

FPIC AND ADIVASI WOMEN IMPACTED BY MINING

Working paper

**‘Free Prior and Informed Consent’: A Tool for Conflict Resolution for Adivasi
Women Impacted by Mining Projects**

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Abstract

Political and corporate induced conflict in adivasi regions in India today has serious negative implications on the security of adivasi women. This working paper analyses the causes of conflict, particularly in the context of mining projects and adivasi women. Using field case studies, research papers and media reports as basis apart from the author's own experiences working in the adivasi regions of the Fifth Schedule areas, this paper traces the constitutional status, legal and governance mechanisms, international commitments of India with respect to natural resources, economic policies related to mining and implications on adivasi women's food security and social protection. The main focus of this paper is the analysis of the United Nations Declaration and its right to free, prior and informed consent vis-à-vis national laws, adivasi women and field level implementation. The paper provides directions for policy, legal and governance interventions for an approach towards gender equity and social security when pursuing mineral policies that affect adivasi women.

Introduction

India has one of the largest adivasi (Scheduled Tribes/tribal/indigenous) populations in the world who live in remote forest and hill areas practicing their traditional forms of agriculture and forest-based livelihoods. The life of adivasi women that is intrinsically linked to these natural resources is now being seriously affected by macro-political and economic decisions increasing conflict and violence thereby creating severe social insecurity. This paper aims at understanding the relation between these politico-economic policy interventions and the growing threat to social security and peace of a very significant section of the marginalized population in India living in the Fifth Schedule areas demarcated by the Indian Constitution and its adjacent regions.

The paper specifically focuses on the mining sector, which is the largest industrial stakeholder in these socially and ecologically fragile regions. The primary focus of this paper is the historical and prospective impacts of mining on adivasi women as adivasi women are the worst affected in multiple invisible ways by mining projects, the repercussions being far-reaching and socially critical. It analyses the status of adivasi women in the backdrop of the shifts in Constitutional safeguards, customary safety nets and State responses to international commitments that are jeopardizing their security and protection. Here again the focus is on the adivasi women living in the Fifth Schedule and contiguous regions since mining here is more widespread than in the other areas.

Today many parts of the Fifth Schedule areas have been officially declared as highly disturbed political zones nurturing terrorism and causing threat to internal security of the country, which is a matter of grave concern at the national and regional level. The paper therefore, aims at exploring policy and administrative strategies for bringing about a more balanced development planning, gender equity and conflict resolution in these remote areas.

Adivasis of India

India today has 428 notified Scheduled Tribes or adivasis as they are known spread across 19 states and 6 union territories; however the total number of tribal communities is reported to be 642 with even more sub-groups/clans (Kishwan, Pandey,

Goyal, & Gupta, 2007). The adivasis constitute 8% or 84,326,240 of the total population of India (Census of India, 2001a).

Since ancient times the adivasis have been an important part of the cultural, political and economic milieu of the Indian subcontinent. While interacting with the outside world, they were mostly self-reliant, accessing forests and land for their subsistence. Their administration system was one of collective ownership, with traditional dispute resolution mechanisms for resolving any internal conflicts. During the British administration the need for special safeguards, governance and administration was deemed necessary, considering the cultural and social diversity of the communities living in these regions and the political conflicts between administrative machinery and tribal communities. The first attempt at administration of adivasis by the British was the setting up of the Hill Assembly in 1782 in the Rajmahal Hill Tract among the Pahari adivasis, and governed by the rules laid down under Regulation I of 1796. The Hill Tract was administered by the Governor and the rules of the British administration applicable elsewhere did not extend here (Ghurye, 1963). While this Regulation was repealed in the year 1827, the concept of having a distinct and special arrangement essentially for the isolated tribal regions gained acceptance. Special laws and separate administrative arrangements came into existence for governing these areas that include the Government of India Act 1919 and 1935 with the latter providing for the declaration of 'excluded areas' and 'partially excluded areas' for parts of central and northeastern India. At the time of framing the Indian Constitution it was observed that in the new democratic set up the problems of adivasis should be an integral part of the development of the people of India as a whole. This resulted in the Constitution adopting provisions for separate administration of adivasi areas, termed Scheduled Areas that included the Fifth and Sixth Schedule¹.

The Fifth Schedule

The Fifth Schedule areas were notified by the President of India in accordance with Articles 244 (1) of the Indian Constitution, primarily as a mechanism for protection

¹ The northeastern States of Assam, Meghalaya, Mizoram and Tripura are notified and administered by the Sixth Schedule

of adivasi communities against exploitation by unscrupulous elements. It contains the procedure for notifying and administering of adivasi populations in the tribal dominant areas of 9 States comprising Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. In the Fifth Schedule Areas the Governor of the State is vested with the power to make regulations for good governance primarily with regard to allotment of land, restricting or prohibiting transfer of land to non-tribals and regulating money lending businesses. The Governor is advised in his role by the Tribes Advisory Council and all regulations passed by the Governor require Presidential assent.

Biodiversity of the Fifth Schedule

The Fifth Schedule areas and its adjacent regions in India have an immense wealth of natural resources and biodiversity. Of the recorded forest area² in the country extending to 769,512 sq km or 23.41% of the total geographical area of the country, an area of 450,554 sq km i.e., nearly 60% is largely concentrated in these regions. Dependent on these forests are a significant population of adivasis, indicative of which is the fact that of the 188 districts with a tribal population in the country, 88 come under the Fifth Schedule (See Annexure 1: Forest cover in tribal districts of Fifth Schedule States) (Forest Survey of India 2009). These densely forested regions that the adivasis call home have, for over centuries, determined the cultural, economic and social facets of their lives. These forests and the wealth of biodiversity in these landscapes provided adivasis with livelihoods and subsistence, imperative for their survival. Adivasi women, in particular, are the original environmentalists conserving this biodiversity and passing on their knowledge acquired over generations.

Population and Development Indicators of Adivasi Women in Fifth Schedule

The adivasi women's population in the Fifth Schedule States numbers 30,932,038 (Census of India, 2001b). For these adivasi women the Constitutional safeguard of Fifth Schedule means protection of their lands and natural resources from being alienated to outsiders. While they do not provide legal entitlements to the women, they ensure a

² The area recorded as a forest in the government records

greater degree of control and access to these resources within their traditional social norms as long as the lands are within the community fold.

On the flip side, the development indicators of literacy, health and mortality for these adivasi women are abysmally poor. This provides a clear indication that the benefits of 'development' for a country with a Gross Domestic Product (GDP) growth rate of 8.6% (Ministry of Finance, 2011) has not trickled down to these impoverished and marginalized communities. The literacy rate of adivasi women in the country is 34.76 (male literacy rate=59.17) against an overall female literacy rate of 53.67 (male literacy=75.26). In Fifth Schedule States more so (barring Himachal Pradesh), these are very low indicating that the promise of universal education continues to be unfulfilled (See Annexure 2: Female literacy rates in the Fifth Schedule States).

Similar is the situation of health and access to medical care. According to the National Family Health Survey-3 (NFHS-3), the likelihood of receiving antenatal care (ANC)³ and care from a doctor is lowest for adivasi mothers, with only 18% of births delivered in health facilities (institutional)⁴ and only 17% of births being assisted by a doctor (IIPS & Macro International, 2007). Lower Body Mass Index (BMI)⁵ and high prevalence of anemia⁶ is also manifest. All these factors, along with the limited access to ANC result in higher Maternal Mortality Ratio (MMR)⁷, especially in the States of Chhattisgarh, Jharkhand and Madhya Pradesh that have a large adivasi population. Of particular concern is the status of the girl child. Infant Mortality Rate (IMR)⁸ of girls is considerably high in several of these States, with Chhattisgarh, Madhya Pradesh, Orissa and Rajasthan having the worst indicators. The under-five mortality rate⁹ for adivasis is also very high. The low levels of literacy among the adivasi women are one of the

³ ANC refers to pregnancy-related health care, which is usually provided by a doctor, an auxiliary nurse cum midwife (ANM), or another health professional. All recommended types of ANC is where the mother received 3 or more ANCs (with the first check-up within the first trimester of pregnancy), received 2 or more tetanus toxoid injections, and took iron and folic acid tablets or syrup for 3 or more months

⁴ Institutional delivery is the percentage of births that took place at a medical facility

⁵ BMI here is the percentage of women between the age groups 15 and 49 years whose BMI is below normal, that is, less than 18.5 (total thin). BMI=weight in kg divided by height in m squared (kg/m²)

⁶ Anemia among women between 15 and 49 years by hemoglobin level (Any anemia=<11grams/decilitre)

⁷ The MMR is the number of women who die as a result of pregnancy and childbirth complications per 100,000 live births in a given year

⁸ IMR is the number of infants dying under one year of age in a year per 1,000 live births of the same year

⁹ Under-five mortality is the probability of dying before the fifth birthday

primary reasons for these poor indices (See Annexure 3: Health indicators for women from Fifth Schedule States).

