

India: Development at a Price

Increasing Transparency and Accountability in the Extractive Industries

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Summary

¹The extractive industry in India is expanding due to liberal government policies, high rates of return, low investment risks and governmental patronage. However, it has remained largely opaque and unaccountable for its environmental and social impacts. Legal, administrative and legislative measures that are friendly to the extractive industry are regarded as some of the main reasons for the industry's rapid growth.

Extractive industries are now expanding to the most remote ecologically and culturally sensitive areas of the country, often facing stiff opposition from local communities. The industry is coming under increasing public scrutiny. The intersections between industry and government are the subject of national debate, together with a host of other issues: illegal mining, low royalty rates and the resulting lack of revenue earned by the state, lack of proper social and environment impact assessments, alarming increases in direct and indirect mining-induced displacement, human rights violations and corruption.

Increasing accountability and transparency requires more effective work with local communities and civil society organizations (CSOs), as well as efforts to ensure the full use of existing legal and institutional mechanisms. Institutions such as the newly formed National Green Tribunal, the *Lokayukta* (ombudsman), and the Comptroller and Auditor General (CAG) of India can all play stronger roles in oversight. The environment impact assessment (EIA) process, which includes a social impact assessment process, is another important area for intervention: the EIA ensures effective participation of impacted communities in the decision-making process, and that the real costs and benefits of extractive industry activities are ascertained.

Finally, given the increasing investment of Indian companies in other countries, there is a need to keep effective watch on investments made abroad, and share information domestically and internationally. International non-governmental organizations (INGOs) can play a positive role by sharing best practices, though they should collaborate with local and national groups and work with existing networks and coalitions.

Contents

Summary	1
Acronyms	2
Introduction	2
Key issues and debates	4
Key actors and institutions	8
Role of India internationally in extractive industry	9
Key entry points to improve extractives transparency and accountability	11
Conclusion	14

¹ Emerging economies are playing an increasing role in oil, gas and mining globally. This paper is one of a series commissioned by the Transparency and Accountability Initiative (T/AI) and the Revenue Watch Institute (RWI) to explore trends and promising strategies for dialogue at the national and international level. The series covers Brazil, China, India, Mexico, the Philippines, Russia and South Africa. The views expressed are those of the authors and are not necessarily those of T/AI and RWI.

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The **Revenue Watch Institute** promotes the effective, transparent and accountable management of oil, gas and mineral resources for the public good. Through capacity building, technical assistance, research, funding and advocacy, we help countries to realize the development benefits of their natural resource wealth.

The **Transparency and Accountability Initiative** aims to expand the impact and scale of funding and activity in the transparency and accountability field, as well as explore applications of this work in new areas.

Finally, there is a critical need to mainstream the discussion on transparency and accountability among the media and general public.

ACRONYMS

ASSOCHAM	Associated Chambers of Commerce and Industry of India
CAG	Comptroller and Auditor General of India
CEC	Central Co-ordination cum Empowered Committee
CIAL	Coal India Africana Limitada
CII	Confederation of Indian Industry
CSOs	civil society organizations
DGHC	Director General of Hydro-carbons
EIA	environmental impact assessment
FICCI	Federation of Indian Chambers of Commerce and Industry
FIMI	Federation of Indian Mineral Industries
GAIL	Gas Authority of India Ltd.
GSI	Geological Survey of India
HCL	Hindustan Copper Limited
IBM	Indian Bureau of Mines
MMDR	Mines and Mineral Development and Regulation Act of 1957
MoUs	memoranda of understandings
MT	metric ton
NELP	New Exploration Licensing Policy
OIL	Oil India Ltd.
ONGC	Oil and Natural Gas Corporation
OVL	ONGC Videsh Ltd.
SEGEMAR	Servicio Geologico Minero Argentino
SGS	Saudi Geological Survey

Introduction

The Indian mining industry is characterized by a large number of small operational mines. India ranked second in the world in 2009-2010 in production of barites, chromite and talc/steatite/pyrophyllite; third in coal, lignite and bauxite; fourth in iron ore and kyanite/sillimanite; fifth in manganese ore, steel (crude) and zinc; sixth in bauxite, eighth in aluminum; and tenth in magnesite. According to advanced estimates of GDP for 2010-2011, the mining and quarrying sector accounted for about 2.26 percent of GDP (at 2004-2005 prices).

