

5TH SLCU NATIONAL MOOT COURT COMPETITION

IN THE HON'BLE SUPREME COURT OF INDIA

AT NEW DELHI

Writ Petition (Civil) No. \_\_\_\_\_ / 2014

(Filed under Article 32 of the Constitution of India, 1950)

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Swadeshi Suraksha Samiti

..... Petitioner

*versus*

Union of India & Others

..... Respondents

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Written Submissions on behalf of the Petitioner,

SLCU027,

Counsel for the Petitioner.

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**LIST OF ABBREVIATIONS**

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¶	Paragraph
AIR	All India Reporter
Art.	Article
EAC	Expert Appraisal Committee
EC	Environmental Clearance
EIA	Environmental Impact Assessment
EPA	Environment (Protection) Act, 1986
Factsheet	Statement of Facts, 5 <sup>th</sup> SLCU National Moot Court Competition Problem
FC	Forest Clearance
FCA	Forest (Conservation) Act, 1980
FRA	Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
Hon'ble	Honourable
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Mining Project	Project by RUC to extract uranium from the ores of Swadeshi
MoEF	Ministry of Environment and Forest, Government of India
MoTA	Ministry of Tribal Affairs
NGT	National Green Tribunal
NRRP	National Rehabilitation and Resettlement Policy, 2007
PESA	Panchayats (Extension to Scheduled Areas) Act, 1996

WRITTEN SUBMISSIONS FOR THE PETITIONER

PIL	Public Interest Litigation
RUC	Rustam Uranium Corporation Private Limited
SC	Supreme Court
SCC	Supreme Court Cases
SPCB	State Pollution Control Board
sq. km.	square kilometre
SSS	Swadeshi Suraksha Samiti
ST	Schedule Tribes
TFD	Traditional Forest Dwellers
Tribal Communities	Indigenous tribal communities of 'Letria, 'Lortep' and 'Lanoitan' living in Swadeshi Forest
UCIL	Uranium Corporation of India Limited
UDHR	Universal Declaration of Human Rights
viz.	namely

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**STATEMENT OF JURISDICTION**

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The Petitioner has approached the Hon'ble Supreme Court of India under Art. 32 of the Constitution of India, 1950.

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**STATEMENT OF FACTS**

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**Presence of Uranium and Tribal Communities in Swadeshi Forest**

The country of India is home to many atomic resources, particularly Uranium. These ores are found in the Hithro mineralised zone of an area of 25 sq. km. in the State of Realkhand. Under the Panchayat (Extension of Scheduled Areas) Act, 1996, the Hithro zone was declared as a 'Scheduled Area'. The Hithro zone is located in the 'Reserve Forest' named Swadeshi which has an area of 125 sq. km. The Swadeshi forest is the home to indigenous tribal communities viz. 'Letria, 'Lortep' and 'Lanoitan' ("Tribal Communities") who are about 400 to 450 in number.

**Electricity Crisis in India**

India, a developing country, has a predominantly industrial economy. However, in January 2012 a severe power crisis adversely affected several industries and they were forced to shut down. As a consequence, many workers were laid off and retrenched. These unemployed workers approached the Supreme Court contending that their right to livelihood was deprived. They sought for, *inter alia*, a remedy to the power crisis that caused this. In turn, the Supreme Court directed the Government to obtain a report from the Department of Atomic Energy on the alternative energy resources in the country and solutions to the electricity crisis.

**Proposed Mining Project in Swadeshi and Protests**

In pursuance of the above directions, the Department of Atomic Energy recommended the extraction of Uranium from the ores of Swadeshi by the leaching process. Therefore, the Government leased 45 sq. km. of Swadeshi (inclusive of the Scheduled Area) to Uranium Corporation of India Limited ("UCIL") for fifty years. The UCIL subsequently sub-leased the process of extraction of minerals to Rustam Uranium Corporation Private Limited ("RUC"). The Tribal Communities vehemently agitated this as they feared they would be displaced from their homes and sacred lands and lose their livelihood. These protests were led by Swadeshi Suraksha Samiti ("SSS") which also highlighted the harmful effects of radiation due to uranium extraction.

### **Grant of Environmental Clearance**

The RUC applied for an Environmental Clearance for the extraction of uranium from the ores of Swadeshi ("Mining Project"). A public hearing was conducted on 17<sup>th</sup> August, 2013 where the Gram Panchayats living in and around the vicinity of the Swadeshi Forests were consulted. No objections were raised by the Gram Panchayats. Subsequently, the Notification that provided for a Public Hearing on 19<sup>th</sup> August 2013 for the Tribal Communities of Swadeshi was cancelled on the ground that the lands, being part of the Reserved Forest, belonged to the Government. An Environmental Clearance ["EC"] subject to the grant of Forest Clearance ("FC") was granted to RUC a period of 30 years. This EC provided certain safeguards such as allowance for the Indigenous communities to access the forest for their livelihood rights as per customary practices, compensation to land losers as per National Rehabilitation and Resettlement Policy, 2007 ["NRRP"], compensatory afforestation, development of effective emergency response etc. Subsequently, RUC was also granted the FC.

The instant petition arises from SSS alleging that the rights of the Tribal Communities under the Constitution of India and Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ("FRA") are infringed by the Mining Project. It further alleges that the EC granted was not in accordance with law. Therefore, it filed a Writ Petition under Article 32 of the Constitution of India, on 14<sup>th</sup> July 2014 before the Supreme Court of India.

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**QUESTIONS PRESENTED**

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1. Whether the instant petition is maintainable?
2. Whether the rights of the Tribal Communities are violated by the Mining Project?
3. Whether the Forest Clearance is valid?
4. Whether the Environmental Clearance is valid?

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**SUMMARY OF PLEADINGS**

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1. The instant petition is maintainable under Art. 32 of the Constitution since: *first*, the fundamental right under Art. 32 is not qualified by the existence of any other local or alternative remedies; *second*, the cases that impose a rule of exhaustion of local remedies are not binding upon this Court and *finally*, there is a Constitutional obligation on this Court to protect fundamental rights. In any case, the alternative remedies are not equally efficacious.
2. The Mining Project violates several fundamental rights including the right to shelter, livelihood, religion and culture by displacing the Tribal Communities from their homes and lands that are sacred to them. Further, the right to health and right to wholesome environment guaranteed under Art. 21 of the Constitution are also violated because of the polluting nature of uranium extraction process. Additionally, the lack of a proper public hearing violates their right to information. The constitutional right to property also stands violated by the Mining Project.
3. The Forest Clearance is invalid since it violates many rights of the Tribal Communities who are forest dwellers within the meaning of FRA. *First*, the Tribal Communities cannot be displaced before the recognition and verification of their rights are completed; and *second*, the Gram Sabha has not consented to this Mining Project. Therefore, the FC is invalid.
4. The Environmental Clearance given to RUC is invalid for three reasons: first, the mandatory public hearing was not conducted; second, the grant of FC which was pre-condition to the EC is invalid; and third, it suffers from Wednesbury unreasonableness.