Social and Economic Role of Adivasi Women in Traditional Economy

Adivasi women play an extremely critical role in the economic and livelihood sustenance of their communities. As the main contributors to the agricultural and forestry activities, women perform multiple tasks at the homestead and at the farm. They practice slash and burn cultivation, which requires women to undertake most of the cutting, digging and clearing activities to prepare the hill slopes and dibble multiple crops while they clear the valley lands for wetland farming. Women also undertake the entire weeding operations, portions of the harvesting and post-harvesting processing and storage activities. Throughout the year women work in the forests collecting wild produce for incomes and for domestic requirements. They also play a significant role in local trade through taking their forest and agricultural produce to the weekly markets and enjoy a considerable financial control over the incomes earned from these transactions.

Women participate in livestock rearing, fishing and other traditional occupations like weaving, pottery, mid-wifery and medicinal healing, cultural and spiritual rituals and in some communities, women participate in hunting activities as well. Their knowledge of biodiversity and natural resource management are perceptible through their contribution in other diverse sustenance activities like house-building, pest management, water harvesting, soil conservation and others.

Adivasi women therefore, are indispensable in their traditional occupations for their families as well as for their communities in multiple ways. This is reflected in the practice of bride price in most of the Eastern and Western Ghats regions and the matriarchal and matrilineal property rights practiced by some of the tribes in the northeastern States. The social rights enjoyed by the adivasi women, in comparison to rural and urban women, and inspite of the low levels of literacy and education, reflects the important status of adivasi women in tribal economy. There is vast historical evidence and documented understanding of this multi-faceted role played by women in the economy of the forest regions.

Problems Confronting Adivasi Women's Lives

In the past, the problems that adivasi women faced were largely related to exploitation by mainstream societies and neglect by the State machinery at different levels. External populations exploiting the adivasis through land alienation had traditionally created a pressure on the adivasi women's control over the natural resources whereas the ill implementation of development activities by governance institutions deprived these communities of basic amenities. Hence, literacy among adivasi women has remained abysmally low and so also their access to development resources. Therefore the harsh conditions of living in the remote forest areas left adivasi women neglected of crucial medical attention, basic education and low decision-making opportunities in local governance. The IMR and MMR for tribal areas are indicative of this continuing neglect.

Post 1990, the New Economic Policy and the subsequent Five Year Plans have changed the discourse of development with far reaching consequences on the adivasi women's rights and protection. In India, prioritizing industrial growth and private partnerships for promoting economic activities have resulted in the State decision to open up the Scheduled Areas for resource exploitation by private industries, foremost of them being mineral resources and the extractive industry. Until 2001 when the first private company, Sterlite¹⁰, took over Bharat Aluminium Company in Chhattisgarh, the mining industry in the Scheduled Areas was mainly confined to the public sector. The proposed diversion of large-scale tribal and forest land for private mining projects is a serious concern in the context of women's security as is seen from the experiences of women affected in different project sites.

A Brief History and Background of Mining in India

Mining activities in the country can be traced as far back as 6,000 years. However, the Indian mining industry came of age only after independence when the role of minerals was considered vital for the development of the nation. On the eve of independence the annual value of mineral production in the country was only Rs. 58 crores¹¹; few minerals were being mined and the country depended primarily on imports

¹⁰ Sterlite Industries (India) Limited is the principal subsidiary of the London based Vedanta Plc

¹¹ 1 crore=10 billion; Rs is the abbreviation for Rupee which is the monetary unit of account in India

(Tata Energy Research Institute, 2001). The period between 1950 and 1980 saw the setting up of several public sector entities to undertake mineral extraction on a large scale. However, it was post-liberalization of the mining sector in 1993 that the value of mineral production tripled: from Rs. 25,000 crores in 1993-94 to more than Rs. 84,000 crores in 2005-06 (Indian Bureau of Mines, 2006).

Today India is a mineral rich country that produces around 86 minerals (4 fuel, 10 metallic, 46 non-metallic, 3 atomic and 23 minor minerals), with the total value of mineral production estimated at Rs.127,921.42 crores (Ministry of Mines, 2010), and the sector's contribution to India's GDP stood at 8.5% (for the period April-December 2010) (Ministry of Finance, 2010).

The geographical distribution of minerals is also widespread. If all kinds of minerals, including sand, stone and brick earth, are taken into consideration, then almost every one of the 604 districts in the country can be said to produce one or the other kinds of mineral (Centre for Science and Environment, 2008). With its rich mineral base India today ranks topmost in world production of some key minerals like coal, iron ore, chromite and bauxite (Ministry of Mines, 2010).

A large number of small operational mines characterize the mining industry in India. The number of mines that reported mineral production (excluding minor minerals, petroleum, natural gas and atomic minerals) in India was 2,729 in the year 2009-10 (Ministry of Mines, 2010). The total area leased out for mining in India is 754,861 ha; however, this does not include minor and atomic minerals or the area affected because of mining all of which will cover a much larger area (Centre for Science and Environment, 2008). The public sector units had a principal role in mineral production but over the years' the private sector has been allowed entry in all segments of the mining industry (barring atomic minerals). Their dominance has been increasing with industries dependent on mines also allowed captive mines in the post-liberalization era. The growing demand for minerals, especially from China, in the years from 2000-06 had fuelled a mining frenzy. Promises of employment and economic prosperity to the local communities have been falsely made to advance the mineral industry. The price, however, has been paid by one of the poorest and most marginalized populations—the

adivasis in the Fifth Schedule—and at the cost of the resource base on which their very lives depend.

Mining in the Fifth Schedule

The mineral map of India overlaid with that of the forests and adivasi populations provides an interesting — and at the same time worrying — picture. The bulk of mineral production (82.92%) is confined to 9 States, of which 7 — Orissa, Andhra Pradesh, Chhattisgarh, Jharkhand, Madhya Pradesh, Gujarat and Rajasthan — are Fifth Schedule States (Ministry of Mines, 2010), that have rich forest and river systems, and a large populations of adivasis. These are also States that typify the term ‘resource curse’ — where a high level of mineral dependence/reserves has simultaneously also led retarded economic performance. The mineral rich States in India demonstrate low per capita incomes, higher levels of poverty and poor development indicators particularly among the adivasi population. Over arching factors contributing to these are poor enforcement of laws and weak institutional and regulatory mechanisms characteristic of mining regions.

The fatal overlap of minerals-forests-adivasis has had a domino effect to the detriment of the ecology and the lives of adivasis. The total forest land diverted for mining in the country between 25 October 1980 and 30 September 2008 stands at 132,364.72 ha. Of this 74% or 98,211.599 ha were from the Fifth Schedule States (Annexure 4: Forest land diverted for mining in Fifth Schedule States between 25 October 1980 and 30 September 2008).

Chhattisgarh, which saw the largest area diverted for mining, has recorded a decrease in forest cover and indiscriminate mining has been one of the main reasons (Forest Survey of India, 2009). Orissa, Andhra Pradesh and Madhya Pradesh are the other States where large tracts of land have been destroyed as a result of mineral exploitation.

Loss of forests and land meant that considerable populations of adivasis were forced out of their homes with little or no compensation/rehabilitation. While no accurate estimates are available, involuntary displacement has resulted in over 2.5 million people (between 1950 and 1991) losing their land as a result of mining alone, across the country. This amounts to 12% of the total population displaced, of which adivasis form more than 50%. The resettlement record, however, is dismal with only about 24% of adivasis

displaced as a result of mining having been resettled (Fernandes & Paranjpye, 1997). These figures represent only those who were forced out of their lands and not others whose lives and livelihoods were affected as a result of mining and its allied activities. At any rate these are very conservative figures, and also do not include those displaced post-liberalization in 1991, when the mineral sector saw a quantum leap in production. State-wise disaggregated data for the Fifth Schedule States is also not available indicating a major lacunae in identifying the exact number displaced as a result of developmental projects, including mining. It is also an indication of the indifference with which the State has treated the issue of development induced displacement and the consequent impoverishment of a significant population. From ecosystem people adivasis were reduced to ecological refugees. Of them, women are the worst affected, losing their customary rights on the one hand, and sidelined by gender insensitive rehabilitation policies, on the other.