A significant feature of the mining sector in India is the dominance of government mining companies, although the role of the private sector has grown steadily over the past decade due to policy change. During 2009-2010, the public sector continued to play a dominant role in mineral production, accounting for 74.48 percent of the total value. However, in some minerals, the role of the private sector is prominent: in iron ore the private sector's share is 63 percent. Small mines, which are mostly found in the private sector, continue to be operated either as proprietary or partnership ventures. Minerals that were wholly mined/recovered by the public/joint sector in 2009-2010 were copper ore and concentrate, diamond, dunite, fluorite (graded) and concentrate phosphorite/rock phosphate, rock salt, sand (others), selenite and sulfur. By and large, almost the entire produc-

tion of lignite, gold (primary and secondary of indigenous origin) and gypsum was from the public sector. In 2009-2010, the public sector accounted for a sizeable production of coal (91 percent), crude petroleum (86.05 percent), utilized natural gas (76.91 percent), tin concentrate (58 percent), barites (99 percent), kyanite (84 percent), sillemannite (74 percent) and magnesite (60 percent).

India's extractive sector is large and steadily growing. National economic policies have repeatedly emphasized the importance of prioritizing the development of the extractives sector because it makes significant contributions to the country's economy through its multiplier effect.² Unfortunately, the sector's economic importance has silenced potential public outcry over its negative impacts. For the greater common good, millions have suffered silently. The small number of people who have spoken out in opposition have met stiff resistance from the powerful industry lobby, the government and those who reap the benefits of the extractive sector.

While the technical and financial growth of the sector is expressly encouraged, transparency in decision-making and accountability for impacts have gotten little attention.³ There is little political will to address transparency and accountability issues. The nexus of the mining industry, politicians and government officials has meant that illegalities and adverse impacts of the sector have been kept away from public and judicial scrutiny.

However, the situation has begun to change over the past two years. Issues of accountability and transparency have begun to generate major debate. Scams involving mineral ores worth millions of dollars have come to light.⁴ The level of corruption and wrongdoing has captured the attention of the Indian public. There is greater recognition that a lack of transparency in the granting of mining concessions has allowed scams to perpetuate. Activists and affected communities are no longer the only ones questioning the activities of the extractives sector; a much wider spectrum including the media, the judiciary, statutory authorities and large sections of society also are joining in.

The focus of issues in the extractive industries has varied from region to region. Southern and western states of India such as Andhra Pradesh, Karnataka and Goa have focused on the lack of accountability and the corrupting influence of the mining sector on society. In the northeastern part of the country, scrutiny has focused on the lack of benefits to local people from oil exports to the rest of the nation. In central Indian states, communities have realized that growth from mining has increased profits for companies and impoverished local tribal communities. This has led to armed mobilization against the state, as well as private companies. The state and its agencies have retaliated, resulting in gross human rights violations. At the national level, public debates are now increasingly focusing on the real costs and benefits of the extractive industries—and especially on who pays the costs and who benefits.

In the current climate, there should be a deliberate move toward increasing transparency and accountability in the extractives sector. The impact of mining, legally or illegally, is immense—ecologically, socially, culturally and economically—and its negative effects have been felt mostly

² National Mineral Policy 2008, paragraph 2.4.

³ The National Mineral Policy 2008 makes no reference to accountability. While acknowledging the negative impact of the extraction process on natural resources such as forests, the policy provides no guidance on assessing responsibility for irreversible ecological damage. Furthermore, it emphasizes the need for transparency in the sector only in terms of protecting private interests in ores and allocation of concessions.

⁴ See for example the Obalapuram mining scam in Andhra Pradesh involving politicians, industrialists and officials, and the Bellary mining scam in Karnataka, which showed that high-level officials and industrialists were cooperating with each other.

by economically and socially backward sections of society. An observation made by the Supreme Court of India stresses the importance of transparency.

The mining operation is hazardous in nature. It impairs ecology and people's right of natural resources. The entire process of setting up and functioning a mining operation requires utmost good faith and honesty on the part of the intending entrepreneur. Any mining activity close to township tends to degrade the environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area. **The fullest disclosures, including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity.**⁵ (Emphasis added.)

The importance of full disclosure and accountability should not be restricted to Indian companies and regulatory authorities within India. At least minimum standards of disclosure and accountability should be adopted in international operations as well.

Key issues and debates

As the mining industries occupy a major part of the extractives sector in India, most current debates in the sector relate to mining operations and their impacts. The past three decades can be viewed as different phases, each highlighting a different set of issues relating to mining. The 1980s and 1990s focused on small-scale mining and quarrying, with the judiciary intervening in specific cases to impose restrictions on the mine owners.⁶ The 1990s brought in issues relating to privatization in the mining sector.