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**PLEADINGS**

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**I. THE INSTANT PETITION IS MAINTAINABLE**

1. It is submitted that the instant petition is maintainable as there is no requirement for the Petitioner to exhaust local remedies [A] and in any case, the alternative local remedies available to the Petitioner herein are not equally efficacious [B].

**A. There is no requirement for the Petitioner to exhaust local remedies**

*a) The right under Art. 32 is not subject to the exhaustion of local remedies*

2. The right to approach this Hon'ble Court in case of violation of fundamental rights is itself a fundamental right enshrined in Art. 32.<sup>1</sup> In *Prem Chand Garg*, it was held that this right is absolute and may not be impaired on any ground.<sup>2</sup> Further, unlike in Art. 226, the remedy provided by Art. 32 is a *fundamental* right and not merely a discretionary power of the Court.<sup>3</sup> Moreover, this Hon'ble Court has on multiple occasions expressly rejected an argument that called for exhaustion of local remedies.<sup>4</sup> Therefore, it submitted that it is not open to this Court to carve out exceptions when there are none in the text.
3. Furthermore, judicial orders are not amenable to writ jurisdiction under Art. 32.<sup>5</sup> Consequently, if a violation of Art. 32 takes place by this Court's rejection of the instant petition, the petitioners will have absolutely no remedy for such violation of their fundamental right. Hence, the Petitioner submits that a liberal approach should be adopted, erring on the side of caution, in cases where the Court rejects a petition under Art. 32.

*b) The rule of exhaustion of local remedies is not binding on this Hon'ble Court*

4. Admittedly, cases such as *Paul Manickam*,<sup>6</sup> *Kanubhai*,<sup>7</sup> and *PN Kumar*<sup>8</sup> require the exhaustion of local remedies before approaching the Court under Art. 32. However, it is

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<sup>1</sup>Constitution of India Art. 32 (1950).

<sup>2</sup>*Prem Chand Garg v. Excise Commissioner*, AIR 1963 SC 996.

<sup>3</sup>*Daryao v. The State of Uttar Pradesh*, AIR 1961 SC 1457; *Tilokchand Motichand v. H.B. Munshi*, AIR 1970 SC 898.

<sup>4</sup>*Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295; *Romesh Thappar v. The State of Madras*, AIR 1950 SC 124.

<sup>5</sup>*Sahibzada Saiyed Muhammed Amirabbas Abbasi v. The State of Madhya Bharat*, AIR 1960 SC 768; *Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1.

<sup>6</sup>*Union of India v. Paul Manickam*, AIR 2003 SC 4622.

<sup>7</sup>*Kanubhai Brahmhatt v. State of Gujarat*, AIR 1987 SC 1159.

<sup>8</sup>*P. N. Kumar v. Municipal Corporation of Delhi*, (1987) 4 SCC 609.

submitted that this Hon'ble court must not be constrained by these decisions for the following reasons: *First*, this self-imposed restraint is merely a rule of convenience and discretion<sup>9</sup> and does not oust the jurisdiction of this Court under Art. 32.<sup>10</sup> *Secondly*, these cases are *per incuriam* as they were rendered in ignorance of previous decisions by higher benches of this Hon'ble Court that expressly rejected such a rule. *Finally*, Art. 32(4) specifically provides that this right may not be suspended except by a *constitutional* provision.<sup>11</sup> A rule of self-imposed restraint by the judiciary that requires exhaustion of local remedies constitutes an *extra-constitutional* partial suspension and is therefore, unconstitutional.

*c) This Hon'ble Court has a constitutional duty to entertain the instant petition*

5. The Constitutional obligation of this Hon'ble Court as the guarantor of fundamental rights has been interpreted broadly<sup>12</sup> and as one that exists independent of any other remedy that may be available.<sup>13</sup> This is particularly true in cases of grave public importance, such as environmental litigation where relief may not be denied on mere technical grounds. Consequently, it is submitted that a refusal to entertain the instant petition would be inconsistent with the aforesaid obligation.<sup>14</sup>

**B. In any event, the alternative local remedy is not equally efficacious**

6. The respondents may submit that the NGT is better equipped to hear this case, than this Hon'ble Court since it has expert members who can evaluate scientific claims. However, it is submitted that the issues herein do not just relate to the procedural aspects of granting forest and environmental clearances. The Petitioner seeks a judicial review of the orders passed by the MoEF since they have grave consequences for the Fundamental Rights of Tribal Communities. While this falls squarely within the jurisdiction of this Court under Art 32, the NGT is not equipped to assess claims of violation of fundamental rights. Its jurisdiction is circumscribed to adjudicating upon harm to the petitioner due to the environmental consequences, damage to the environment and damage to property.<sup>15</sup>

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<sup>9</sup>State of Uttar Pradesh v. Mohammad Nooh, AIR 1958 SC 86.

<sup>10</sup>Mohammed Ishaq v. S. Kazam Pasha, 2010 (1) SCC (Cri.) 721.

<sup>11</sup>Constitution of India Art. 32(4) (1950).

<sup>12</sup>MC Mehta v. Union of India, AIR 1987 SC 1086.

<sup>13</sup>Nilabati Behera v. State of Orissa, AIR 1993 SC 1960; Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.

<sup>14</sup>Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 129; Romesh Thappar v. The State of Madras, AIR 1950 SC 124.

<sup>15</sup>National Green Tribunal Act § 2(1)(m) (2010).



Therefore, while it may be legal for the NGT to hear this case, it is not expedient or efficacious.

7. Moreover, under the NGT Act only the person aggrieved by an order made under the FCA and/or EPA can seek relief from the Court.<sup>16</sup> This bars any public spirited person or organisation, such as the Petitioner, from approaching the NGT due to the rigidity of the *locus standi* requirement. On the contrary, the relaxation of *locus standi* rules by this Hon'ble Court ensures that this dispute may be filed as a Public Interest Litigation (PIL). Further, the petitioners submit that the persons whose Fundamental Rights have been affected are Tribal Communities who are unaware of their Fundamental Rights and the legal procedure to seek remedies. It is therefore imperative that the petition be adjudicated upon by the Supreme Court so that concerned environmental groups like the Petitioner may render able assistance to the Court.
8. In any case, the NGT is ill-equipped to deal with the petition in its entirety as its provisions pertain only to the resolution of environmental disputes. While the NGT may have jurisdiction for adjudicating upon orders passed under the FCA and EPA,<sup>17</sup> it does not have jurisdiction to decide upon issues arising out of FRA and PESA. It is submitted that these questions are central to the petition as they concern statutory rights granted to the Tribal Communities. This distinguishes the petition from a simple environmental dispute. Moreover, it is illogical to split the petition because the issues of rights are integral and emanate from the orders being challenged. Further, it will cause great inconvenience to the Petitioner to agitate the matters in two different Courts. Thus, it is submitted that only the Supreme Court can render effective justice in the instant case.