Mining and Mineral Related Legislation

The enactment of the Mines and Minerals (Regulation and Development) Act 1948 saw the beginning of the development of a legal framework serving to develop and regulate mining in the country. With the adoption of the Indian Constitution in 1950 the rules with regard to mineral development and regulation for government at the Centre and States was framed. The Mines and Minerals (Development and Regulation) Act (henceforth referred to as MMDR Act) was enacted in 1957 and the Mineral Concession Rules and Mineral Conservation and Development Rules were framed in 1960 and 1988 respectively. The regulations on mining, including grant of lease, royalty, prospecting and conservation, are governed by the MMDR Act, the Mineral Concession Rules outline the procedures and conditions for obtaining a prospecting license and mining lease, and the Mineral Conservation and Development Rules lay down the guidelines for ensuring mining on a scientific basis while conserving the environment at the same time. The MMDR Act has been amended four times and is again in the process of being revised. The Mines Act 1952 and the Mines Rules 1955 together govern health and safety of workers. Several ministries and institutions at the State and Central level were also established for the development of the mineral sector.

The National Mineral Policy 1993 formulated in the post-liberalization era marked the opening up of the mineral sector to the private industry. Riding on the high of the expanding mineral sector and ignoring the crushing impacts on and sustained protests by the local communities, the government approved the New Mineral Policy in 2008 — a Policy that calls for greater private equity and foreign direct investment (FDI) with efforts towards making the regulatory environment conducive to private investment. At the same time the Policy provided little space for the affected communities to voice their apprehensions and was ambiguous with respect to environmental safeguards.

Mining projects are also required to comply with other legislations that include mainly the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981, the Environment (Protection) Act 1986 (henceforth referred to as EPA) and the Environment Impact Assessment notification 2006 (henceforth referred to as EIA), the Forest (Conservation) Act 1980 and the Wildlife (Protection) Act 1972.¹² While this regulatory framework seems impressive, its failures are evident across the country, particularly in the Fifth Schedule areas where every rule of law has been flouted with impunity sometimes by the government and at other times by the private corporations.

Legislations Safeguarding Adivasi Rights in Fifth Schedule States

The Constitutional safeguards to the adivasis by demarcating Scheduled Areas were strengthened with legislations and court judgments. For the Fifth Schedule, the Panchayats (Extension to Scheduled Areas) Act 1996 (henceforth referred to as PESA) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (henceforth referred to as FRA) are two such powerful legislations. The PESA recognizes the competence of gram sabhas or village councils¹³ to safeguard and preserve the community resources, traditions and customs of adivasis residing in these regions. It provides for tribal self-rule and greater self-governance. As per the Act the gram sabha has to be consulted and their consent sought prior to initiating any developmental activities including mining. In addition, the Act also empowers the gram

¹² These Acts have seen amendments over the years.

¹³ They include all adult male and female members of the village

sabha to prevent alienation of adivasi land, permits ownership over minor forest produce, allows exercising control over money lending, restrict sale and consumption of intoxicants, control local plans and resource management in the villages, and monitor state institutions in its jurisdiction.

The FRA recognizes three kinds of rights of adivasis and other forest dependent communities in the Fifth Schedule Areas — right to land, user rights and right towards conservation. The right to land secures tenure by providing title deeds over individual and common properties in forest lands occupied prior to 2005. User rights recognize rights to collect minor forest produce — a traditional practice of these forest-dependent communities — and conservation rights gives them a voice in forest and wildlife protection. The FRA was a progressive Act that aimed to set right the historical injustices in terms of land and forest use alienation that the adivasis in India had been subjected to in pre- and post-colonial times.

Both PESA and FRA provide for greater participation of women in governance and decision-making over village matters. PESA provides for reservation of seats for adivasi women thereby giving equal rights to men and women in decision-making and self-governance. Under the FRA, the land to which title deeds are given will be held in joint ownership by both husband and wife, and cannot be sold but only transferred through inheritance. The Forest Rights Committees set up under the Act were required to have one-third members as adivasis of which not less than one-third were to be women.¹⁴

Another landmark in the struggle for adivasi rights has been the Samatha Judgment 1997 — a historic verdict where the Supreme Court of the country held that the transfer of tribal land in Scheduled Areas to private mining companies was a contravention of the Fifth Schedule of the Constitution. The Judgment supported the spirit of the Fifth Schedule with respect to protecting adivasis land rights against being alienated to developmental projects including private mining companies. By disallowing private mining companies from occupying adivasi lands, it ensured that land and natural resources remained in the hands of local communities, especially women, even if they do not have legal title deeds in their names. The Judgment recognized that adivasi women

¹⁴ Where there were no adivasis in the Committees at least one-third of all members were required to be women

are most vulnerable to exploitation by outsiders and they would not have a level playing ground with private industries. It also implied a continued economic sustenance and livelihood opportunities directly for women who are the mainstay of traditional economies and directed that mining should be allowed only as a last resort to the economic requirements of the Scheduled Areas. Therefore, without giving a blanket ban on mining, the Judgment provided opportunity but with a protective approach to the local communities who were to be given the legal rights to undertake mining independently or in association with a State institution, if required. It believed that if local communities had control over the activity, the interests of all the sections of the community, including women, would be addressed.

In consonance with the Constitutional safeguards and legislations at the national level mentioned above, the States also enacted parallel land transfer regulations to prevent land alienation of adivasis by non-tribals.¹⁵

India's International Agreements and Commitments to Safeguard Adivasis

India has made several commitments at the international level for the protection of human rights, including that of adivasi women. These include the United Nations (UN) Declaration on the Rights of Indigenous Peoples 2007, International Convention on the Elimination of Discrimination Against Women 1979, International Covenant of the Social, Economic and Cultural Rights 1966 and the International Convention on the Elimination of Racial Discrimination 1966. However, while these cover issues of women's rights in general and mention indigenous peoples' rights in specific contexts, they are not legally binding on the State parties. The International Labor Organization (ILO) Convention 169 is another central element in the international framework for the promotion and protection of the rights of indigenous peoples over land and natural

¹⁵ These include the Andhra Pradesh (Scheduled Areas) Land Transfer Regulation 1959 (amended in 1970, 1971 and 1978), the Chhotanagpur Tenancy Act 1908 and the Santhal Pargana Tenancy Act 1940 for Jharkhand, the Madhya Pradesh Land Revenue Code 1959 and Madhya Pradesh Land Distribution Regulation Act 1964 that are applicable to Chhattisgarh as well, the Bombay Land Revenue (Gujarat Second Amendment) Act 1980, the Himachal Pradesh Transfer of Land (Regulation) Act 1968, the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act 1974 and Maharashtra (Restoration of Lands to Scheduled Tribes) Act 1974, the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes Regulations) 1956 and the Orissa Land Reforms Act 1960, the Rajasthan Tenancy Act 1955 and the Rajasthan Land Revenue Act 1956

resources. It is a revision of the ILO Convention 107¹⁶ or the Indigenous and Tribal Populations' Convention 1957. Convention 169 is based on the two principles of consultation and participation, and was the first to enshrine the indigenous peoples' rights to consultation.¹⁷ It is a legally binding international instrument that required States ratifying it to introduce complementing legislations at the national level. India, however, is yet to ratify this Convention.¹⁸

National Mechanisms to Uphold FPIC of Adivasis in the Fifth Schedule

The UN Declaration on the Rights of Indigenous Peoples 2007, to which India is a signatory, specifically recognizes adivasis' right to free, prior and informed consent (henceforth referred to as FPIC)¹⁹. The Declaration in its different articles upholds the social, cultural, economic, political and legal rights of indigenous peoples.