After India became independent in 1947, the mining sector was mostly state-run; the private sector was mainly limited to the minor mineral sector.⁷ In the early 1990s, when the policy of privatization and liberalization was adopted, private players were allowed to enter the sector more broadly.⁸

In the first half of the 2000s, debates around mining focused on displacement, loss of forest cover and wildlife habitat, and pollution. Issues of transparency and accountability were not raised at the policy level in any significant manner. However, the Supreme Court in 2002 delivered a landmark decision holding the Kudremukh Iron Ore Co. accountable for violations of environmental norms.⁹

Over the past three years, additional issues have cropped up relating to the nexus of the industry, politicians and government officials. For the first time, fears have arisen that the activities of the extractive industry not only threaten the ecology but also affect good governance and democratic

5 Ruling of the Apex Court in *M.C. Mehta Vs. Union & Ors.*, ((2004) 12 SCC 118).

6 Illegal and indiscriminate mining in the Mussorie hills in the Himalayas led to the imposition of strict orders to restrict mining there: *Rural Litigation And Entitlement Kendra v. State of U.P. @ Ors.*, AIR 1985 SC 652. In *Tarun Bharat Sangh, Alwar v. Union of India and Ors.*, 1993 SCC Supp. (3) 115, the Supreme Court restricted mining activities in ecologically protected areas of Rajasthan.

7 The mining laws in India makes a distinction between major and minor minerals based on their division in the schedules to the act.

8 The National Mineral Policy 1993 permitted foreign investment up to 50 percent of equity. This cap was removed in 2006. The public sector continues to account for 70 percent of the total value of production in the country.

9 *K.M. Chinnappa v. Union of India*, AIR 2003 SC 724. Significantly, some of the most important measures to restrict the impact of mining were initiated as a result of judgments delivered by the Indian judiciary. The decision of the Supreme Court with respect to mining in tribal areas in India in *Samata vs. State of Andhra Pradesh*, AIR 1997 SC 3297, was a landmark decision with regard to the protection of rights of tribal populations.

ideals. The experience of mining in states such as Andhra Pradesh, Goa and Karnataka show that the sector has made deep inroads in the governance structures with key members of the legislature, with ministers having direct interests in the mining industry. A report by the Lokayukta of Karnataka on mining in some districts of the state laid bare the nexus among players in the mining sector that has undermined the rule of law:

Law of the land was seemed to have been suspended and oral whip was used to keep silent. Consequently, administration has allowed the loot of natural resources, in this case iron ore, which continued without any opposition. Huge bribes were paid. Mafia-type operations were the routine practices of the day.¹⁰

Investigation is under way in the states of Orissa and Goa on the extent of illegal mining, conducted by the Justice Shah Commission on Illegal Mining.

Mining-related issues concern a cross section of the population: displaced people, local communities living in close proximity to mine sites, victims of the ill effects of mining, civil society groups interested in protecting the rights of communities or the environment, miners, etc. The key issues being debated now can be broadly listed as:

1. **Mining-induced Displacement:** Rich mineral deposits are found in areas with relatively low land acquisition costs, and are being exploited with opencast mining located in densely populated regions. Often this development takes place on fertile and urban lands with poor definitions of land tenure and politically weak and powerless populations, especially indigenous people.¹¹ While there is no comprehensive updated statistic on the exact number of people affected by mining, one estimate projected that development projects in India from 1947-2004 displaced around 60 million people—roughly three times the population of Mumbai.¹²
2. **Lack of Revenue Earned from Extractive Industries:** The negative impacts of extractive industries have long been tolerated since the industry was regarded as contributing to state coffers. However, of late the reality of has been revealed to the public. On being granted a mining lease, the lessee has to pay a royalty rate to the government. Often the amount of royalty charged by the government is far lower than the market value of the mineral. This has meant that the government, while leasing out limited mineral resources and making way for potential adverse environmental and social impacts, is scarcely benefiting from increased revenue.

A shocking example can be seen in the iron ore mining sector in Karnataka. The royalty paid to the government is Rs. 16/- to Rs. 27/- per metric ton (MT), depending on the quality of the ore. According to the Lokayukta's report, between 2004 and 2006—the peak period—the export price for iron ore was in the range of Rs. 6,000 to 7,000 per MT. Even in the lean period, the export price for iron ore was between Rs. 1,500 to Rs. 2,000 per MT. This means that the Karnataka government earned between 0.2 percent to 2.5 percent of the amount earned by the exporter.

¹⁰ Report of the Karnataka Lokayukta, December 2008, http://ercindia.org/adv_act.php.

¹¹ Ibid.

