

India Extractives Transparency Charter
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Publish What You Pay

Emerging Indian Coalition

Preamble

We, as citizens, and representatives of civil society organizations, citizen campaigns, networks, affected communities, mine workers and unions are coming together to demand utmost transparency in all process related to the extraction of India's natural resources. We believe that all the natural resources are an asset and inheritance of the commons, and the State plays the role of a trustee on our behalf. To ensure that decisions are taken in the best interests of citizens and citizens can have a systematic role in the oversight and monitoring of the extractive process, we sign this Charter and resolve to build a vibrant peoples' campaign to implement the Charter in letter and spirit through advocacy and engagement.

I. Context

The principles of transparency form the basis of democracies anywhere in the world. Whereas it is true that demands for transparency are agreed to and accepted in principle, years later it is still a theory in practice. Governments and citizen campaigns across the world are still struggling to make effective and functional transparency a practical reality.

With the roll-out of rights-based frameworks for ensuring provision of minimum services over the past two decades in India, the role of transparency has been recognized as a fundamental prerequisite for social empowerment, both as a means to an end and as an end in itself. A peoples' movement for the demand for transparency in wage payments, led to a vibrant and diverse campaign that led to the passage of the Right to Information (RTI) Act in 2005. The fact that nearly six million citizens of the country including workers, peasants, students, journalists, researchers, bureaucrats, farmers, lawyers and activists use RTI as a means of accessing information and to hold those in power to account, is indicative of the individual and collective demand for transparency that continues to grow.

Natural resources are a common asset of the country, with the State currently playing the role of a trustee of the shared inheritance on behalf of living people and future generations. The present generation is taking decisions on the protection, maintenance and sale of this common asset, the consequences of which will be borne entirely by the future generations. Given that future generations are not yet able to participate in this decision making, it is imperative that the decisions taken in the present are not only fair, but also appear to be fair, as the State needs to be held accountable for its actions.

Transparency in the extractive sector therefore is a significant and critical means for holding the State accountable to legal and administrative standards. The Extractive Industry (EI) in India has begun to play a more high-profile role in the debate on development, climate change, environment, economy, and even electoral politics. For instance, significant numbers of communities live on the land where mineral resources are found, and their extraction involves massive displacement. The resistance and concerns of people facing displacement has given a different texture to the transparency debate in the country. In addition, large "scams" have been unearthed that demonstrate discretion in awarding mining licenses and contracts; such corrupt practices have led to sub-optimum revenue generated for the State when actual production begins. The political economy of extraction in India therefore impacts lives, livelihoods and State revenues.

Citizen's knowledge about payments made by the EI to Government is extremely important. The global movement for a mandatory disclosure standard - which requires some of the largest extractive companies in the world to publish the payments they make to Governments for every project in every country in which they operate - is enabling citizens internationally to use this data to hold both companies and Governments to account. Vedanta Resources for instance which is listed on the London Stock Exchange, is obligated to and has been disclosing royalty payments made to foreign Governments in which it is running extractive operations as per legislation in the European Union (EU). The Data Extractors Programme of the Publish What You Pay is in the midst of analysing payments reported by private companies to the concerned Governments to make sense of the trends and communicate its relevance to citizens.

While mandatory disclosure of payments is a significant step towards an open and accountable extractive sector, citizens need access to other types of information in order to assess whether payments made were just and adequate, keeping in mind the costs that were incurred. This Charter therefore includes, in addition to mandatory disclosure of payments to Governments by extractive companies, a call for greater transparency in relation to procurement processes for licenses and contracts, contract terms and beneficial ownership information; as well as greater transparency about, and participation in, policy and decision making and oversight of natural resource governance principles and laws.

We note here that our call for transparency reflects the official view of the Ministry of Mines, as expressed in the Sustainability Development Framework, which states that *“Even where information is shared the information is often restricted to benign issues rather than dealing with sensitive matters upfront. Most sustainability reports do not touch upon impact mitigation measures or performance on commitments made to their community. It is therefore important to provide structured information on companies’ social, environmental and economic performance and demonstrate a commitment to be transparent.”*

II. India Extractives Transparency Charter and its objectives

Though there are multiple laws, policies and judicial orders that govern reporting and information sharing of the multiple stages of the extractive process in India, there is no minimum standard of information disclosure and transparency by which the extractive industry is bound. Moreover, information is not shared at the lease/project level; there is an absence of a common platform which can serve as a single repository of information; and there is an absence of independent oversight on compliance with transparency norms. It is also important to bear in mind that the given current structures of power, there is inherent inequality between the ability of citizens and companies in the way information is accessed.