Specifically with regard to FPIC the Declaration²⁰ clearly states that indigenous people cannot be forcibly removed from their lands; that no relocation can take place without them giving the required consent and with the option of return; that they have a right to determine and develop priorities for development on their land and resources; that their own representative institutions will be involved in the consultation process; that they have a right to requisite compensation; and that their FPIC is imperative for projects involving resource exploitation on their lands, including that of minerals. India ratified this agreement in September 2007²¹, and while this is a non-legally binding mechanism India has laws like PESA and EPA at the national level to complement this international treaty.

¹⁶ India has ratified Convention 107; however, this Convention had a paternalistic attitude to the indigenous people that assumed the integration of tribal communities was the only possible future for them and it was the State who should decide their development choices. This was the primary reason for revision of the Convention and the adoption of Convention 169

¹⁷ Articles 6 (1), 7 (1) and 15

¹⁸ India's objection was on the use of the term 'indigenous' which it felt favored autonomy

¹⁹ Free implies no coercion, intimidation or manipulation, with the option of saying 'no'; Prior implies consent sought sufficiently in advance to authorization/initiation of a project and respecting the time requirements of indigenous consultation process; Informed implies information about certain aspects of the project to be provided (nature, scope, size, duration, reversibility, locality, impacts, personnel, procedures etc); Consent is demonstrating a clear and compelling agreement to be reached using a mechanism agreed upon (AIPP 2010).

²⁰ In Articles 10, 11, 18, 19, 27, 28, 29, 32, 41

²¹ This was a conditional vote that the Declaration recognized adivasis right to internal autonomy, but not the right to impair the territorial integrity of the nation

PESA was seen as one of the most powerful legislations recognizing the rights, cultures and aspirations of adivasis in the Fifth Schedule areas, by decentralizing the governance structure in the region. The Act lays emphasis on the supremacy of the gram sabha and the right to tribal self-rule for the adivasis living in these regions. The gram sabha is endowed with considerable powers to function as an institution for self-governance. Some important features of PESA that align with the UN Declaration, especially with regard to FPIC are that the gram sabha or the panchayats²² at the appropriate level:

- shall be consulted before making the acquisition of land for development projects and before re-settling or rehabilitating persons affected by such projects in the Fifth Schedule;
- shall make recommendations that will be mandatory prior to granting of prospective license or mining lease for minor minerals in the Fifth Schedule, as well as for granting of concession for the exploitation of minor minerals by auction;
- shall make recommendations that will be mandatory prior to granting of concession for the exploitation of minor minerals by auction.

The Act provides for reservation of seats for adivasi women (not less than one-third) as Chairpersons and in the panchayat. This is, therefore, an important governance institution that gives equal rights to men and women in decision-making over village matters, atleast on paper. Where civil society groups have facilitated utilization of this Act, adivasi women have been able to participate in gram sabha meetings and voice their rights, especially when participating in mining related campaigns, passing resolutions regarding mining projects, participating in public hearings and dialogue with the State over rehabilitation issues.

The EPA requires that mandatory public hearings be held prior to clearing of projects, including that of mining. These public hearings are a platform for seeking information, clarifications, raising objections and putting up complaints of a proposed project. The EPA also requires that the companies present EIA reports with detailed project information, including that of impacts, to the communities. Thus, the EPA and the PESA

²² Assembly of 5 respected elders chosen and accepted by the village community

together stand as legal custodians of adivasis right to access information before any project is cleared or rejected.

Impacts of Mining on Adivasi Women in Fifth Schedule: Sources of Conflict

While India has an impressive list of legislations, regulations and commitments, the ground reality is that these have often failed to prevent alienation of tribal land or restore lands alienated from them. The increasing land alienation has resulted in a mounting threat to their security and inflicted adverse socio-economic changes in their lives, especially with the expansion of indiscriminate and illegal mining in their lands. Their right to FPIC has been repeatedly violated through use of violence. This is manifest in the manifold and widespread impacts on their everyday lives, with adivasi women being differently and more adversely impacted.

Historical experience in India has shown that when adivasis are deprived of their land and access to forest and natural resources, the repercussions on the women in the communities, their social and economic sustenance, their capacity to provide food security to their families, and protect their own and their children's safety from political disturbances is deeply felt. However, the costs to the women and children from such severe repercussions are not recognized as important tangible costs. The impacts of these negative changes can be witnessed in the several mine sites and mining affected communities in all the States wherever mining has taken place. Whether it is the coal mining belt in Jharkhand, Orissa, Andhra Pradesh and Chhattisgarh, the bauxite areas of Orissa, the uranium mines in Jharkhand, or the several other major and minor minerals extracted or processed in the adivasi regions, the plight of the women in these communities has visibly changed after the mines came. Some of the most severe impacts have touched their social, economic, ecological and cultural lives while the political disturbances as a result of mining projects have seriously affected their safety and security. The atrocities and violence on adivasi women is not limited to the Fifth Schedule areas as developmental projects like mining force them out of their traditional lands.

Impact on economic and livelihood structure

Traditionally, adivasi women play an important role in the economic activities and the alienation of their traditional resources for mining projects deeply affect their right to livelihood and economic sustenance. Marginalization from their lands has also led to forced migration and lowering of status from farmers to that of daily wage laborers. In Damanjodi, Koraput district of Orissa, adivasi women who lost their land and access to forests because of bauxite mining are working as landless labor in agriculture, as domestic help or as daily wage labor in the construction industry. The wages they receive are often below the minimum wage stipulated by the State. In Jharkhand and Chhattisgarh where adivasi communities lost their land for coal mining, women and children pick coal and load them into trucks for their survival or scavenge for coal and sell them to petty traders for meager returns. This work is irregular, low paid and highly exploitative. In the diamond and stone quarries of Madhya Pradesh adivasi women work as daily wage labor for local contractors after being displaced from their lands for mining and national parks (Dhaatri-Samata & HAQ, 2010). In Rajasthan adivasi women work as contract labor in the stone quarries and live in makeshift migrant colonies (Dhaatri & Samata, 2010). In Chandrapur district of Maharashtra, the adivasi women have lost their access to forest produce and are one of the most impoverished communities today (Gaikwad, 2009). These are but a few examples of the economic status of adivasi women displaced by and working in some of the mining regions.

With rehabilitation policies being gender blind women are excluded from direct benefits from mining. National Aluminium Company (NALCO) in Orissa, Bharat Aluminium Company in Chhattisgarh, Singareni Collieries Company Limited in Andhra Pradesh, Coal India Limited in Jharkhand and Western Coalfields Limited in Maharashtra are all examples of the poor implementation of rehabilitation in the Fifth Schedule areas. Resettlement and rehabilitation for mining projects is mainly confined to reconstruction of houses, monetary compensation for land and low-end employment for male head of family or the eldest son. Women are not treated as separate entities in the process of rehabilitation even in the case of female-headed households. Daughters are not entitled to compensation or jobs, thereby losing out on their inheritance rights to property and land. Monetary compensation normally goes to the men and is exhausted within a short period, leaving the affected families impoverished. Women have often complained that

substantial part of this money is spent by the men on material goods like motorbikes, television sets, urbanized form of housing and other non-productive commodities with women having little decision-making powers over the compensation received. The low level of literacy among adivasi women further means that any jobs they do get are as unskilled labor and casual in nature.

Forced and seasonal migration in search of wages has often been the result of mining, which in most cases of affected families has proved that it does not provide the kind of livelihood support as that of pre-mining traditional farming. A shift to mining has also forced communities to shift from subsistence and consumption economies to market-dependent cash economies, thereby increasing the burden of debt on them while lowering their per-capita consumption on food. This burden is most heavily borne by the women who are forced to walk longer distances for wage labor, get lesser payment even for hazardous work and barely manage to feed their families. In Damanjodi, Orissa, for instance, it was found that there were many widows and destitute women in the displaced persons camp (henceforth referred to as DP camp) of NALCO's bauxite mining project, with no source of livelihood. Commercial sex trade which was non-existent prior to mining is another clear sign of the economic vulnerability of women from the local community (Dhaatri-Samata & HAQ, 2010). The economic prosperity promised by mining has apparently not touched the lives of these women.