¹² Walter Fernandes, "Development-Induced Displacement: The Class and Gender Perspective," (paper presented at the International Conference on The Emerging Woman in the Indian Economy, Christ College, Bangalore, India, November 26-27, 2007).

3. **Illegal Mining:** Official statistics released by the Ministry of Mines provide the following data on the return on illegal mining for 2010-11 (up to September 2010):

	Quantum of mineral/ ore excavated/stacked/ transported	Value of mineral (rupees)
Major minerals	2,494,900 tons	338,747,000
Minor minerals	1,968,000 tons	257,195,000

Illegal mining continues due to lax enforcement and active political and official support. Profits are high and prosecution is rare.

4. **Mining by Private Companies under Cover of State Agencies:** Constitutional and local laws prohibit private mining companies from operating in areas where tribal populations reside. However, as is evident in most tribal areas, private mining companies operate under the cover of the state; a state agency holds the lease, while the actual mining is carried out by a private entity.

For example, the UK-registered Vedanta group's controversial mining project in Orissa has the state-owned Orissa Mining Corp. as the mining leaseholder, while all de facto control rests with Vedanta. Similarly, the Saudi Arabian mining company Ras Al Khaimas has approval for mining in the tribal areas of Andhra Pradesh. The actual mining lease, however, belongs to the state-owned Andhra Pradesh Mineral Development Corp.

5. **Corruption:** India's mining industry has become synonymous with corruption. Permits and approvals for mining can be easily bought at a price. The report of the Lokayukta of Karnataka notes that both private and government entities pay bribes to secure permits for mining. The report states that several companies in the mining sector have paid bribes, under-invoiced exports, and used fake permits. The National Mineral Development Corp., the public-sector giant in the mining sector, is accused of under-invoicing sales. The report also names Adani Enterprise for paying bribes and permitting illegal iron ore exports. Another company, JSW Steel, is accused of not only paying bribes but also of colluding with the state tourism minister in securing leases.
6. **Handing Over Public Resources to Private Industries:** Many minerals and mineral-bearing areas have been reserved for mining by government agencies. Over the past decade, significant areas have been handed over to private industries at throwaway prices. Most of these transfers lacked transparency and were done purely to benefit certain companies. For instance, in 2003, the Karnataka government designated 1,162,000 hectares of land for private mining. This land had been owned by the state and considered a public asset.
7. **Lack of Public Involvement in Making Decisions:** Decisions with respect to allocating leases and mining permits do not involve the public. The public's input is sought in a very limited way during the environmental clearance process. The public views extractive industry activities as something imposed against its will. The lack of public involvement has at times led to local communities and civil society groups objecting to mining projects that have received regulatory approvals. Affected communities and CSOs sometimes resort

to nonviolent protests or take legal recourse to challenge the setting up of industries, seeking greater accountability and transparency.

POSCO, a South Korean steel company, is planning to start a steel and mining project in the state of Orissa. This project has been strongly opposed by local affected people, who have refused to allow company officials to enter. The communities have also challenged the project's approval in court, ensuring that despite having all approvals, the company is unable to initiate construction activities. Similarly, in the Himalayan state of Himachal Pradesh, people's struggles in and out of court have delayed the plans of Lafarge Cement to undertake limestone mining and set up a cement plant in the ecologically fragile hills.

8. **Lack of Proper Environmental and Social Impact Assessments:** Mining industries have significant impact on the environment and livelihoods of people and are permitted only if they have an environmental clearance from the government. Under the Indian environment impact assessment (EIA) regime, the project proponent is required to undertake EIA studies at its own expense. There is no independent assessment of the project. The mining industry is rarely, if ever, held accountable for wrong or misleading information. Several incidents have to come to light when EIA consultants have copied assessments from EIA reports of completely different projects situated in very different environments.

For example, for a mining project in Maharashtra by the mining company Ashapura Minechem Ltd., the EIA consultant copied parts of an EIA report from a Russian report.¹³ The EIA report contained references to spruce and birch trees, which are not found in the tropical climate of Maharashtra. This brazen act of plagiarism was ignored, and mining was allowed without any action against the mining company or the consultant.