## **II. THE MINING PROJECT INFRINGES ON VARIOUS RIGHTS OF THE TRIBAL COMMUNITIES**

9. It is submitted that implementation of the Project would result in a violation of multiple fundamental and statutory rights that emanate therefrom. These rights include the right to shelter under Art. 21 [A], the right to clean environment under Art. 21 [B], the right to a clean health under Art. 21 [C], the right to livelihood under Art. 21 and Art. 19(1)(g)[D], the right to religion and minority rights under Art. 29 and Art. 25 [E] and finally, the right to information under Art. 19(1)(a) [F].

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<sup>16</sup> National Green Tribunal Act § 16 (2010).

<sup>17</sup> National Green Tribunal Act § 16 (2010).

**A. The Mining Project violates the right to shelter**

**10.** In the instant case, the Swadeshi Forest is home to the indigenous Tribal Communities who are being displaced on account of large-scale mining operations. It is submitted that this displacement of the Tribal Communities violates their right to shelter guaranteed under Art. 21 of the Constitution.

*a) The Tribal communities enjoy a fundamental right to shelter*

**11.** The right to shelter has been read into Art. 21<sup>18</sup> as an essential concomitant of the fundamental right to life.<sup>19</sup> has been read into Art. 21. This Hon'ble Court has interpreted the right to shelter to mean the right against forceful eviction.<sup>20</sup> Additionally, many international instruments that India is a party to explicitly provide for the right to adequate housing and shelter.<sup>21</sup> Crucially, with regard to forest dwelling tribal communities, this right has been codified under the Forest Rights Act.<sup>22</sup> Therefore, it is submitted that the Tribal Communities are entitled to their natural habitat under Art. 21 and this is contravened by the Project.

*b) The lack of an enforceable rehabilitation policy violates the right to shelter.*

**12.** The right to rehabilitation of displaced persons is a part of Art. 21.<sup>23</sup> In cases of forced displacement, it has been held "rehabilitation of the oustees is a logical corollary of Article 21".<sup>24</sup> Further, since there is a void in domestic law, international law instruments become relevant.<sup>25</sup> This is especially true in issues concerning the environment and

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<sup>18</sup> Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180; Shantistar Builders v. Narayan Khimalal Totame, AIR 1986 SC 180; See also Protection of Human Rights Act § 2(1)(d) (1993).

<sup>19</sup> Francis Corallie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746; Shantistar Builders v. Narayan Khimalal Totame, AIR 1990 SC 630; Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, (1997) 11 SCC 123.

<sup>20</sup> Ram Prasad Yadav v. Chairman, Bombay Port Trust, 1989 SCALE (1) 716; Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, (1997) 11 SCC 123; Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180; Shantistar Builders v. Narayan Khimalal Totame, AIR 1986 SC 180; P. K. Koul v. Estate Officer, W.P.(C) No.15239/2004.

<sup>21</sup> ICESCR, General Comment on Art. 11(1966); UDHR Art. 25.

<sup>22</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act § 3 (2006).

<sup>23</sup> Bal Kishan v. State of Haryana, W.P. No. 596 of 2014; Sudama Singh v. Govt. of Delhi, W.P. (C) No. 8904/2009.

<sup>24</sup> State of Bihar v. Prem Kumar Singh, L.P.A/702/2012 IN (CWJC/3114/2012); N .D. Jayal v. Union of India, (2004) 9 SCC 362.

<sup>25</sup> Vishakha v. State of Rajasthan, AIR 1997 SC 3011; PK Koul v. Estate Officer, W.P.(C) No.15239/2004; Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd, (2008) 13 SCC 30; Kapila Hingorani v. State of Bihar, W.P. (C) 488 of 2002.

human rights.<sup>26</sup> Therefore, the Guiding Principles on Internal Displacement must be considered.<sup>27</sup>

**13.** In the present case, there is no plan for rehabilitation or measures for resettlement for any of the displaced tribal communities. While the Respondents may contend that rehabilitation as per the NPPR was made a specific safeguard to the environmental clearance, it is submitted that this is inadequate for the following reasons. *First*, the mere mention of rehabilitation in the Environmental Clearance granted to RUC does not provide an *independent enforceable right* for the displaced persons against the State. Accordingly, non-compliance of the aforesaid condition can at most lead to cancellation of the Environmental Clearance, without providing any remedy to the displaced persons. *Secondly*, the NRRP may not even apply as there are only 400 to 450 persons who are displaced<sup>28</sup> and not the mandated 200 families. It is submitted that the tribals being denied their fundamental right under Art. 21 merely because the number of those affected does not meet the threshold requirement of NRRP is unreasonable and discriminatory. *Thirdly*, the provisions in the NRRP that refer to land-for-land compensation are merely directory in nature and prescribes instances where land “*may be allotted*”. Further, affected Tribal Communities could be coerced to accept money in lieu of land.<sup>29</sup> This against the principles and the law laid down in *Karjan Jalasay*.<sup>30</sup> *Finally*, and in any event, measures for rehabilitation must be taken *prior* to the implementation of the Project,<sup>31</sup> which is not true in this case.

**B. The Mining Project violates the right to a wholesome environment**

**14.** It is widely accepted that the right to life under Art. 21 also embraces the right to live in a wholesome, pollution-free environment.<sup>32</sup> This has to be read in conjunction with Art. 48A and Art. 51A (g) that imposes a duty on the State to preserve and improve the environment.<sup>33</sup> Further, this is in line with India's international obligations.<sup>34</sup> It is

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<sup>26</sup> Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd, (2008) 13 SCC 30.

<sup>27</sup> The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2)

<sup>28</sup> Factsheet, ¶ 1, Pg. 1.

<sup>29</sup> National Rehabilitation and Resettlement Policy Cl. 7.14 (2007)

<sup>30</sup> Karjan Jalasay Yojana Assargrath Sahkar Ane Sangarsh Samiti v. State of Gujarat, AIR 1987 SC 532.

<sup>31</sup> Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751.

<sup>32</sup> Subhash Kumar v. State of Bihar, 1991 AIR 420; M.C. Mehta v. Union of India, (1998) 9 SCC 589; Virender Gaur v. State of Haryana, (1995) 2 SCC 577.

<sup>33</sup> Constitution of India Art. 48A (1950); Constitution of India Art. 51A(g) (1950); M.C. Mehta v. Union of India, (1998) 9 SCC 589.