Impact on domestic lives, food security and other support

Impacts on the economic rights of the adivasi women have immediate repercussions on the food security and nutrition of their families and of their own health. When deprived of their natural source of food and subsistence agriculture and pushed into wage labor, their capacity to purchase food from the market is highly reduced thereby forcing them to buy less and consume less. For example, in a comparative study conducted in the bauxite mining regions of Visakhapatnam district, Andhra Pradesh, and Koraput district of Orissa — the former a pre-mining and latter a post-mining scenario — it was found that in Koraput, adivasi families who were once able to cultivate two crops in a year from rain-fed agriculture were reduced to daily wage earners subsisting on a meager income. This had adversely affected their food basket that in the past included a wider variety. Livestock, which is an important asset and source of income in times of

crises, could not be kept by the residents of the DP Camps anymore as the shelters provided in the camps did not have space for the same. Securing fodder for livestock and fuelwood for the house had become a burden as common property, grazing lands and forests were either acquired or degenerated. In comparison, the adivasi women in Visakhapatnam were meanwhile able to produce a variety of paddy, cereals, millets, pulses, tubers, fruits and vegetables on their own lands that ensured food security for a large part of the year. The forest for these women also helped meet nutritional needs and was an additional source of food in times of scarcity. It also met their needs for fodder, fuelwood and medicine. They supplement this with daily wage labor for a few days in a year and many of them additionally earn considerable income from cash crops like coffee and pepper. These women, who are threatened by bauxite mining, when interviewed, expressed serious concerns about their food security based on what they witnessed in the lives of adivasi women in neighboring post-mining Orissa (Dhaatri & Samata, 2011).

With inflation touching 14.4% in 2010, the cost of food and commodities has skyrocketed. This had led to reduced consumption of food among families, evidenced by the high levels of malnutrition in several sites among women and children. Mining does not seem to have had any positive impacts on nutritional status thus showing that the public assumption of mining leading to economic prosperity is merely hypothetical (Dhaatri-Samata & HAQ, 2010). In fact poverty and malnourishment in Southern Orissa that includes the districts of Koraput, Raygada and Malkangiri which is the heart of the adivasi population as well as of mining projects is one of the highest in the country. The region-wise poverty rates among social groups indicate that 82.8% of adivasis in southern Orissa are impoverished. The food security for the Raygada and Malkangiri districts is marked by extreme insecurity while that of Koraput is graded as severely insecure. These districts have some of the poorest indicators for child health and malnutrition. (See Annexure 5: Mortality and nutritional status of children in some southern districts of Orissa) (IHD & UNWFP, 2008).

This is expected to worsen if the current trends of inflation continue. Therefore, mining has proved here that instead of improving the status of local communities and leading to their prosperity, it has led to malnutrition, lesser consumption and reduced availability of traditional food, with greater dependence on the market. It has been found

that as in southern Orissa, mining has not assured even the existing levels of incomes for the local communities. There is no proper cost-benefit analysis of any mining projects in the country from the perspective of local communities and gender equity, so far. Unless a true assessment is made it is not possible to understand the gravity of the situation as adivasi women have no political articulation or influence to express their grievances.

Several rivers accessed by the adivasi women for household use, as fishing grounds and for agriculture are severely contaminated and choked with toxins. The River Damodar that flows through Jharkhand has been reduced to a sewage canal in several parts where coal mining is rampant. The Roro river system of Jharkhand has been severely polluted by decades of chromite and asbestos mining. Known carcinogens, chromite and asbestos pose health risks because of leaching into the groundwater and river affecting the environment, livelihoods and health of the adivasis living in the Roro hills (Enviro-nics Trust, 2009). In Jharkhand and Orissa women in the mining affected communities reported that they have to depend on water supplied erratically through tankers by the companies. In Sundargarh district, Orissa, and in Raigarh district, Chattisgarh, women reported of waterborne illnesses due to consumption of contaminated water. Coal, bauxite and chromite mining are water intensive and where such mining is rampant as in districts like Sundargarh, Koraput, Raigarh, Surguja and others, it has severely impacted access. For the adivasi women mining has meant longer hours of walking every day for collection of water and reduced consumption due to dwindling water resources. (Dhaatri-Samata & HAQ, 2010 and Dhaatri & Samata, 2010) The environmental degradation and vanishing natural resource base as a result of mining has meant an exhausting everyday struggle to meet other household needs of food, fuelwood, medicine and fodder.

The detrimental impacts on health of adivasi women from different kinds of mining are also evident in many sites. While tuberculosis is widespread in mining regions there is very little information on its real extent. In the uranium mines of Jadugoda, East Singhbhum district of Jharkhand, adivasi women are paying a heavy price for the country's nuclear ambitions. Over 30% of women here are reported to be barren, 18% had suffered miscarriages and still-births, and most of them are plagued with fatigue, weakness and depression (Deccan Chronicle, 2007).

The loss of food security, access to natural resources and adverse impact on health have resulted in impoverishment of adivasi women in mining areas, depriving them of even their existing levels of sustenance.

Impact on cultural and social security

Mining and mineral activities have drastically altered the cultural and social fabric of an adivasi community. Adivasi women who had an important role in local economy have been undermined of their social status and in decision making as a result of displacement and degradation in their economic status. The community and village were an important part of their physical, emotional and social security but displacement and influx of migrants has torn the cohesive fabric of community life. For the adivasis in the Fifth Schedule regions this has meant not just degradation of environment but entering into a conflict over resource sharing with the migrant population. For adivasi women this has created an environment of insecurity as they are vulnerable to sexual harassment by men who come to work in the mines or in other activities related to mining. Truck drivers comprise a considerable floating population and bring with them the danger of HIV/AIDS. Increased alcohol addiction and resulting domestic violence have begun to pervade the adivasi women's lives. Damanjodi town in Koraput district, Orissa, located next to the biggest bauxite mine in the country, has a very high incidence of HIV/AIDS. In the DP Camps here while basic amenities are non-existent liquor shops have sprung up. The wages earned by the men who work in the mines and peripheral activities are spent on alcohol, which is the main cause for domestic violence, frequent brawls and physical abuse of women. Sundargarh district in Orissa, the site of iron ore, dolomite and limestone mining also has a high incidence of HIV/AIDS (Dhaatri-Samata & HAQ, 2010). Social evils like dowry, unheard of among adivasi communities are today making an entry and weakening the women's position in the community. Adolescent adivasi girls are one of the most vulnerable groups. In the dolomite mines and limestone quarries of Sundargarh district, and in the ancillary mining activities are employed several adolescent adivasi girls. Sundargarh is also a junction from where adolescent girls, desperate in their poverty, are pushed into trafficking either for sex or for labor. Local organizations here have reported a high rate of trafficking with nearly 7,000 girls being trafficked to urban centers, many of whom are adivasis. Sundargarh is an example of how an agricultural

adivasi region, has been destabilized by the colluding mining and land mafia, traders, contractors and corporate agents in a nexus with the police and political forces (Dhaatri-Samata & HAQ, 2010 and O'Reilly, 2007). Further adding to the volatility are left-wing extremist groups active here and in other Fifth Schedule areas.

Political insecurity, violence and rights violations

The adivasi regions today are under siege by private mining and global markets. The domino effect of the impacts of social insecurity and economic impoverishment in the adivasi regions coupled with the forced repression by the State and corporates through use of police and special armed battalions is witnessing a brutality of human rights violations. In the last decade the adivasi region has experienced unprecedented political violence by the State under the larger influence of mining and corporate interests. Political instability and high inequality created by the mining lobbies has led to extreme political activities, violent upheavals and increased influence of the politically violent groups like the Maoists (also referred to as Naxalites) and other extreme left-wing political groups. Corporate stakes in the region have led to corporate induced violence in order to stake claim to the resources of the adivasis against their will. The lack of policy perspective on distributive growth across social sectors, especially with respect to the adivasis has led to the present status of political insecurity where the State has declared these areas as 'terrorist' areas causing instability to the nation. Instead of addressing the core issues of protecting the adivasis and their social security vis-à-vis corporate and market stakes and trying to balance social equity with economic growth, the State has chosen to undertake the violent path to suppress dissent. The conflict over resources between the adivasis and the State has become a zone of terror for the former with the State and the extremist groups declaring war.

The Prime Minister of India has termed Maoism as 'the greatest internal security threat to our country' and said that required steps were being taken to 'to deal with the menace' (Gaikwad, 2009). Corporate abuse of adivasi lands for mining projects is today one of the main causes for an increase in Maoist violence and for the political crisis in the region.