The Ministry of Environment and Forests on two occasions has revoked the environmental clearances granted to mining projects in the state of Goa because of improper assessment and concealment of information by the project proponent, most recently from the mining giant Sesa Goa.¹⁴

9. **Debates Over Profit-sharing Under Proposed Mining Law:** The main legislation that regulates the mining sector is the Mines and Mineral Development and Regulation Act of 1957 (MMDR). The MMDR Bill of 2010 proposes several changes to the existing regulatory setup. A new provision has been added to share the profits of mines with people affected by them. In the last version seen, the basis for the percentage share varied between coal and non-coal sectors. Also, the money would be placed in a district mineral foundation in each district where mining takes place. The foundation would be headed by the local administration, which would decide how to distribute it. This is problematic for several reasons. First, when based on percentage of company profits, it is not clear what benefits will actually go to the affected population. Second, the whole process has been bureaucratized, with several layers of institutions added, increasing the chances of corruption. Third, the proposed district mineral foundation would not have any community involvement.

13 Padmaparna Ghosh, "Are the govt's green clearances a farce?" *The Mint*, December 17, 2007, <http://www.livemint.com/2007/12/27000203/Are-the-govt8217s-green-cle.html>.

14 Sesa Goa had been granted environmental clearance for the Pirna iron ore mine in the villages of Pirna and Nadora in northern Goa. The Ministry of Environment and Forests canceled this clearance on August 29, 2011. Jaisinh Maganlal had been granted environmental clearance for Careamol iron ore mine at Village Pirla, Taluk Quepern, District South Goa. This clearance was revoked by the ministry on August 23, 2010.

The above shows an evolution from environment and human rights issues to transparency and accountability. Though the earlier issues remain important, there has been a realization that it will be difficult to deal with negative fallouts from the extractive sector without reforms to improve accountability, transparency and public participation, together with effective access to justice.

At the same time, there is recognition, however limited, that the lack of transparency and accountability in the extractive sector is bound to be inimical to the growth of the industries. Reliance on corporate social responsibility is not sufficient.

Key actors and institutions

The Indian government ministries that regulate the extractives sector include:

- The Ministry of Mines
- The Ministry of Petroleum and Natural Gas
- The Ministry of Coal
- The Ministry of Environment and Forests
- The Ministry of Steel
- The Ministry of Tribal Affairs
- The Ministry of Commerce and Industry

The Indian Bureau of Mines (IBM), the Geological Survey of India (GSI) under the Ministry of Mines, and the Director General of Hydro-carbons (DGHC) under the Ministry of Petroleum and Natural Gas have important regulatory and research-related functions. The Ministry of Mines has formed two committees—the Stakeholder Committee and the Central Co-ordination cum Empowered Committee (CEC)—to assist it in monitoring and regulating the sector. Since India is a federal state, there are also government departments at the state level involved in regulating some aspects of the sector.

Despite the introduction of private players, the public sector continues to account for 70 percent of the total value of production in the country. In fact, the coal sector has only one player: the government-owned Coal India Ltd. (CIL). There are, however, captive coal mines owned by other companies, including private players. Some of the big public-sector enterprises in the extractives sector are:

- National Aluminum Company Ltd.
- Hindustan Copper Ltd. (HCL)
- Mineral Exploration Corp. Ltd.
- Oil and Natural Gas Corp. (ONGC)
- Oil India Ltd. (OIL)
- Bharat Petroleum Corp. Ltd.
- Gas Authority of India Ltd. (GAIL)
- NMDC Ltd.

Along with the public sector, many private companies are significant players in this sector, including:

- Sesa Goa
- Vedanta Alumina Ltd.
- Tata Iron and Steel Co.
- Jindal Steel Works
- Ashapura Minechem Ltd.
- Hindalco Industries Ltd.
- Sterlite Industries (India) Ltd.
- Reliance

Other institutions playing an important role with regard to accountability and transparency in the mining sector are: the Supreme Court of India, which has stopped mining in certain areas, restricted indiscriminate mining, and regulated mining operations in certain parts of the country; the Central Empowered Committee constituted by the Supreme Court of India to monitor issued orders; and the Lokayukta of Karnataka, which through rigorous investigations brought to light major scams in iron ore mining. The National Green Tribunal, a recently formed specialized environmental tribunal, has the jurisdiction to hear cases challenging approvals granted for mining operations, and has the power to hold mining companies accountable for environmental damage.

Laws and Policies

The two main policies of the central government for the extractives sector are the National Mineral Policy of 2008 and the New Exploration Licensing Policy (NELP). Additionally, the Ministry of Mines is currently preparing a sustainable development framework for the mining sector.¹⁵ The most significant applicable laws are:

- Mines and Minerals Development & Regulation Act of 1957 (MMDR Act 1957)
- Environment (Protection) Act of 1986
- Forest (Conservation) Act of 1980
- Land Acquisition Act of 1894
- Panchayats Extension to Scheduled Areas Act, 1996
- Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006
- Right to Information Act of 2005
- Water (Prevention and Control of Pollution) Act of 1974
- Air (Prevention and Control of Pollution) Act of 1981

Neither the Indian CSOs, nor the government of India, are focusing on issues of transparency and accountability in the international operations of the Indian government and private companies. There is a critical and urgent need to initiate this focus.

