



Forest Peoples Programme

1c Fosseway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK
tel: +44 (0)1608 652893 fax: +44 (0)1608 652878 info@forestpeoples.org www.forestpeoples.org

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To:

The Honorable Chief Justice of India K.G.Balakrishnan , Arjit Pasayat, and
S.H.Kapadia, on 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

Honourable Sirs,

We are writing with a high level of concern regarding the case of Niyamgiri, where Sterlite-Vedanta is trying to get mining clearance. We understand that the company is awaiting judgement from the Supreme Court of India on whether the mining clearance will be issued.

We are an international Non-Governmental Organization based in the UK working to protect and promote the rights of indigenous peoples and forest-dependent peoples. We are particularly concerned with the case before you at the moment, as we feel that the views and perspectives of indigenous and tribal peoples' have not been properly heard at the court, and their livelihoods as well as their religious and cultural traditions are likely to be effectively destroyed if the planned mining goes ahead.

This would violate the 5th Schedule of India's Constitution, and the recently enacted Forest Rights Act, as well as international laws and standards, including the UN Declaration on the Rights of Indigenous Peoples passed by the General Assembly in September 2007. We would also like to draw your attention to the recent decision of the Supreme Court of Belize vis-à-vis the applicability of the Declaration in national courts, where the Court ruled that:

...this Declaration, embodying as it does, general principles of international law relating to indigenous peoples and their lands and resources, is of such force that the defendants, representing the Government of Belize, will not disregard it. ... In **Article 42** of the Declaration, the United Nations, its bodies and specialized agencies including at the country level, and **states**, are enjoined to promote respect for and full application of the Declaration's provision and to follow up its effectiveness.¹

It should be noted that India voted in favour of the Declaration.

We understand the vital necessity to balance environmental protection, social and human rights concerns and development objectives. However the currently proposed mining operations can not be termed 'sustainable' in any way and proposed compensatory schemes are insufficient. The area under

¹ http://www.law.arizona.edu/depts/iplp/advocacy/maya_belize/documents/ClaimsNos171and172of2007.pdf

consideration, we understand, is an area in which communities and peoples are living in remote communities according to customary land and resource management systems. Allowing mining clearances in these areas would irreversibly distort and damage such systems, and the cultures from which they emerge.

Further to these concerns regarding the rights of indigenous and tribal peoples, we are also concerned about the implications under India's new Forest Rights Act. We understand that the summit of Niyam Dongar is covered by primary forest - a unique forest area in Orissa, at an altitude of 4,000 feet and with a very high level of biodiversity. We understand that the document presented by the Ministry of Environment & Forests to your court on 5th October stated that re-afforestation plans involving plantations would "enhance the forest cover" in the area. We consider this to be a reflection of a fundamental misunderstanding of the role and importance of biological diversity, and a misunderstanding of national commitments under the Convention on Biological Diversity.

The religious significance of the area proposed to be covered by the mining concession is very high, as it is considered sacred to the Dongria people. This religious significance and the protection provided by the Dongria in the name of their god, Niyam Raja, 'King of Law', is one of the reasons for the high forest level retained on the summit of this mountain. The Dongria have a taboo against felling any trees on the summit of the mountain and we are told that it is today the best-forested of the bauxite-capped mountains in Orissa.

With such religious and cultural significance, it is clear to us that financial payments for "tribal development" or other compensation packages would be ill-placed to replace that which would be lost if mining was allowed to take place on the mountain. In particular, we would like to emphasize that indigenous and tribal peoples have the right to self-determination, and the right to give or withhold consent to development initiatives on their traditional and customary lands. Without the consent of the Dongria people, allowing this mining clearance to be passed would constitute a violation of international law.

We would also like to restate concerns about the past record of Vedanta-Sterlite, the company petitioning for the mining clearance. We understand that in your Order of 23rd November you accepted that Vedanta has established a bad reputation in India & worldwide for its record on the environment as well as human rights. We would like to draw attention to the linkages between Vedanta and Sterlite and that a black-listing of one should apply equally to the other.

For the above reasons, we respectfully ask that the mining clearance is not provided for the proposed site.

Yours sincerely,

Helen Leake
Policy Advisor