The government's political strategy to deal with this 'menace' has been the setting up of the Salwa Judum, which means 'purification hunt', and launching the more

widespread Operation Green Hunt. Salwa Judum, a State armed militia launched in Dantewada district, Chhattisgarh, in 2005, had unleashed a wave of violence against the adivasis which resulted in the destruction of over 644 villages, displacement of more than 300,000 adivasis, and a complete collapse of any form of administration in the region. Operation Green Hunt was launched in 2009 whereby paramilitary and special task forces were deployed in different parts of the Red Corridor (the term used to refer to the Maoist affected regions across the country). The Maoists retaliated against the Judum and the security personnel, resulting in loss of life for both sides. In one of the worst attacks Maoists killed 75 security personnel engaged in counter-insurgency operation in Dantewada district, Chhattisgarh. In Maharashtra, Andhra Pradesh and Orissa too there were several encounters in which police and Maoists suffered losses. The region today is witnessing massacres, taking officials as hostages, kidnapping and violence by the Maoists with similar forms of destruction and killings by the State, escalating the threat to the safety and security of the adivasis.

Through the Salwa Judum and Operation Green Hunt operations, the security forces and the Judum cadre indulged in arson and looting of villages, killing, beating and torture of adivasis. In this process, the brutalities inflicted on the adivasi women are an evidence of the state of terror that pervades these zones of conflict. Rape has been used as a weapon in war, and this situation too was no exception. While there was reluctance by the victims to come out into the open, several incidences of sexual harassment and physical violence like beatings and mutilations were reportedly perpetrated by the Salwa Judum and the security personnel involved in Operation Green Hunt. The victims also included women cadre of the Salwa Judum who faced sexual abuse both from the male counterparts and the armed security personnel. Many cases of rape have also gone unreported in the mainstream media or only find a passing mention in local news. The forcible relocation of the adivasis into the Salwa Judum camps resulted in the women losing the security that their community had provided as well as their livelihood sources. Several fact finding missions and occasional media reports are a testimony to the violence unleashed on adivasi women in these regions.

So what is the link between Salwa Judum, Operation Green Hunt, left wing extremism, adivasis and mining? It is widely reported in the media that Operation Green

Hunt and Salwa Judum are not merely anti-Maoist measures but a strategy to rid the forests of its adivasi residents and clear the path for corporates to gain access to the mineral wealth. Activists refer to these areas not as ‘Maoist Corridor’ but as MoU²³-ist Corridor.²⁴ There have been hundreds of MoUs signed by the State governments of Orissa, Jharkhand, Chhattisgarh and other States worth several billions of dollars for undertaking mining or mineral related projects on adivasi lands — lands that overlap with the areas of Maoist operation as well. The inception of the Salwa Judum also coincided with the signing of several of these MoUs between the Chhattisgarh government and multinationals. The Maoists have also made mining operations and companies their targets. Blowing up railway lines that are critical for transporting ore, stealing explosives stored in mines (Seth, 2010), earning huge amounts by taking cuts from illegal mining (NDTV, 2010) and demanding protection money from mineral companies are all nefarious actions of the left wing outfits. Meanwhile the mining lobby has been accused of funding the Maoists as well (Gangan, 2010).

Corporate violence is being witnessed in several subtle ways, which keeps the communities in a constant state of threat and fear. The Draft report of the Committee on State Agrarian Relations and Unfinished Task of Land Reforms had stated that the Salwa Judum had received funding for its activities initially from corporate giants like Tata Steel and Essar Steel. However, in the final report that was published by the government this part was missing. Women, who are the most vociferous in campaigning for their lands and are actively negotiating with the government for their rights, are being intimidated by company sponsored agents. Corporates are also using the State machinery at different levels to intimidate women and force them to stop their resistance. Corporate induced violence has led to women being beaten up, put in police custody, arrested on false criminal charges or face police firing or violence. Even where they choose to express dissent in a peaceful manner, it has meant being branded as Maoists and facing the ire of the State. This was witnessed in Dumka district, Jharkhand, at the site of a proposed thermal power project to be set up by Calcutta Electric Supply Corporation Limited, the flagship company of the RP Goenka group (RPG-CESCL), which has stakes

²³ Memorandum of Understanding

²⁴ Transcript of speech given by the activist Arundhati Roy on 2 June 2010 in Mumbai and organized by the Committee for Protection of Democratic Rights.

over the rich coal reserves in the region. Munni Hansda, an adivasi woman, is the target of police and State suppression as she had been mobilizing people on a large scale to protest against the project. She was arrested under multiple charges, several of them false, and sent to prison for 8 months. While she continues with her campaign, she is fighting the pending cases against her and, in her own words, is fearful of police repression and being branded a Maoist. Along with her, criminal cases were also filed against 304 protesting adivasi women of 'gathering armed mob and inspiring them to attack' (Dhaatri & Samata, 2010). Orissa has a history of violent confrontations with its adivasis. On 2 January 2006, 12 adivasis including 2 women were gunned down by the police while protesting against inadequate compensation and improper rehabilitation for land acquired for the proposed steel plant of Tata Steel at Kalinga Nagar, Jajpur district, Orissa. Giving no scope for discussion and using brute force the policemen, in the presence of government officials, opened fire on the protestors (Pradhan, 2006). Mukta Jodia, the first recipient of the Chingari Award for Women Fighting Against Corporate Crime is an adivasi tribal leader opposing the corporate giant Utkal Alumina International Limited to protect the land from the bauxite mining and processing project in Kashipur of Raygada district, Orissa. It was in Kashipur on 1 December 2004, that the police brutally attacked adivasis by tear-gassing, charging with lathis and blank firing. Sixteen adivasis were critically injured and several arrested, the majority of who were women. The adivasis were protesting setting up of a police station and barracks at a village close to the alumina plant (Mines and Communities, 2004). Earlier, on 16 December 2000 police had fired on adivasis of Maikanch in the same district killing 3 and injuring 8 (Patnaik, 2001). Another recipient of the Chingari Award, Dayamani Barla an adivasi woman from Jharkhand, has locked horns with the steel giant Arcelor Mittal that plans to set up a steel plant. Their struggle and the struggle of the hundreds of other adivasi women against corporates and the State in the face of severe repression is a testimony to the significance that the land and forests hold and for which they are willing to fight at any cost.

The convergence of mining, left-wing extremism, adivasi exploitation, and State and corporate violence to create an environment of fear and conflict is thus evident. The adivasi areas, rich in mineral reserves but lacking basic amenities and development have resulted in the Maoists gaining ground. Suppression by the State has escalated conflict

and thus threatened the security of the adivasis especially that of women. The situation today is spiraling out of control. While the government claims that Operation Green Hunt is media hype, police operations continue in the adivasi regions affecting the security of adivasi women (Financial Express, 2009 and Sethi, 2010). The Maoist menace refuses to subside and mining projects being proposed further endanger adivasi women's security and right to life.

Implications on constitutional and customary laws and security

Under pressure from mining lobbies, the government is attempting to amend the Fifth Schedule to bring in a clause for allowing private mining in the interest of economic necessity. This would encourage all other commercial interests to lobby for licenses, undoing the purpose of the Schedule. Mining has become the most dangerous threat to the Constitutional security of the adivasis. Customary laws governing resource management and social norms were respected internally by the communities. Opening the areas for the private market implies migrant, external population, new forms of vices and crimes that are beyond the control of traditional leadership and customary authority. Especially with regard to safety of women, this becomes a major threat as one of the first impacts of mining and industrialization is the exploitation of local women by outsiders. Sites where mining related activities have commenced have seen a high proportion of unwed and single mothers, destitute women forced into prostitution, increased incidence of HIV/AIDS, alienation of land and property and degeneration in the social and cultural life of adivasi women. With the failure of constitutional protection and customary laws, women are even more vulnerable socially and economically.

Current State Responses to FPIC: Flaws and Gaps

There is a clear discrepancy between the laws and policies, which has given opportunity for misuse/misinterpretation of law by the State in order to invite private and FDI's into these remote and forest areas. The misuse is being justified for economic reasons. Hence, laws as well as administrative procedures are being violated in order to hasten private interests and completely ignore the right to FPIC of communities. Public hearings mandatory under the EPA have turned into a mere formality, and not treated as a platform for recording peoples' concerns. Armed police are deployed, in many instances

in complicity with mining lobbies to prevent democratic conduct of these public consultations. Gram sabha resolutions made under PESA are completely sidelined as well.

