

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

Introduction and justification

India is endowed with significant mineral resources with the nation being ranked top in the extraction of some key minerals. The galloping Gross Domestic Product (GDP) to which the mining and quarrying sector contributes a mere 1.94% is often given as an indicator of the country’s accelerated development. While mineral extraction is necessary for the growth of the country, the negative costs of development being borne by those who are adversely impacted by mining are invisible. One social category of population that has historically been vulnerable to exploitation related to insensitive development, particularly with respect to mineral extraction, has been the adivasis (indigenous/tribal people) of India. Mineral deposits are primarily located in forests, which are home to the adivasis. Increasing pressure on these resources by the profit driven State and industry to meet urbanization and export demands, has led to conflict over resource ownership and access between adivasis and the former, and resulted in situations of socio-political tensions.

Worst affected are the adivasi women whose entire survival depends on the natural resources but who do not have any access to information or platforms to assert their legitimate rights. This proposal aims at understanding the issues of conflict faced by adivasi women and to explore the extent to which existing national and international mechanisms for conflict resolution, with specific focus on the right to *free prior and informed consent* (FPIC) of the United Nations (UN) Declaration on the Rights of Indigenous Peoples, can protect their rights and security.

The adivasis form 8% of the population and live in the hills and forest areas demarcated as Scheduled Areas, under Fifth Schedule of Indian Constitution. They have traditionally been dependent on the forest and subsistence farming for their livelihood. These forests and lands had prevented them from facing starvation and provided them with social, cultural and ecological spaces. Adivasi women, in particular, form an integral part of this eco-economy. In truth, adivasi economy is enormously dependent on the contribution of adivasi women’s skills, labour and wisdom, with their dependence on the State or external societies for their survival being minimal. The traditional knowledge and wisdom passed down over generations of adivasi women have given them a deep understanding of the forest and resource use. Their agricultural practices and kitchen gardens have enabled them to have food security. While adivasi women live in some of the most resource rich regions and produce diverse food crops, their right to food security is under constant threat from development projects like mining. When displaced, they are forced to migrate with no source of social or economic security or forced into trafficking, domestic or bonded/migrant/casual labour. Many displaced and affected women have become destitute due to loss of livelihoods resulting from mining, while few have directly benefited in terms of employment, monetary compensation or resettlement.

Currently policies and programmes indicate moves to increase mineral extraction and call for greater control, whether overt or covert, of the extractive industry over adivasi lands for exploitation of minerals. As in the past, social and economic obligations whether as partners in sharing the benefits or in providing alternatives to adivasi communities that face displacement from Greenfield areas, are being ignored by the State instrumentalities. Unlike in mainstream societies, adivasi women have always enjoyed a greater degree of control over their natural resources and enjoy powers of decision-making on household matters. However, whenever

mining projects have been initiated in adivasi lands women are completely sidelined from the process of consultation, consent and decision-making, and entitlements like compensation, alternate employment and rehabilitation facilities or even their right to object to alienation of their lands. In recent years, the spate of mining and associated development projects proposed/initiated has led to serious conflicts and resistance. These conflicts have been aggravated by political disturbances, extremist and corporate induced violence resulting in human rights abuses of adivasi women.

Yet, across the country adivasi women have been at the forefront of protecting their lands and forests or engaging with the government in demanding social justice. They are steadfast in their struggle and have genuine concerns that need to be addressed by the State. They often face repression and brutalities at the hands of the administration or other stakeholders, and live in a state of constant fear and insecurity. It is this growing unrest and conflict faced by adivasi women that needs urgent attention.

Some of the important legal mechanisms available in India for adivasis to assert their rights, are the Panchayat (Extension to Scheduled Areas) Act 1996 (PESA) and the process of public hearings under the Environment Protection Act, apart from the Fifth Schedule. PESA provides for equal participation of adivasi women in village councils (gram sabhas) but is yet to be effectively implemented in terms of framing rules and enabling adivasi women's real participation they are illiterate and have no access to information about these laws.

The UN Declaration (mentioned above) is seen as a watershed in the indigenous peoples' struggles for recognition of their customary and legal rights, in the light of historical conflicts that emerged from development projects and loss of their resources. The Declaration specifically recognises their right to FPIC and respects their legitimate authority to enter into an equal and respectful relationship with any third party. The Declaration lays particular emphasis on removing gender inequity. India too is a signatory to the Declaration, which although not legally binding, underlines the moral obligation of the State towards the adivasis. The Declaration also complements national laws and strengthens adivasis legitimate rights.

Unfortunately, till date the commitment has remained merely on paper while conflict is escalating in mineral rich areas with adivasi women facing the brunt. While it cannot be gainsaid that minerals are important for the country's development, the government and private multinationals need to understand that it is in the best interests of all to have a consultative and consent-based approach involving all stakeholders rather than entering into a situation of conflict. There is a need to explore options and adhere to legal and international agreements that fall within the framework of a democratic nation. It is imperative that adivasi women are seen as agents of change (critical stakeholders) in the process of sustainable development.

It is time that FPIC is recognised and actively used as an important tool for conflict resolution. However, for it to be effective and meaningful it should be supported by policy and programme interventions by the State and NGOs, that include linking FPIC with laws, governance structures, consultative procedures, dissemination of information, training and capacity building, strengthening indigenous decision-making structures, legal support, and genuine negotiation that includes adivasi women. A similar process is being tried in different countries for bringing justice to indigenous people using this critical instrument.

The working paper proposed focuses on understanding how FPIC can be used as a tool for conflict resolution by adivasi women in mining areas within the existing legal framework in the

country. It will look at incorporation of their consent and perspectives so that development takes place effectively and not create conflicts in remote areas.

Objectives

The main output of the project is a working paper and the principal objectives are:

- Enable greater understanding and use of the still new concept of FPIC by NGOs and activists.
- Provide direction and serve as a guide to grassroots advocacy campaigns of adivasi women impacted by mining who are struggling to be heard
- Enable concerned decision and policy-makers to understand how to implement FPIC in governance and law.

Methodology

As a part of my work I have been involved in advocacy, skill sharing and research on impacts of mining on women, especially in the context of adivasi women. This has enabled me to understand perspectives at the grassroots level and has given me the opportunity to interact with policy and decision-makers in the government, as well as NGOs, activists and networks, both national and international, working specifically in the context of indigenous women and mining. The information collected as a result of this involvement will form a part of the working paper. The methodology will incorporate extensive secondary research for analyzing the concept and use of FPIC at the country and international level. It will include analysis at a country level of the different legal and policy frameworks, both existing and proposed, that threaten the security of adivasi women.

Bibliography of related sources

UN Declaration on the Rights of Indigenous People, PESA, Environment Protection Act and Public Hearing, Rehabilitation and Resettlement Policies (2003, 2006), Proposed Rehabilitation and Resettlement Bill, New Mineral Policy 2008, Proposed amendments to the Mines and Minerals Development and Regulation Act 1957, Fifth Schedule of India, Adivasi women's struggles against mining: success and failures in the country, FPIC concept, FPIC as a legislation and its impact (eg in Philippines), Examples where FPIC has been successfully used in conflict resolution, etc.