Role of India internationally in extractive industry

India is becoming increasingly important as an exporter of minerals.¹⁶ Most people, however, do not know the expanding presence of Indian extractive companies in other countries. Issues relating to such international operations have been conspicuously absent from most civil society discussions. With several extractive industries being approved almost on a daily basis, there are enough local issues to preoccupy civil society organizations (CSOs). Neither the Indian CSOs, nor the government of India, are focusing on issues of transparency and accountability in the international operations of the Indian government and private companies. There is a critical and urgent need to initiate this focus.

¹⁵ SDF Overview, <http://mines.nic.in/index.aspx?level=1&lid=324&lang=1>.

¹⁶ The principal exports are diamonds, which account for more than 65 percent of mineral exports, followed by iron ore (20 percent), granite and alumina. Information available on the website of the Ministry of Mines, <http://mines.nic.in/writereaddata/Contentlinks/d7f155888d0548e180cde54d4b961a0.pdf>

The existing public discourse rarely focuses on international acquisitions by government companies, despite the fact that in most, if not all instances, public money is involved. The following list gives an overview of the scale at which Indian government and government companies are acquiring or have acquired global presence in the extractive industry.

- The Ministry of Mines signed seven memoranda of understandings (MoUs) from September 1, 2009 to August 31, 2011 with other countries and provinces: Namibia, Canada, Ontario (Canada), Mozambique, Malawi, Saskatchewan (Canada) and Colombia.
- The Geological Survey of India (GSI) signed a MoU with Servicio Geologico Minero Argentino (SEGEMAR) of Argentina on October 14, 2009, for scientific and technical cooperation. GSI also signed a MoU with Saudi Geological Survey (SGS) on March 2, 2011, for technical cooperation.¹⁷
- Most of the government-sector oil companies have shares in oil and gas fields in different places of the world, such as Sudan, Egypt, Libya, Ivory Coast, Vietnam, Myanmar, Russia, Iraq, Qatar and Australia. India has a 20 percent share in the Sakhalin-I oil project in Russia. ONGC, a public sector company, has entered into an agreement with ENI to acquire a 20-25 percent share of the Congo oil block.¹⁷
- Coal India Ltd., a government-owned company, is acquiring assets in other countries through its subsidiary Coal Videsh; 60,000 million Rs. have been earmarked for this purpose. It has established a wholly owned subsidiary, Coal India Africana Limitada (CIAL), in Mozambique, and was granted a prospecting license for two geological coal blocks by the government of Mozambique in 2010.¹⁸
- In the oil and natural gas sector, the government-owned ONGC Videsh Ltd. (OVL) is involved in various projects in Myanmar, Russia, Kazakhstan, Iran, Iraq, Syria, Sudan, Libya, Nigeria, Brazil, Cuba, Colombia and Venezuela. Nine of these projects are already producing hydrocarbons. The company has also completed a 741-kilometer pipeline project in Sudan. Its overseas cumulative investment has exceeded \$10 billion.¹⁹

In addition, the Indian government, the public sector and private companies have stakes in several companies in the extractives sectors across the world. The private-sector companies in India have also expanded their operations across the world. The top four private companies involved in coal mining in India (Reliance Power, Adani Power, Lanco Infratech and GVK), have acquired assets in Australia and Indonesia.²⁰ One of the largest manufacturers of iron and steel in India—Jindal Steel and Power Ltd.—has invested in iron ore reserves in Bolivia. Tata Power acquired 30 percent equity stakes in major Indonesian thermal coal producers PT Kaltim Prima Coal and PT Arutmin Indonesia, as well as related trading companies owned by PT Bumi Resources Tbk.²¹

India's demand for fuel, minerals and metals is rapidly increasing. The large number of thermal power projects that have been approved by the government would require a supply of good quality coal, and hydropower projects will require huge amounts of steel and cement for construction. To meet domestic demand, there has been an exponential increase in acquisitions in foreign countries. However, the people of India do not know where the government is spending its

17 "Role of Oil and Natural Gas Industry in India GDP," <http://business.mapsofindia.com/india-gdp/industries/oil-natural-gas.html>.