<sup>34</sup> Rio Declaration on Environment and Development (1992).

submitted that the uranium mining operations in the forests of Swadeshi violate the aforesaid right to wholesome environment in two ways.

15. *First*, the Mining project violates right to pollution-free environment by exposing the public at large to radiation. The compulsory exposure of unwilling persons to pollution<sup>35</sup> has been held to violate Art. 21. *Secondly*, it is submitted that the Mining Project would result in an ecological imbalance<sup>36</sup> and destroy the guarantee of a wholesome environment. This Court has a duty to guard against irreversible ecological damage.<sup>37</sup> Swadeshi Forests are famous for their natural biodiversity comprising of rare flora and fauna. It is submitted that the mining project would disturb this and irreversibly damage the ecology. Therefore, it violates the guarantee of right to wholesome environment.

16. The Respondent may rely on the lack of scientific consensus on the exact harms caused to the environment by Uranium Mining. However, as held in *Vellore Citizens Forum*,<sup>38</sup> the onus of proof is on the Respondents to show that its actions are environmentally benign.<sup>39</sup> Further, this Court in *M C Mehta* imposed on the State, a duty *anticipate, prevent and attack* the causes of environmental degradation.<sup>40</sup> Therefore, it is not open to the Respondent to depend on scientific uncertainty to push forth a project that violates the right to life of several people.

### **C. The Mining Project violates the right to health**

17. The right to health has been held to be an integral to the meaningful right to life (CERC), and is thus, protected under Art. 21.<sup>41</sup> Further, it is both a constitutional obligation under Art. 47<sup>42</sup> and an international obligation to allow citizens to enjoy the highest standard of health. Indeed, this obligation has been interpreted to include the prevention of pollution by extractive industries<sup>43</sup> and ensuring a hygienic environment.<sup>44</sup>

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<sup>35</sup> P.A. Jacob v. Supt. of Police, Kottayam, AIR 1993 Ker 1; Murli S Deora v. Union of India, W.P.(C) 316 of 1999.

<sup>36</sup> Rural Litigation Entitlement Kendra v. State of Uttar Pradesh, AIR 1985 SC 652.

<sup>37</sup> Goa Foundation v. Diksha Holdings Pvt. Ltd., 2001(1) Bom. C.R. (S.C.) 639; T.N. Godavarman Thirumulpad v. Union of India, (2006) 1 SCC 1.

<sup>38</sup> Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647.

<sup>39</sup> M. C Mehta v Union of India, (1998) 9 SCC 93.

<sup>40</sup> M.C. Mehta v. Union of India, (1998) 9 SCC 589.

<sup>41</sup> State of Punjab v. Mahinder Singh Chawla, S.L.P. (C) Nos. 12945 and 18828 of 1996, Paramanand Katara v. Union of India, AIR 1989 SC 2039; State of Punjab v. Ram Lubhaya Bagga, AIR 1998 SC 1703.

<sup>42</sup> CESC Ltd. v. Subash Chandra Bose, AIR 1992 SC 573.

<sup>43</sup> ICESCR General Comment 12 on Art. 11 (1966).

<sup>44</sup> Virender Gaur v. State of Haryana, (1995)2 SCC 577; T.N. Godavarman Thirumulpad v. Union of India, 2002 Indlaw SC 1386; ICESCR Art. 12(c) (1966).

18. In the instant case, it is submitted that the uranium mining activity in the Swadeshi forest affects the health of tribal communities living in and around the vicinity of the forest. The health effects of uranium mining including cancer, congenital deformities, and kidney diseases has been confirmed by various studies<sup>45</sup> and also, recently taken cognisance of by the Jharkhand High Court.<sup>46</sup> Moreover, the mere condition of developing an “emergency response procedure” is insufficient as the tribal communities still suffer from “slow poisoning by the polluted atmosphere”<sup>47</sup> and are compelled to live under “the dark shadow of a genocide.”<sup>48</sup>

19. The Respondent might attempt to justify the Uranium Mining Project on the ground of employment and revenue generation. However, this Court in *MC Mehta* has explicitly laid down that life and public health override considerations such as unemployment and revenue generation. The Respondent may also seek to rely on the scientific uncertainty surrounding the exact consequences on uranium mining on public health. However, it is submitted that the Court must adopt the *precautionary principle* in matters of public health also. Indeed, there is a global trend towards the same.<sup>49</sup> Moreover, the courts in India have recognised that it is impossible to eliminate hazards altogether, even with the most sophisticated safety and alarm systems.<sup>50</sup> This is particularly true in a developing country like India.<sup>51</sup> In light of the foregoing, it is submitted that the right to health is negated by the uranium mining project.

**D. The Mining Project violates the right to livelihood**

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<sup>45</sup>CHRIS SHUEY, URANIUM EXPOSURE AND PUBLIC HEALTH IN NEW MEXICO AND THE NAVAJO NATION: A LITERATURE SUMMARY available at [http://www.emnrd.state.nm.us/mmd/marp/Documents/MK023ER\\_20081212\\_Marquez\\_NNELC-Acoma-Comments-AttachmentE-UExposureSummary.pdf](http://www.emnrd.state.nm.us/mmd/marp/Documents/MK023ER_20081212_Marquez_NNELC-Acoma-Comments-AttachmentE-UExposureSummary.pdf) (Last Visited on 25th August, 2014); RISKS ASSOCIATED WITH CONVENTIONAL URANIUM MILLING OPERATIONS, Environment Protection Agency available at <http://www.epa.gov/rpdweb00/docs/tenorm/402-r-08-005-volii/402-r-08-005-v2-appiv.pdf> (Last Visited on 25th August, 2014). Moushumi Basu, *Who Pays the Price for Uranium Mining?*, Vol XLIV (49) ECONOMIC & POLITICAL WEEKLY (2009).

<sup>46</sup>Court on its Own Motion v. Union of India, W.P. (PIL) No. 1188/2014

<sup>47</sup>T. Damodar Rao v. The Special Officer, Municipal Corporation, AIR 1987 AP 171.

<sup>48</sup>Law Society of India v. Fertilizers and Chemicals, AIR 1994 Ker 308.

<sup>49</sup> See THE PRECAUTIONARY PRINCIPLE: PROTECTING PUBLIC HEALTH, THE ENVIRONMENT AND THE FUTURE OF OUR CHILDREN, WHO Europe (2004) available at [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0003/91173/E83079.pdf](http://www.euro.who.int/__data/assets/pdf_file/0003/91173/E83079.pdf) for the Resolution on the Precautionary Principle, endorsed by Heads of Government at General Affairs Council at Nice (2000); *Also see* Public Health and Well-being Act, Australia (2006).