There is therefore a need to develop a “India Extractives Transparency Charter” to call for information to be made available in the public domain to foster greater transparency about EI activities and enable citizens to use information to hold duty bearers to account. The objective of the Charter is to:

- Lay down the minimum principles of transparency and information disclosure that should govern the extractive industry
- Identify the nature of information related to each stage of extraction i.e. allocation of leases, approvals and clearances, production, reporting and payments - that should be disclosed in the public domain so that affected communities and citizens can hold the industry accountable
- Attempt to democratize the knowledge related to operations of the sector. Efforts must be made to that a body of knowledge is developed for understanding official records, so that more and more people can partake in holding it accountable.
- Plan the way forward for a campaign to realize such disclosures through advocacy, legal interventions and capacity building

For instance, as of 2016-17 the Government of India itself reported that there are 96,089 illegal mines operating in the country¹ all of which fall entirely outside of a formal reporting mechanism. In such a context, there is a crying need to build a transparency framework that enables citizens and affected communities to hold leaseholders and the State accountable.

In order to develop a Charter that could meet the above objectives, it is imperative that its content emerges from citizens and takes into account their experience with the EI through a process of meaningful consultation.

To this end, multi-stakeholder consultations were organized in Jaipur, Rajasthan and Ranchi, Jharkhand in collaboration with Environics Trust and SR Abhiyan. These consultations saw the participation of up to 130 activists representing nearly 35 civil society organizations working on mineral extraction and NGOs, independent experts, journalists as well as representatives of Government working in Departments of Mines and Department of Information Technology. Field visits were made to active mining sites and affected nearby villages. Interactions with affected communities and grassroot organizations working towards make the mining entities more accountable also took place through the course of this exercise.

¹ Lok Sabha Starred Question 144 answered by the Union Minister of Mines, Government of India on 28.12.2017

III. Minimum Principles of transparency and information disclosure

Based on the consultations that took place under this endeavour and years of experience emanating from the struggle and practice of citizens, campaigns and CSOs in accessing information for holding structures of power to account, the following have emerged as the minimum principles of transparency² that should govern the information disclosure framework for the Indian EI.

1) All information pertaining to extraction must be in the public domain.

All information pertaining to extraction is public information and must be disclosed to the people. This should preclude any attempt that may restrict/exclude a citizen from accessing information or from having to prove their need to do so. Administrative provisions of transparency and record maintenance in all stages of extraction must comply with the standards and requirements of information disclosure as laid down in the Right to Information Act, 2005.

2) Transparency is required at all stages of extraction to facilitate citizens in holding the industry accountable to its norms.

Disclosure must therefore include disclosure and widespread understanding of entitlements, receipts and expenses, norms, terms of contract, standards, decision making processes and justifications for decisions taken, possibilities for appeal, avenues of grievance redress in order to empower citizens.

3) There must be equal and open access of information to all citizens.

Transparency is required to be ensured within a framework so as to enable accountability to citizens. Therefore, transparency is required at the stage of planning and taking decisions so that citizens and affected communities can participate in consultations meaningfully. Transparency is also required at the stage of implementation and reporting, so that citizens and affected communities can maintain constant public vigilance and verify whether what it is being reported is actually true or not.

4) Compliance with legal and constitutional provisions for decentralization and decision making

All norms of mandatory disclosure of information should comply with existing legal provisions of the Forest Rights Act, Panchayats (Extension to Scheduled Areas) Act, 5th and 6th Schedule of the Constitution and the 73rd and 74th Amendment to the Constitution.

² The principles listed build on for instance the “Minimum Principles of Transparency” laid down by the Ministry of Rural Development and reiterated by the office of the Comptroller and Auditor General in its “Auditing Standards of Social Audit”.

Document can be accessed here: <http://www.nrega.nic.in/CEGC/TransparencyandAccountability.pdf>

- 5) *There is a need to specially empower and facilitate certain marginalized groups to access information.***

Disclosure of information must be done through both online and offline modes. All records maintained by the State with respect to allocation, granting of clearances, planning, production and reporting should be generated on the basis of a real time, transaction based 'Management Information System' (MIS) which should be open to all. Such an MIS should be built keeping in mind the interests and requirements of the citizens and beneficiaries such that it enables widespread use and access. The MIS should be real time, transaction based and open to all. Reports generated should be machine readable and free to access. In addition, disclosure of information must also be done through special proformas and formats at the village level through wall paintings, notice boards etc.

- 6) *All decision making should be disclosed in the public domain in the midst of all interested stake holders. This is the best way of ensuring that decisions are not only fair but also appear to be fair.***

To this effect, Section 4(1) (c), RTI Act which mandates the State to "publish all relevant facts while formulating important policies or announcing the decisions which affect public" and Section 4(1)(d), RTI Act which mandates the State to "provide reasons for its administrative and quasi-judicial decisions to affected citizens" should be made applicable to all stages of extraction.