18 Information available on the website of Coal India Ltd. at http://www.coalindia.in/Documents/Coal_videsh_web_site_sept_2010.pdf

19 Information available on the website of the ONGC Videsh at <http://www.ongcvidesh.com/Company.aspx>

20 Piyush Pandey, "The emergence of Indian coal barons," *Times of India*, October 18, 2011, <http://timesofindia.indiatimes.com/business/india-business/The-emergence-of-Indian-coal-barons/articleshow/10512765.cms>.

21 Information available on the website of the TATA Power at <http://www.tatapower.com/services/power-projects.aspx#indonesian>.

money, or what the socioeconomic and environmental impacts of such activities are. Therefore, it becomes very difficult to hold the government accountable.

According to a report of the CAG released earlier this year, the OVL (registered in Mauritius, paying tax in Belgium) incurred a loss of more than \$262 million between January 2009 and March 2010 due to its inability to achieve the estimated production of 35,000 barrels of oil per day.²² According to the report, OVL's estimate of production was highly optimistic. OVL should be held accountable for this loss of taxpayers' money. But there is very little information about such deals in India, and the government is not feeling pressure to make such information easily accessible.

Key entry points to improve extractives transparency and accountability

Transparency and accountability in the extractive sector are possible only if the legal, political and institutional framework in the country favors them. Freedom of information laws, effective public participation in decision-making, freedom of the press, and the right to free speech and expression are all key, as are effective mechanisms to redress grievances. India also needs effective laws and mechanisms to protect those who raise their voice against illegal activities. Experience across the world has shown that the might of the extractive industries, backed with the power or connivance of the state, can lead to harassment and the suppression of people's voices. The experience in India has been no different.

The government of India, given its clearly stated goal of economic growth, is unlikely to play a significant role at the international level to ensure transparency and accountability. This may change if there is constant pressure from the public, civil society organizations and the media.

International Role of India in Improving Transparency and Accountability

The government of India, given its clearly stated goal of economic growth, is unlikely to play a significant role at the international level to ensure transparency and accountability. This may change if there is constant pressure from the public, CSOs and the media. The government of India needs to ensure transparency in all Indian public-sector enterprises in other countries, especially in those with political instability and poor adherence to laws. Furthermore, the government should ensure there is effective consultation with potentially affected communities before deals are made. One possibility is a complaint mechanism similar to that under the OECD Guidelines for multinational enterprises.

The following means may convince the government to focus on accountability and transparency in its extractive explorations abroad:

1. Effective watch by CSOs on acquisitions abroad by the Indian government and private sector companies. This can be in the form of documenting specific instances of Indian companies acquiring mines and other projects. The information could be used for pressuring and convincing the industries investing abroad to respect the laws of the country as well as ethical standards.
2. International groups can assist Indian CSOs in identifying the links between extractive industries and their sources of finance. There is little expertise in India for this. International groups can also provide funding to groups in India to undertake training and initiate advocacy actions.

²² Utpal Bhaskar and Appu Esthose Suresh, "CAG criticizes OVL for expensive acquisition of Imperial Energy," *Mint*, March 25, 2011: <http://www.livemint.com/2011/03/24220443/CAG-criticizes-OVL-for-expensi.html?type=tp>.

Domestic Measures to Improve Transparency and Accountability

The following measures may be adopted at the domestic level to improve transparency and accountability in the extractives sector:

1. The government of India can encourage financial institutions in countries that are involved in financing infrastructure projects to adopt the Equator Principles or a similar set of guidelines to reduce the environmental and social impacts of extractive operations.
2. The government and CSOs alike can hugely benefit from interactions with other groups working on similar issues, either in other parts of the country or in other countries. For this reason, information on best practices, previous experiences with particular companies and campaigning ideas should be made easily accessible.
3. The Environment Impact Assessment Notification of 2006 must be implemented properly and in a manner that makes decision-making transparent and ensures that those responsible for violations of the law are held accountable.

According to the law, mining companies have to submit compliance reports on a regular basis to the concerned regulatory authority, showing that they have complied with all the conditions imposed on them as part of the environmental clearance. These compliance reports are rarely submitted on time, and even if they are, the regulatory authority does not assess the extent of compliance. There is hardly any follow-up by the ministry in case of nonsubmission of reports. This has meant that mining companies can operate with virtual impunity.

CSOs should pressure regulatory bodies to discharge their post-clearance monitoring responsibilities effectively. Compliance reports should be made public so locally affected people and CSOs can verify the information provided by the mining company.