<sup>50</sup>M.C. Mehta v. Union of India, AIR 1987 SC 965; Bayer (India) Limited v. State of Maharashtra, AIR 1995 Bom 290.

<sup>51</sup>Bayer (India) Limited v. State of Maharashtra, AIR 1995 Bom 290.

- 20.** The right to livelihood, being an important facet of the right to life is protected under Art. 21.<sup>52</sup> With respect to forest dwelling tribal communities, this is also statutorily guaranteed in the FRA.<sup>53</sup> In the instant case, the tribal communities' livelihood includes activities such as apiculture, gathering of herbs, fruits and flowers, and collection of gum dust.<sup>54</sup> Therefore, it is submitted that the mining project, by displacing the tribal communities from their land and forest deprives them of their right to livelihood.
- 21.** The Respondent may take up the defence that the tribal communities have been given access to the Forest for their livelihood requirements.<sup>55</sup> However, it is not mere access but *actual availability and possession of land* that is indispensable to the livelihood and sustenance of tribal communities.<sup>56</sup> Moreover, the environmental degradation caused by mining will inevitably have an adverse effect on livelihoods that are heavily dependent on the forest ecosystem and forest produce.<sup>57</sup> In any case, demand for exact evidence to show the loss of livelihood by eviction is 'unrealistic'.<sup>58</sup> Indeed, the Supreme Court in *Olga*, advocated for the use of common-sense and not strict proof of nexus between eviction and loss of livelihood.<sup>59</sup>
- 22.** The Respondent may also submit that the Compassionate-Employment safeguard<sup>60</sup> is sufficient to ensure that right to livelihood is not deprived. However, it is submitted that this is inadequate for two reasons. *First*, the safeguard in the EC is merely a guideline and not a guarantee. Moreover, in the absence of stipulations like provision of vocational training, such a safeguard is meaningless. Indeed, the Planning Commission of India has admitted that there has been a failure to provide "alternative livelihoods to those displaced by developmental projects". *Second*, even the safeguard is limited to one adult member per family and not to every single person who may lose their livelihood.

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<sup>52</sup> *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180; *Shantistar Builders v. Narayan Khimalal Totame*, AIR 1986 SC 180.

<sup>53</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act § 3(1) (2006)

<sup>54</sup> Factsheet, ¶ 2, Pg. 1.

<sup>55</sup> Factsheet, Annexure C, Pg. 7

<sup>56</sup> *P Rami Reddy v. State of Andhra Pradesh*, AIR 1988 SC 1626; *Madhu Kishwar v. State of Bihar* AIR 1996 SC 1864; *Samatha v. State of Andhra Pradesh*, (1997) 8 SCC 191.

<sup>57</sup> National Forest Policy (1988).

<sup>58</sup> *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180; *Shantistar Builders v. Narayan Khimalal Totame*, AIR 1986 SC 180.

<sup>59</sup> *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180; *Shantistar Builders v. Narayan Khimalal Totame*, AIR 1986 SC 180.

<sup>60</sup> Factsheet, Annexure C, Pg. 7

**E. The Mining Project violates the religious and cultural rights**

23. Petitioner submits that the Mining Project in the Swadeshi forest encroaches upon the religious and cultural rights of the Tribal communities. The lands and the rocks of Swadeshi are sacred to indigenous tribal communities that reside therein and form a part of their cultural heritage. It is submitted that the mining project materially interferes with the tribal communities' right to religion [a] and right to culture [b].

**a) The Mining Project violates Art. 25**

24. The tribal communities enjoy a right to practice their religion that is protected under Art. 25 of the Constitution. Further, the right includes the right to practice rituals and observation in addition to faith and belief.<sup>61</sup> It is submitted that the Mining Project violates this right by destroying the lands and rocks that are sacred to the tribals and further, the right to *practice* their religion by displacing them from their sacred land, destroying the rocks and preventing access to these rocks. Moreover, no safeguards have been provided to protect these religious sentiments as was done in *Alaknanda*.<sup>62</sup>

25. Respondents may suggest that the religious rights of the Tribals may be restricted in favour of a Mining Project that purports to be in public interest. However, it is submitted that this restriction is not in pursuance of “public order, morality and health and any other fundamental right” and hence, impermissible.

**b) The Mining Project violates Art. 29**

26. The tribal communities have a fundamental right to conserve their distinct culture.<sup>63</sup> Since the LETRIA, LORTEP and LANOITAN are indigenous tribal communities living within the reserve forest of SWADESHI, they are “*forest dwelling Scheduled Tribes*”<sup>64</sup> for the purposes of the FRA and are entitled to certain statutorily guaranteed cultural rights.<sup>65</sup> Moreover, recent precedents such as *Orissa Mining*<sup>66</sup> and *Chewang Pintso Bhutia*<sup>67</sup> have recognised that tribals are entitled to protect their rights under the FRA.

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<sup>61</sup> *Orissa Mining Corporation v. Ministry of Environment and Forests*, (2013) 6 SCC 476; *Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj v. State of Gujarat*, AIR 1974 SC 2098; *Seshammal v. State of Tamil Nadu*, 1972 (3) SCR 815.

<sup>62</sup> *Alaknanda Hydro Power Co. Ltd v. Anuj Joshi*, (2014) 1 SCC 769

<sup>63</sup> Constitution of India Art. 29(1) (1950).

<sup>64</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act § 2(c) (2006).

<sup>65</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act §§3(i), 3(k), 5(c) (2006); §4(d), Panchayats (Extension to Scheduled Areas) Act (1996).

<sup>66</sup> *Orissa Mining Corporation v. Ministry of Environment and Forests*, (2013) 6 SCC 476.

<sup>67</sup> *Chewang Pintso Bhutia v. State of Sikkim*, W.P.(C) No. 22/2012.

27. Moreover, this Court may liberally adopt principles from International Conventions since it is an issue concerning 'human rights, environment, ecology and other second-generation or third-generation rights'.<sup>68</sup> Thus, international instruments that mandate recognition of customary and cultural rights of indigenous people<sup>69</sup> become relevant. In fact, in *Lubicon Lake Band*, an energy exploration project that threatened “the way of life and culture” of the indigenous community was held to violate the cultural rights guaranteed under the ICCPR.<sup>70</sup>

**F. The Mining Project violates the right to information**

28. The petitioner submits that there exists a right to access environmental information.<sup>71</sup> *First*, this right has been recognised as a corollary to right to clean and hygienic environment under Art 21 of the Indian Constitution.<sup>72</sup> *Second*, the Courts have also recognised ‘right to information’ as an integral part of freedom of expression.<sup>73</sup> *Finally*, it is submitted that the *public trust doctrine*,<sup>74</sup> necessitates that the public be *informed* of any diversion of these natural resources and be made known of its environmental consequences. Moreover, this right is internationally recognised<sup>75</sup> in conventions such as the Rio Declaration,<sup>76</sup> where the right of the public to access information about the environment is recognised. This right is imperative at the grass root level to aid environmental decision making,<sup>77</sup> particularly when a decision may affect health, life or livelihood.<sup>78</sup>

29. In light of the foregoing, it is submitted that public hearing under EIA is one of the ways in which the State realizes the citizen’s right to access environmental information. A public hearing informs affected persons of the consequences of a project and elicit objections for the same. Further, the EIA Notification *necessitates* dissemination of the

<sup>68</sup> Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd, (2008) 13 SCC 30.