Adivasi women from the tribal areas of Visakhapatnam district in Andhra Pradesh, protesting bauxite mining, had received no direct access to project details or impacts from government or the company. None of the women had been called for any consultations or seen the environment impact assessment document. Nor was any formal meeting of the gram sabha convened to take the consent of the adivasis. On the other hand they had received threats by company agents and local police that they would not receive compensation if they protested against the project. Women leaders, particularly widows who were actively opposing the project were under severe pressure and intimidation. They received no information about the public hearing held on 3 October 2008, but were informed about the same by non-governmental organizations (NGOs) and political parties in the opposition. The public hearing was conducted in an atmosphere of terror with police and special armed battalions posted at the venue. The government deliberately closed down public transport services on the day of the hearing to prevent people from participating and raising their objections.

‘Loha nahi-Anaj chahiye’ or ‘We want grains, not minerals’ is the demand of the adivasi women of Jharkhand, and one that is echoed by their counterparts across the tribal areas of Central India. The women of the project affected area of RPG-CESCL have been an integral part of the struggle since 2005. In a clear violation of FPIC, the adivasi women said they had received no information from the officials about the project nor were they shown any impact assessment documents. They had submitted their gram sabha resolutions to the company and officials but these were ignored. Political and police interference in the gram sabhas and traditional adivasi meetings to create confusion and disputes were also resorted to.

In September 2004, Tata Steel organized a public hearing expansion of mining activities in Naomundi, West Singhbhum district of Jharkhand. Not only was no prior information of the project to the communities affected, they were brutally prevented from attending the public hearing by the security personnel. Ironically in April 2005 the

Ministry of Environment and Forests accorded a no-objection certificate to the project (George, 2005).

In the year 2000, ignoring the gram sabha resolutions under PESA of 53 villages, the Madhya Pradesh government granted leases for coal mining to Jindal Steel and Power Limited in Tamnar block (Equations, 2007). In Pakur district, Jharkhand, the government allotted land for coal mining without consulting the gram sabha and on objecting, village elders were implicated in false cases and put in jail (George, 2005). In the now famous Vedanta case in Niyamgiri, Orissa, the local adivasi women have been protesting against the Vedanta's alumina refinery and bauxite mining in their hills. However, the public hearings were conducted by mock consultations with local people, especially with women to whom they did not divulge any project information. The Government of Orissa went ahead giving clearance to the project even before forest clearances were obtained and in open defiance of the rights of adivasis under the FRA (Saxena, Parasuraman, Kant, & Baviskar 2010). The State government went much beyond its reach in granting extensive areas of land and other subsidies to the company misusing the 'public purpose' clause of the Land Acquisition Act 1894. In this case there was neither consent sought nor prior information given to communities, least of all to the women who have been the most active advocates for control over their natural resources.

The 'efficiency' of governments is synonymous with arbitrary sanctioning of leases. State governments, like Jharkhand, have made promises that mine leases will be sanctioned within 3 months. This is hardly a time frame in which the different social, environmental and other impacts can be clearly studied (George, 2005).

Deceit and fraud by altering gram sabha resolutions have been resorted to by officials in their hurry to grant no-objection certificates. Governance institutions at local and national levels are allowing undemocratic means to obtain leases, several of which are illegal as they do not meet the necessary requirements. Projects are initiated or expanded without receiving the necessary environment and forest clearances mandated by law. In the proposed bauxite mining sites in Fifth Schedule areas of Visakhapatnam district, there was a strong resistance from officials to settle forest lands claimed by the adivasis under the FRA, allegedly due to verbal instructions from higher authorities (Rebbapragada, Pandey & Chellam, 2010). The government has also chosen at times to

even disregard the findings of committees set up by it. An example is where a 45 page chapter on PESA and left-wing extremism was deleted from a report²⁵ submitted to the Prime Minister apparently on the advice of the Home Ministry. The chapter damned the central and State government and police forces for ‘a damaging mix of misgovernance, alienation and violent insurgency’ against adivasi people and links the rise of Maoism to the failure of PESA (Kirpal, 2010 and Dandekar & Choudhury, 2010). Specifically with regard to mining the chapter specifically states that stakes are loaded against PESA where mining is concerned, bemoans the absence of a legal framework for communities to oppose mining or secure a direct stake in mining and mentions how governments in Fifth Schedule States continue to ignore the Samatha Judgment (Dandekar & Choudhury, 2010).

Projects, across the Fifth Schedule are thus being pushed without consent of local communities or rather amidst opposition from communities in outright violation of the FPIC principles.

The Dialogue for Conflict Resolution and Gender Equity

Call for a gendered perspective

The current crisis of social and economic insecurity is very severe and urgent, and one that is directly related to the kind of development policies that the State is adopting with serious negative impacts on adivasi women. The crisis has escalated into a kind of civil war and militancy in the area between the State and extreme political forces with the adivasis held as hostages. This hostility and conflict can be addressed only if there is a genuine dialogue between the State and the adivasis.

Firstly the State should differentiate between extremists and adivasis as the latter are neither terrorists nor Maoists. The war is between the Maoists and the State and the adivasis are only vulnerable victims in this crossfire. Adivasi assertion for protection of their lands and resources cannot be equated to extremist insurgency or terrorism or cannot be brutally suppressed by police violence in the name of countering extremist violence. The Maoists are taking advantage of the State policies which are anti-tribal, especially in the context of adivasis losing their lands and resources and being displaced by private

²⁵ State of Panchayat Report 2009 submitted by the Institute of Rural Management Anand

mining projects on a large scale. Secondly, adivasis' inalienable right to land and forests needs to be recognized by both the State and the corporates, the denial of which perpetrates a confrontation. Therefore, the dialogue for conflict resolution can happen only when the State takes its social responsibility seriously and develops economic policies for these regions that are economically, socially and ecologically equitable and distributive rather than in justifying private and global market profits as beneficial to local communities. There is historical and empirical evidence showing the contrary.

Today conflict resolution and climate change efforts have been recognized to be effective only when there is gender equality and sensitivity. Development policy makers should listen to the perspectives of women from the grassroots; women from adivasi communities for instance who have a historical and experiential knowledge of sustainable utilization and management of natural resources. Moreover, their experience of the forms of development in the past has proved to be disastrous to their lives — all across the Fifth Schedule and tribal dominant areas several mining, power and other development projects have not delivered on the promise of economic or social progress to the adivasi women. Neither has rehabilitation, compensation and resettlement been gender inclusive. The cases mentioned above in this paper from different mining projects are evidence of this exclusion and deprivation. Therefore, false assurances by the State and a hike in monetary compensation are not the way forward to conflict resolution.

FPIC as a tool for empowering adivasi women: Creating a dialogue for conflict resolution

Conflict resolution can be meaningful when the State in the guise of the 'enabler' does not abdicate its fundamental responsibilities in all aspects of mining projects, does not transfer responsibility onto private players and ensures that its policies are in harmony with the adivasi women's perspectives. Where adivasi women are saying it is outrageous to destroy their resources for short-term commercial interests the State ought to take them seriously. Where they have already been displaced and deprived, the State should take responsibility to fulfilling the task of proper resettlement and reinstatement of their livelihoods. Mere legislations and providing for reservations in governance institutions is not sufficient; adivasi women need to be made aware of their rights and be provided with an environment where they can exercise the same without fear of threat or violence.

While development of adivasi areas is a priority, merely infusing huge amounts of money in a programmatic manner as is proposed under the Integrated Action Plan into adivasi areas under Maoist influence is not the ideal solution²⁶ (Hindustan Times, 2010).

To fulfill its mandate as the principal protector of adivasi women's rights the State should respect their right to FPIC and fulfill its responsibility in this regard by:

- Protecting the rights of adivasi women under the Fifth Schedule by disallowing dilution or amendments of this Constitutional safeguard.
- Upholding the spirit of the Samatha Judgment that acts as the custodian of adivasi women's control over lands and resources.
- Giving precedence to the FRA and settling rights over mining projects. This is important from a gender perspective because women under this Act are joint holders of title deeds to land and denial would amount to gross injustice and legal violation.
- Bringing a gendered perspective into the EPA by:
 - Including clear and measurable gender impact assessment indicators;
 - Mandatorily providing details of impacts on adivasi women;
 - Undertaking cost-benefit analysis through a gender lens;
 - Conducting public hearings in an atmosphere of democratic conduct without obstructing participation of adivasi women or intimidating them by use of police excesses as is being followed currently.
- Respecting the provisions of PESA which, in the context of FPIC for adivasi women, implies their
 - Right to comprehensive information about the project and its impact on water, land, forests and other resources including extent of diversion;
 - Full participation of and decision-making in the gram sabhas without which no resolution will be valid;
 - Consent or no objection certificate for sanctioning minor mineral leases in the gram sabha meetings;

²⁶ The package includes an amount of Rs. 13, 742 crores for 35 districts worst hit by Maoist violence. The two pronged strategy includes development and police action according to the Central government

FPIC AND ADIVASI WOMEN IMPACTED BY MINING

-Right of participation in social and economic assessment prior to mining, in preparing the cost-benefit analysis of any proposed projects at the community level, decision making over community ownership rights regarding the proposed project and right of consent or reserving consent to any proposed project.