- 7) *Recognising that, despite best efforts, both the modes of providing information and of getting feedback can be corrupted or blocked, multiple modes and routes must be used in order to make it progressively difficult to inhibit the free flow of information to and from the people.***

Multiplicity of modes of disclosure should also include disclosure of information at the national, state, district and village level - both at a cumulative and disaggregated level. This includes the need for leaseholders to publish their payments to governments on a project-by-project basis.

- 8) *Information made available by the State to any existing or potential bidder or leaseholder must be made available to citizens simultaneously. No entity, individual or corporation should be able to have privileged information related to minerals and its distribution.***
- 9) *There must be institutionalized mechanisms such as social audits by independent entities to facilitate citizens in verifying the authenticity of information being disclosed and triangulate data from multiple sources. Findings that emerge from such audits must have legally sanctioned corrective actions. Similarly, there must be institutionalized platforms for dialogue between the State, leaseholders and citizens on a regular basis to flag issues of concern and arrive at mutually agreed upon time bound decisions and resolutions.***
- 10) *Compliance of the extractive industry towards meeting disclosure norms must be overseen in an independent manner. Non-disclosure of information or unauthentic disclosure of information should be penalized***

IV. Information to be disclosed

Nodes of information that should be in the public domain and are aligned to the principles articulated above, were identified for each stage of the extraction process. They are as follows:

1. Exploration and Prospecting:

Given that this marks the beginning of the extractive process in any community, it is imperative that citizens, communities and local interest groups are alert about this stage and gain awareness about the modalities of any potential granting of lease. More often than not, this is a stage of the extractive process that goes largely unnoticed by the general public, which goes in favour of a vested relationship between the State and the potential leaseholder. In terms of this stage, the following information is required to be in the public domain:

- i. Prospective Schemes submitted by bidders
- ii. Contracts awarded for exploration and prospecting
- iii. Terms, conditions and norms under which exploration can be carried out
- iv. A list of all the areas where exploration and prospecting is currently underway

2. Auction and Allocation:

Having adequate and timely information pertaining to this stage of extraction is critical to be aware of the terms of contract arrived at between the State and the leaseholder, and at what cost to the community and environment. It is mostly the case that contracts are drawn between the leaseholder and the State, and clearances for operations are sought after, making it an exercise of redundancy, as it is already a fait accompli. It is therefore demanded that landholdings which are to be auctioned by the State should be disclosed in the public domain, and unless prior consent is established, the landholding should not be leased out. In addition, various kinds of information need to be shared in the public domain to determine whether the auction and allocation process is fair, economical and efficient. In terms of this stage, the following information is required to be in the public domain:

- i. Landholdings that the State intends to auction and proof of consent from existing landowners/residents
- ii. Statement of purpose for the proposed auction underlying intended production, projected revenue, impact on environment, geology and livelihood foreseen
- iii. List of “no go areas” where exploration and mining cannot take place to protect the environment, geology and habitations
- iv. Gazette notifications inviting applications for exploration and auction
- v. All cabinet decisions pertaining to extraction
- vi. List of bidders who have applied for license and their past performance in extraction; and Ongoing and previous litigations against the bidders
- vii. Information pertaining to distribution of minerals and their location in various geographic locations of the country as recorded by the Geological Survey of India
- viii. List of leaseholders who have been granted the license and their details
- ix. True beneficial ownership of the leaseholder

- x. Mining Lease Deed and terms of contract agreed between
- xi. Details of appointment of “Mining Development Cum Operator” for every lease, and the conditions under which this appointment was made
- xii. Leaseholder wise details of specific subsidies, tax breaks and tax incentives given by the State for running of operations

3. Acquisition of Land:

Given that a large number of communities, particularly in rural areas, live on top of landholdings under which minerals are found, acquisition of land becomes an exercise with irreversible consequences on the socio-political economy of habitants and habitations. *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act* passed in 2013 attempted to balance the equation of power between the entity acquiring land, and those being displaced from their land by introducing provisions for ensuring transparency and informed consent prior to acquisition. In terms of this stage, the following information is required to be in the public domain:

- i. Purpose and duration of land acquisition
- ii. List of households affected and their socio-economic status
- iii. List of landholdings affected and their existing category of land utilization
- iv. Notice for land acquisition
- v. Details of the entity conducting the ‘Social Impact Assessment’ and terms of reference of the same
- vi. Schedule of Social Impact Assessment and date of public hearing
- vii. Social Impact Assessment Report
- viii. Details of relief, rehabilitation and compensation offered to each affected individual/household
- ix. Proof of consent for acquisition of the Gram Panchayat (for community land) and individuals (for personal land)
- x. Listing of all landholdings which has been acquired/in the process of being acquired owing to extraction
- xi. Norms used to determine the rate of compensation for land acquired
- xii. Details of employment package given to landholders as compensation for land acquisition