<sup>69</sup> ICCPR Art. 25 (1966), International Labour Organization (ILO) Convention on Indigenous and Tribal Populations Convention No. 169 (1957); Convention on Biological Diversity (1992).

<sup>70</sup> Lubicon Lake Band v. Canada CCPR/C/38/D/167/1984

<sup>71</sup> See SHYAM DIVAN & ARMIN ROSENCRANZ, ENVIRONMENTAL LAW AND POLICY IN INDIA 157-158 (2<sup>nd</sup> ed. 2002).

<sup>72</sup> “Right to information and community participation for protection of environment and human health flows from Art 21” Research Foundation for Science Technology National Reserve Police v. Union of India, (2005) 10 SCC 510.

<sup>73</sup> Union of India v. Association of Democratic Reforms, AIR 2002 SC 2112; Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal. AIR 1995 SC 1236.

<sup>74</sup> M.C. Mehta v. Kamal Nath, (1997)1 SCC 388

<sup>75</sup> R. (Greepeace Ltd) v. Secretary of State for Trade and Industry, (2007) Environmental Law Reports 29.

<sup>76</sup> Rio Declaration on Environment and Development (1992).

<sup>77</sup> Information for Decision Making, Agenda 21 (1992).

<sup>78</sup> Essar Oil Ltd. v. Halar Utkarsh Samiti, (2003) 2 SCC 27.



EIA report<sup>79</sup> to locally affected persons so that the participation at public hearings is *informed*.<sup>80</sup> In the instant case, the public hearing scheduled for the Tribal Communities was cancelled arbitrarily.<sup>81</sup> Therefore, it is submitted that Tribal Communities' right to access information has been curtailed.

### **III. THE FOREST CLEARANCE IS INVALID**

- 30.** The petitioner submits that the Forest Clearance<sup>82</sup> obtained by RUC is invalid as *first*, it violates various rights of the Tribal Communities conferred by the FRA. The FRA confers various individual and community rights to tribal and indigenous communities residing in forests. It is submitted that the Tribal Communities in the instant case qualify as "*forest dwelling Scheduled Tribes*",<sup>83</sup> and consequently, enjoy rights such as the right to hold,<sup>84</sup> cultivate and live on forest land,<sup>85</sup> right to access forest resources for livelihood,<sup>86</sup> right to protect, conserve and manage any community resource for sustained use,<sup>87</sup> right of access to biodiversity<sup>88</sup> and *any* other traditional right customarily enjoyed by them.<sup>89</sup> Any Forest Clearance must necessarily comply with the provisions of FRA to be valid.<sup>90</sup> It is submitted that the Forest Clearance in the instant case violates the provisions of the FRA in two distinct ways and is therefore, invalid.
- 31.** *First*, Section 4(5) of the FRA stipulates that no tribal can be evicted or displaced from the land *under his occupation* until the recognition and verification of rights is completed.<sup>91</sup> The Ministry of Tribal Affairs has interpreted this provision to be *absolute* and enjoined State Governments from evicting any forest dweller till the recognition and

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<sup>79</sup> Centre for Social Justice v. Union of India, AIR 2001 Guj 71.

<sup>80</sup> Environment Impact Assessment ¶ 2, Appendix IV (2006).

<sup>81</sup> Factsheet, ¶ 7, Pg. 7. Infra ¶37 of Written Submissions.

<sup>82</sup> Factsheet, ¶ 8, Pg. 7.

<sup>83</sup> Factsheet, ¶ 1 & 2, Pg. 1 r/w Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act § 2(c) (2006).

<sup>84</sup> "*The forest rights recognised and vested under this Act shall include the right of land to forest dwelling tribes....*" Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act § 4(8) (2006)

<sup>85</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act § 3(1)(a) (2006).

<sup>86</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act § 3(1)(c) and 3(1)(d) (2006).

<sup>87</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act § 3(1)(i) (2006).

<sup>88</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act § 3(1)(k) (2006).

<sup>89</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act § 3(1)(i) (2006).

<sup>90</sup> Orissa Mining Corporation v. Ministry of Environment and Forests, (2013) 6 SCC 476.

<sup>91</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act § 4(5) (2006): "*Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from the forest land under his occupation till the recognition and verification procedure is complete.*"; Forest Rights Act § 6 (2006): The recognition and verification procedure is done by the Gram Sabha with appeals to a Sub-Divisional Committee and a District Level Committee.

verification of rights is completed.<sup>92</sup> In this case, there is nothing to suggest that the rights of the Tribal Communities have been settled. Therefore, it is submitted that the grant of Forest Clearance disregards this procedure under the FRA and is impermissible.

- 32.** *Secondly*, the rights of the tribals cannot be abrogated to make way for a developmental project without the consent of the Gram Sabha.<sup>93</sup> Further, as per a circular of the Ministry of Environment and Forest,<sup>94</sup> additional compliance requirements such as *written consent or rejection of the Gram Sabha*<sup>95</sup> and *a separate written approval for diversion of forest land*<sup>96</sup> must be mandatorily attached to the Forest Clearance application. Indeed, this Hon'ble Court in *Orissa Mining*<sup>97</sup>, reiterated that the Gram Sabha's approval is a pre-requisite for the sanction of forest clearance. It is submitted that the omission to seek the approval of the Gram Sabha is in blatant disregard of the aforementioned stipulations. Therefore, the petitioner submits that the Forest Clearance is invalid and should be set aside.
- 33.** It is submitted that the omission of a mandatory consultation to seek the approval of the Gram Sabha is in blatant disregard of the aforementioned stipulations. Therefore, the petitioner submits that the Forest Clearance is invalid and should be set aside.

#### **IV. THE ENVIRONMENTAL CLEARANCE IS INVALID**

- 34.** It is submitted that the Environmental Clearance given to RUC is invalid since *first*, the mandatory public hearing was not conducted [A]; *second*, the grant of FC which was pre-condition to the EC is invalid [B]; *third*, there is no R&R policy [C]; *lastly*, EC is struck by *Wednesbury unreasonableness*. [D].

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<sup>92</sup> ¶ V(a), MoTA Guidelines [No. 23011/32/2010-FRA {Vol. II (Pt.)}] vide letter dated July 12<sup>th</sup>, 2012.

