judgment clearly refers to this report . It is not clear why SIIL which was found equally guilty by the same report was given the liberty to continue with the process from where Vedanta had left off .*

We feel that the judgment passed by the Supreme Court on 23 November 2007:

1. bypassed important environmental, human right and biodiversity concerns,
2. overlooked the willful manipulation of the requirements of the law by VAL,
3. ignored the advice of its own advisory body which had clearly done its homework and laid out all the facts,
4. denied permission to mine to one company on the basis of a report and invited another party for the very same purpose linked or otherwise that was found equally guilty on all counts by the same report.

We hereby request the Supreme Court bench to take serious consideration of the fact that VAL and SIIL are indeed part of the same entity, and review its earlier decision to allow SIIL to mine the Niyamgiri as long as it adheres to the conditions laid out by the Supreme Court. We also request you to consider the fact that mining on Niyamgiri hills will lead to irreparable damage of the biodiversity of the area; and the lives, cultures, wisdom and livelihoods of a primitive tribal group so critically dependant on this area and its biodiversity.

Thanking You

Yours Sincerely

Ashish Kothari /Erica Taraporevala  
Apt. 5 Shree Dutta Krupa  
908 Deccan Gymkhana  
Pune 411004  
Tel: 91-20-25675450  
Tel/Fax: 91-20-25654239  
Email: [ashishkothari@vsnl.com](mailto:ashishkothari@vsnl.com)  
Website: [www.kalpavriksh.org](http://www.kalpavriksh.org)