4. CSOs and interested individuals should use right to information applications to seek information from public authorities about mining projects and should publicize incriminating information.
5. Effective engagement with new and existing institutions on issues concerning extractive industries should be a priority. The newly set-up National Green Tribunal offers a good opportunity for raising transparency and accountability issues with respect to environmental violations.
6. The office of the CAG provides a good forum to ensure financial integrity in government dealings in the extractive industry. Of late, several reports have highlighted blatant illegalities in the industry. The CAG is a constitutional body and is mandated to promote accountability, transparency and good governance through high-quality auditing and accounting. It is meant to provide independent assurance to the legislature, the executive and the public that public funds are being used efficiently and for the intended purposes. CAG conducts performance, financial and compliance audits. In certain instances, the CAG has audited the performance of specific activities related to extractive companies, such as the audit on corporate social responsibility of Coal India Ltd. and the audit on

international acquisitions by ONGC Videsh Ltd.²³ The reports of the CAG reveal wasteful expenditure in acquisitions across the world by ONGC, such as the acquisition of oil fields in Qatar in 2005. No independent assessment of the oil availability was carried out, and in 2008 the project was abandoned after a wasteful expenditure of \$82 million. Similarly, the CAG report questioned the viability of oil exploration in Sudan in a time of political uncertainty. The audit reports, which are presented to Parliament and also available in the public domain, should have led to parliamentary and public debate, but did not. There is a critical need to focus the attention of civil society on the findings of the CAG. Areas for action include:

1. Wide dissemination of CAG findings with respect to extractives;
2. Initiating public debate and follow-up, both in and outside of the country; and
3. Providing constructive suggestions to the Audit Advisory Board of the CAG.

Table 1
Overview of Strategic Interventions
in Extractive Industries

	Civil Society	Government	Industry	Regulator
Target Champions	mmP, Samata, LIFE, eRc, MLPC, TAI India coalition Individuals: Ravi Rebbapragada, Samata Claude Alvares, Goa Foundation S.R Hiremath, Samaj Parivartan Samudaya EAS Sarma, former power secretary, Government of India	Specific officials/ agencies; top officials in public sector units	Federation of Indian Chambers of Commerce and Industry (FICCI); Confederation of Indian Industry (CII); Associated Chambers of Commerce and Industry of India (ASSOCHAM); Federation of Indian Mineral Industries (FIMI)	Indian Bureau of Mines, Petroleum Regulatory Board; state pollution control boards; proposed National Mining Regulatory Authority and Tribunal under the MMDR Bill
Opportunities	Exchange of information; collaboration	Focused demand (could be issue specific or project specific); share experiences in other countries	Push for better design and implementation of CSR initiatives and other resources available with the industry	Push to ensure compliance by industry
Mechanisms	Workshops; on-demand research to assist in campaigns in India, e.g. research on financial structures of companies; collaborative research	Meetings, petitions	Debate at different forums; perhaps collaborate?	Support litigation against inaction or wrong action by regulator

23 Report No. - 9 of 2011-12 for the period ended March 2010, Performance Audit of Coal India Limited Corporate Social Responsibility. http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Government_Wise/union_audit/recent_reports/union_performance/2011_2012/Commercial/Report_No_9/Report_No_9.html

Conclusion

India's extractive industry urgently needs to be made transparent and accountable for its ecological and social footprint. There is general acceptance that the extractive industry currently has a heavy impact on nature, offers few benefits, and threatens the democratic fabric of the country. As the links among environmental degradation, human rights abuse and a lack of benefits to society become increasingly visible, civil society groups will need to take the lead in convincing the government to pursue legal and institutional reforms toward transparency and accountability. Because of India's economic importance, the footprint of its extractive industry extends to Africa, Central Asia, Southeast Asia and America. The role of CSOs domestically and internationally is crucial in ensuring that the extractive industry operates within the framework of the law and is transparent and accountable for its operations—not only to its shareholders, but also to the government and the public at large.

The present study reveals that despite a good amount of civil society focus on the activities of extractives, there are still significant areas for intervention:

- Existing laws and institutions should be effectively used to bring about transparency and accountability in the extractive sector. The EIA process offers significant scope for civil society intervention. Given the large number of projects that have been approved, there is a need for deepening as well as expanding work on EIAs among CSOs. The National Green Tribunal can also help ensure accountability for the environmental impacts of the extractive industry.
- Institutions such as the Lokayukta have assumed significance in recent years in exposing the link between mining, corruption and political patronage, and they need further support. Reports by the CAG on extractive industries also need effective public dissemination and action.
- There is a need to focus on the activities of Indian companies abroad and share information about them within India.
- There is a critical need to mainstream the discussion on transparency and accountability among the media and general public, as well as to share information at the international level. A comprehensive, publicly accessible database on extractive industries could serve as an effective tool to make the industry transparent.



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