<sup>93</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act § 3(2) Proviso (ii) (2006): "*The clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.*"

<sup>94</sup> MoEF Circular [F. No. 11-9/1998-FC (Pt)] vide letter dated August 3<sup>rd</sup>, 2009.

<sup>95</sup> ¶ (f), MoEF Circular [F. No. 11-9/1998-FC (Pt)] vide letter dated August 3<sup>rd</sup>, 2009.

<sup>96</sup> ¶ (c), MoEF Circular [F. No. 11-9/1998-FC (Pt)] vide letter dated August 3<sup>rd</sup>, 2009. The proposal must be accompanied with several other important disclosures that ensure that the role of the Gram Sabha and tribal rights are preserved. These include – 1) A letter from the State Government certifying that the proposal was placed before the Gram Sabha; 2) A letter from Gram Sabhas stating that they have consented to the diversion of forest land and the compensatory measures if any; 3) A letter from the State Government certifying that all details and implications of the project were placed before the Gram Sabha in vernacular language of the forest dwellers before the decision was reached.

<sup>97</sup> *Orissa Mining Corporation v. Ministry of Environment and Forests*, (2013) 6 SCC 476.

**A. The mandatory public hearing was not conducted.**

35. It is submitted that the grant of an EC is contingent upon compliance with all the essential pre-requisites under the EIA Notification (find case). A uranium mining project comprising of an area of 45 sq. km falls under Category A in the EIA Notification, 2006.<sup>98</sup> Accordingly, a public consultation is required to complete the EIA.<sup>99</sup> It is submitted that the language in Section 7 is *mandatory* in nature and *not directory*.<sup>100</sup> Thus, public consultation is an essential and non-derogable component of EIA, the failure of which can render the EC invalid.<sup>101</sup>
36. It is submitted that the public consultation process in the instant case was defective since, *first*, the Tribal Communities had the right to participate in the public hearing regardless of property rights in the land; and *secondly*, in any case, the tribal communities possess property rights within the Reserve Forest. Therefore, it is submitted that in the absence of an effective public consultation process, the EC granted to RUC is invalid.

*a) No public hearing was given to all local affected persons*

37. In the instant case, the public hearing was scheduled for the Gram Sabhas on 19<sup>th</sup> August, 2013. However, this was abruptly cancelled on the ground that the mining project fell within Reserve Forest Area and since the property rights for the same vest in the State, there was no requirement to conduct a public hearing. It is submitted that the reasoning of the SPCB is completely erroneous and at odds with the language and spirit of the EIA Notification. The right to participate in public hearing is not qualified by any property rights. Indeed, the EIA Notification<sup>102</sup> and MoEF circulars<sup>103</sup> have given a wide interpretation to public hearing to ensure the widest possible participation to all affected people. The purpose of this is to gather all the concerns of all local affected persons.<sup>104</sup> In fact, one can be affected by a mining project without having any property rights. Thus, the cancellation of the public hearing scheduled for 19<sup>th</sup> August, 2013 vitiates the

<sup>98</sup> Environment Impact Assessment Notification Item (a) to Schedule (2006).

<sup>99</sup> Environment Impact Assessment Notification ¶ 7(III) (2006).

<sup>100</sup> "shall undertake Public Consultation" Environment Impact Assessment Notification ¶ 7(III) (2006). See SHYAM DIVAN, *The Contours of EIA in India*, WATER AND THE LAWS IN INDIA 396 (Ramaswamy R. Iyer ed. 2009).

<sup>101</sup> MC Mehta v. Union of India, (2012) 8 SCC 132; Utkarsh Mandal v. Union of India, WP No. 9340/2009.

<sup>102</sup> "The Public Hearing shall be arranged in a systematic, time bound and transparent manner ensuring widest possible public participation at the project site." Environment Impact Assessment Notification Appendix IV (2006).

<sup>103</sup> MoEF Office Memorandum [J-15012/29/2010-IA-II (M)] vide letter dated April 19<sup>th</sup>, 2010.

<sup>104</sup> Environment Impact Assessment Notification ¶ 7 (2006).

requirement of public consultation and strikes at the root of the EIA. The Supreme Court in *Sterlite Industries v. Union of India* held that a procedural impropriety can be a ground for quashing an environmental clearance if a mandatory requirement is violated.<sup>105</sup> Thus, petitioner requests the Court to set aside the EC granted to RUC.

- 38.** Further, the Respondent may suggest that deprivation of the public hearing component alone does not necessarily vitiate the public consultation process as stakeholders still have the option of submitting their concerns in writing. However, such an argument is unsustainable on two grounds. *First*, public hearing has been interpreted to be mandatory component of EIA process and *second*, for a public consultation to be meaningful and effective it must ensure the widest participation of locally affected persons.<sup>106</sup>
- 39.** Further, it is reasonable to assume that many of the STs and other TFDs are completely unaware of their rights.<sup>107</sup> Therefore, the public hearing serves the twin purpose of informing them of the consequences of the proposed project and seeking their objections. In the absence of a public hearing, it is unreasonable to presuppose that the STs and TFDs possess requisite expertise to determine the consequences of the Mining Project and make written objections to it.

*b) In any event, tribal communities enjoy property rights in the Reserved Forest.*

- 40.** Assuming *arguendo*, property rights are a pre-requisite to take part in a public hearing process, the petitioner submits that the Tribal Communities living in Swadeshi possess property rights as granted by the Forest Rights Act.<sup>108</sup> Further ILO Convention 107, which has been ratified by India, confers Tribal Communities with rights of ownership over the lands that they have traditionally occupied.<sup>109</sup> With regard to the foregoing, the petitioner submits that the denial of public hearing on the ground that the Tribal Communities do not have property rights is erroneous. Therefore, the EC must be set aside.

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<sup>105</sup> *Sterlite Industries (India) Ltd. v. Union of India*, (2013) 4 SCC 575.

<sup>106</sup> Justice A.R. Lakshmanan, *Thoughts on Environmental Public Hearings 2*, Vol 17 STUDENT BAR REVIEW (2005).

<sup>107</sup> *Orissa Mining Corporation v. Ministry of Environment and Forests*, (2013) 6 SCC 476.

<sup>108</sup> *Supra*, ¶ 30-33 of Written Submissions.

<sup>109</sup> ILO Convention on the Indigenous and Tribal Populations Convention Art. 11 (1957).