-Access to information, decision-making over utilization of royalties, verification of utilization, complaints of non-compliance and participation in grievances and redressal process that affect their communities, is guaranteed;

-Freedom to say 'NO' to any mining project without fear or threat;

-Right to obtain written guarantees by the company that mining activities will not be located near schools, habitations, water sources or health centers;

-Right to evaluate and monitor mining activities, dust, noise and water pollution levels at regular intervals to ensure compliance and mechanism to file for penal action in the event of violations. For this a formal mechanism of community grievance redressal mechanism at the project level with the involvement of the District Collector/equivalent authority has to be mandatory with the right of women to assess periodically the effectiveness of the grievance redressal performance. The grievance redressal should have a periodical public hearing mechanism within the project period with the district level authorities responsible for conducting them and ensuring women's participation in this process.

-Right to regular health checkups, free treatment and complete information on health status of community with periodic and transparent reporting to specified authorities to be within the project costs borne by the company; in addition independent health appraisal with a committee of doctors and independent civil society/women's specialists should be undertaken by the government within the project cost for an objective health assessment and treatment. Costs of different kinds of illnesses related to different minerals

FPIC AND ADIVASI WOMEN IMPACTED BY MINING

have to be specified formally within the MoU of the project as an accountability mechanism of the project owners;

-Right to demand for disclosure of disaster management plans, accident benefits and other environmental damages with periodical assessment and review of the same in consultation with the communities, especially women from the affected communities. The responsibility towards costs and damages have to be clearly spelt out at the time of public hearings and submitted to the local community as well as to the government in written form within the MoU of the project contract;

-Similarly mine closure plans, costs and responsibilities have to be clearly indicated within the MoU and consent taken from the affected communities;

-Right to be provided, at the time of granting of lease, a clear explanation and time frame on how to clean up closed/abandoned mines, the process of reclamation of land, water and forests, resettlement of workers and communities if required and participation in the process of mine closure and project audit.

- Approach to Land Acquisition Act 1894 with gender prudence required by:
 - Doing away with indiscriminate use of the Land Acquisition Act to protect the rights of small and subsistence farmers, majority of whom are adivasi women as directed by the Supreme Court (Venkatesan, 2011)
 - Land acquisition for mining as a last resort rather than a first choice of economic activity (in consonance with the Samatha Judgment)
- Ensuring gender equity for adivasi women in rehabilitation planning by:
 - Specifying clearly the impacts of rehabilitation plan;
 - Treating women as head of household at par with men and providing joint ownership over land, housing and compensation;
 - Specifying the legal rights of single women, widows and women-headed households where their lands are acquired and providing them a fair share in resettlement.

FPIC AND ADIVASI WOMEN IMPACTED BY MINING

- Providing sustained and concrete employment/livelihood to adult daughters, single mothers or women and widows, and not monetary compensation or token time-based schemes;
- Involving adivasi women in the rehabilitation planning and in identification of alternate sites and water resources, design of houses and villages, kitchen gardens, schools, health care centers' and other amenities;
- Providing them the right of giving or withholding permission for liquor shops (which they are entitled to under the PESA as well);
- Providing for periodic assessment by adivasi women of progress of rehabilitation/resettlement till full and adequate completion of process, with defined penalties for non-implementation.

Conclusions

The earlier development paradigm was aimed at land reforms and redistribution, restoration of ownership and control over natural resource rights to local communities and strengthening local governance institutions. The policy shift to development with resource ownership and management rights being transferred to corporate bodies through direct or indirect means has implied a serious conflict for communities over their survival and economics. Hence, development policies must be urgently reviewed to balance corporate demands with community needs. A country like India which has a strong constitutional framework and a vibrant democracy, should not, in its haste to be a global market, undo its commitments to the most marginalized — the adivasi women and children of the nation. Nutrition and education of women and children of a country are the best indicators of a nation's progress which the adivasi region of India does not reflect today. It should apply, with genuineness, its Constitutional mandate with its international commitments like the FPIC. Only then will its economic growth for the larger majority be fulfilled instead of large economic strides for a small minority.

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Annexures

Annexure 1: Forest cover in tribal districts of Fifth Schedule States

State	No of tribal districts in the State	Geographical area in tribal districts (sq km)	Total forest cover of district (sq km)	Forest cover as a percentage of geographical area
Andhra Pradesh	8	87,090	25,567	29.36
Chhattisgarh	9	92,656	40,210	43.40
Gujarat	8	48,409	6,767	13.98
Himachal Pradesh	3	26,764	3,231	12.07
Jharkhand	8	44,413	13,889	31.27
Madhya Pradesh	18	139,448	42,312	30.34
Maharashtra	11	138,272	29,509	21.34
Orissa	12	86,124	33,299	38.66
Rajasthan	5	38,218	6,348	16.61
Data recorded is in the year 2007				
Source: Forest Survey of India, 2009				

Annexure 2: Female literacy rates in the Fifth Schedule States

State	Adivasi Female	Adivasi Person	Female Overall	Person Overall
Andhra Pradesh	34.73	37.04	50.43	60.47
Chhattisgarh	39.35	52.09	51.85	64.66
Gujarat	36.02	47.74	57.80	69.14
Himachal Pradesh	53.32	65.5	67.42	76.48
Jharkhand	27.21	40.67	38.87	53.56
Madhya Pradesh	28.44	41.16	50.29	63.74
Maharashtra	43.08	55.21	67.03	76.88
Orissa	23.37	37.37	50.51	63.08
Rajasthan	26.16	44.66	43.85	60.41
All India	34.76	47.10	53.67	64.84
Sources: SSA website; Lok Sabha, 2005				

Annexure 3: Health indicators for women from Fifth Schedule States

State	MMR	All recommend ed types of ANC	Institutional births (%)	Anemia (any) (%)	BMI (%)	IMR	Under five mortality rate
Andhra Pradesh	154	28.2	64.4	62.9	33.5	54	61
Chhattisgarh	335	11.3	14.3	57.5	43.4	58	78
Gujarat	160	25.6	52.7	55.3	36.3	51	63
Himachal Pradesh	269	17.4	43	43.3	29.9	45	64
Jharkhand	312	7.5	18.3	69.5	43	48	72
Madhya Pradesh	335	7.2	26.2	56	41.7	72	93
Maharashtra	130	21.6	64.6	48.4	36.2	33	42
Orissa	303	18.4	35.6	61.2	41.4	70	91
Rajasthan	388	8.6	29.6	53.1	36.7	65	88
India	254	15	38.7	55.3	35.6	55	73

Sources: Das, Patel & Shah; IIPS & Macro International, 2007; Ministry of Health and Family Welfare, 2009

Annexure 4: Forest land diverted for mining in Scheduled Areas between 25 October 1980 and 30 September 2008

State	Forest land diverted in hectares
Andhra Pradesh	18,178.55
Chhattisgarh	21,421.422
Gujarat	9,866.408
Himachal Pradesh	1,652.348
Jharkhand	9,501.255
Madhya Pradesh	11,970.084
Maharashtra	3,638.249
Orissa	16,795.252
Rajasthan	5,188.031
Source: Rajya Sabha, 2008	

Annexure 4: Mortality and nutritional status of children in some southern districts of Orissa

District	Infant mortality	Child mortality	Underweight children (%)	Anemia among children (%)
Raygada	106	163	50.6	47.8
Malkangiri	103	158	56.1	48.4
Koraput	101	153	43.5	49.4
Rest of Orissa	86	128	39.7	41.8
Source: IHD & UNWFP, 2008				