**B. The EIA was conducted in violation of PESA**

41. The PESA makes the Gram Sabha<sup>110</sup> as the focal point of tribal self-governance.<sup>111</sup> Section 4(d) of the PESA acknowledges the competence of the Gram Sabha “to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources...” It is submitted this provision is inviolable and reveals that the Gram Sabha is clothed with enormous plenary powers<sup>112</sup> to safeguard its traditions and customs. Since the Mining Project infringes on the customs and community resources of the Tribal Communities, the logical corollary of Section 4(d) is that the Gram Sabha must be mandatorily consulted.<sup>113</sup> In the present case, there was no consultation with the Gram Sabhas of the affected Tribal Communities. Therefore, Respondent has acted in contravention of the law laid down under PESA.
42. The Respondent may rely on Section 4(i) of PESA to suggest that the Gram Panchayat is a competent authority for the purpose of ascertaining the concerns of all locally affected persons. However, Section 4(i) is limited to issues of land acquisition and rehabilitation. No such authority is not conferred with respect to issues such as use of community resources, environmental degradation or health concerns, as in this case. Instead, the authority to safeguard community rights etc. is vested with the Gram Sabha.<sup>114</sup>
43. Therefore, the fact that the Gram Panchayat raised no objection is of no relevance. In any case, it is submitted that the Gram Panchayat may not have raised any objection at the first meeting in anticipation of the second public hearing that was scheduled with the actual stakeholders and competent authority on a subsequent date. Therefore, the opinion of the Gram Panchayat on the 17<sup>th</sup> August, 2013 cannot be reasonably construed as consultation for the purposes of Section 4(i).

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<sup>110</sup> Constitution of India Art. 243(b) (1950) and Panchayats (Extension to Scheduled Areas) Act § 4(c) (1996) define a Gram Sabha as a body consisting of person registered in the electoral rolls for the Panchayat at the village level.

<sup>111</sup> SAIRAM BHAT, NATURAL RESOURCES CONSERVATION LAW 455 (2010).

<sup>112</sup> Constitution of India Art. 40 (1950): This is in contrast with the Gram Sabhas or Panchayats in general areas who are merely *endowed* with powers “as may be necessary to enable them to function as institutions of self-government”.

<sup>113</sup> AJITHA S. GEORGE, *The Paradox of Mining and Development*, LEGAL GROUNDS – NATURAL RESOURCES, IDENTITY, AND THE LAW IN JHARKHAND 167 (Nandini Sundar ed., 2009).

<sup>114</sup> Panchayats (Extension to Scheduled Areas) Act § 4(d) (1996).

**C. The forest clearance is invalid**

44. The EC granted by the MoEF commences from the date of grant of FC.<sup>115</sup> The petitioner submits that the EC is inoperable, in any case, because the FC is invalid.<sup>116</sup>

**D. The EC suffers from Wednesbury unreasonableness**

45. The *Wednesbury* principle, as laid down *Rameshwar Prasad v. Union of India*<sup>117</sup> determines an administrative action to be unreasonable if it, *inter alia*, has “ignored a very relevant material which it should have taken into consideration.” Further, in *Lafarge Umiam Mining (P) Ltd. v. Union of India*,<sup>118</sup> the Supreme Court stated that it will review the decision of the MoEF to see if all relevant factors and the legislative policy underlying the law have been strictly considered before reaching the decision. It is submitted that the SPCB and EAC have fallen foul of the *Wednesbury*<sup>119</sup> principle by cancelling a mandatory public hearing and not considering all relevant objections, respectively.

46. As reasoned earlier, the public hearing process is mandatory by law and the SPCB is tasked with conducting it. By choosing to ignore a mandatory prescription, the SPCB has acted unreasonably and in disregard of the law. Further, the basis for this decision – that public hearing is restricted to those with property rights – has no founding in law and precedent. Therefore, the decision to cancel the public hearing is inexplicable and unreasonable. As a result of this, the Public Consultation process i.e. Stage III of the EIA has been vitiated and the EC should be set aside.

47. *Second*, it is submitted that the EAC's decision to grant the EC without considering the material from public hearing is unreasonable as per the *Wednesbury* principle. One of the duties of the EAC during appraisal is to consider all the objections raised during a public hearing and respond to them.<sup>120</sup> The failure to consider all objections and give a reasoned order renders the decision of the EAC vulnerable to non-application of mind.<sup>121</sup> In the event of cancellation of a mandatory public hearing, the EAC is deprived of one of the

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<sup>115</sup> Factsheet, Annexure C.

<sup>116</sup> *Supra*, ¶ 30-33 of Written Submissions.

<sup>117</sup> *Rameshwar Prasad v. Union of India*, (1994) 3 SCC 1.

<sup>118</sup> *Lafarge Umiam Mining (P) Ltd. v. Union of India*, (2011) 7 SCC 338

<sup>119</sup> *Associated Provincial Picture Houses v. Wednesbury*, 1947 2 All ER 680.

<sup>120</sup> *Samatha v. State of Andhra Pradesh*, (1997) 8 SCC 191; *Rudresh Naik v. Goa State Coastal Zone Management Authority* NGT Appeal No. 20/2013; “*detailed scrutiny of the application and other documents like the...outcome of the public consultations including public hearing proceedings*” Environment Impact Assessment Notification ¶ 7 (2006).

<sup>121</sup> *Utkarsh Mandal v. Union of India*, WP No. 9340/2009

main relevant considerations for its appraisal. In such a case, the reasonable decision would have been to direct that the SPCB conduct a public hearing for the Tribal Communities instead of going ahead with the appraisal nevertheless. Indeed, the EAC's appraisal despite such a *glaring omission* shows that its decision is tainted with arbitrariness. By choosing to overlook the unreasonable actions of the SPCB, the EAC has perpetuated the same. Hence, the appraisal process i.e. Stage IV of the EIA is vitiated by it and the EC should be set aside.

- 48.** The Respondent may submit that it is not in the domain of judicial review to evaluate the wisdom behind a policy decision and strike a balance between different priorities. However, it is submitted that when Fundamental Rights<sup>122</sup> are at stake, the Court may “*not to shrug its shoulders*” and has the basic duty to examine whether the relevant considerations have been borne in mind.<sup>123</sup>

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<sup>122</sup>*Supra*, Part II of Written Submissions.

<sup>123</sup>Sachidananda Pandey v. State of West Bengal, AIR 1987 SC 1109.

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**PRAYER**

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Wherefore in light of the issues raised, arguments advanced and authorities cited, it is humbly prayed that this Hon'ble Court may be pleased to hold, adjudge and declare that;

1. The instant Writ Petition is maintainable;
2. The Mining Project infringes on several rights of the Tribal Communities including the right to shelter, right to wholesome environment, right to health, right to livelihood, right to information, right to property and right to freedom of religion and right to preserve culture;
3. The Forest Clearance granted to RUC is invalid;
4. The Environmental Clearance granted to RUC is invalid;

and pass any other order it may deem fit in the interest of justice, equity and good conscience.

All of which is humbly prayed,

SLCU027,

Counsel for the Petitioner.