4. Obtaining of Clearances:

Clearances and Consent to Operate by the Environment, Pollution, Forest and Wildlife Authorities lay down the practical conditions that the leaseholder is mandated to follow, subject to which the license to operate has been granted. The leaseholders’ compliance with the conditions laid down in the clearances are supposed monitored by Government representatives. However, given that the details of these conditions are known only to the leaseholder and to the clearance authorities, there is (as has been amply demonstrated in actual experience) incentive for this monitoring to be superficial and compromised. It is essential that conditions of operations are made public knowledge as local communities have most at stake and are best equipped to monitor whether these conditions are being met with. In terms of this stage, the following information is required to be in the public domain:

- i. Details of the entity conducting the ‘Environment Impact Assessment’ and terms of reference of the same
- ii. Schedule of Environment Impact Assessment and date of public hearing
- iii. Environment Impact Assessment Report
- iv. Environment Clearance
- v. Clearances granted by the Pollution Control Board and Consent to Operate
- vi. Clearances granted by the Department of Forests
- vii. Clearances given by various Line Departments
- viii. Summary of the impact of extraction operations on land, water, air, vegetation and livelihoods
- ix. Summary of the activities that the leaseholder is required to take to mitigate the impacts of extraction
- x. Permissible quantities of air, sound and water pollution as per clearance, and actual quantities of air water and sound pollution at the mining site
- xi. Transfer and Posting of Government Officers in Mining Areas

5. *Production:*

Leaseholders are mandated to comply with minimum conditions of safety and labour welfare and operate under production limits set in the lease. Leaseholders are also supposed to make payments in line with the quantum of production. As a result, transparency across all parameters of production at the lease level is essential. In terms of this stage, the following information is required to be in the public domain:

- i. Mining Plan and Mining Lease Deed
- ii. List of workers employed in the mining site
- iii. Environment Compliance Report
- iv. Monthly and Annual Production Reports filed by the leaseholder with IBM and the Department
- v. Inspection reports of the concerned mine as conducted by the Department
- vi. Show cause notices issued by the Department to leaseholders
- vii. Demand for recovery, and recoveries made
- viii. Description of the investment made by the leaseholder in the mine which includes amount spent on machinery, amount spent on land - purchase, compensation and rehabilitation, and salary payable to management and workers.
- ix. Activities contracted to third parties, their terms of reference and rates
- x. Environment data as recorded daily in the mining site and the norms prescribed

6. *Payments:*

By publishing the payments made by the leaseholder/contract holder to Government and to communities affected by extraction related activities, citizens can hold the EI fiscally accountable. Payment disclosure enables citizens to understand what revenues were gained and at what cost. In addition, payment disclosure enables citizens to strengthen their demand for just budgetary

allocations for provision of basic services by the State which has gained monetarily from extraction. For this it is essential that payments are reported project wise instead of aggregate figures reported in the Union/State Budget.

The following are the kinds of payments made by leaseholder to the Government, that are mandated to be disclosed as per the global Mandatory Disclosure standard (legislation to date has been passed in the EU, US, Canada, Norway and Switzerland) (Article 41.5):

- i. *Production entitlements;*
- ii. *taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes*
- iii. *royalties*
- iv. *dividends*
- v. *signature, discovery and production bonuses*
- vi. *licence fees, rental fees, entry fees and other considerations for licences and/or concessions;*
- vii. *payments for infrastructure improvements;*

In addition to the above kinds of payments, payments of leaseholders that are currently not mandated to be disclosed as per the global Mandatory Disclosure standard, but warrant disclosure with reference to the Indian context include the following:

- i. Contribution made to National Mineral Exploration Trust by leaseholder to Government
- ii. Contribution made to District Mineral Foundation
- iii. Cost incurred by leaseholder for closure of mine as per Mine Closure Plan
- iv. Cost incurred by the leaseholder in deploying infrastructure and equipment at the worksite
- v. Penalties paid by leaseholder for violation of norms
- vi. Wage payments made to employees and workers
- vii. Payments made as compensation for acquisition of land and to whom
- viii. Costs incurred by the leaseholder to comply with conditions laid down in the Environment Clearance, Pollution Control Board Clearance and Forest Clearance
- ix. Costs incurred by the leaseholder to workers for compensation
- x. Costs incurred by the leaseholder to maintain safety norms in the mine as laid out in law
- xi. Cost incurred for security/police protection
- xii. Donations made by leaseholder to political parties
- xiii. Expenditure incurred by leaseholder for fulfilling CSR obligations
- xiv. Audited Mining Receipts

7. District Mineral Foundation Trust:

The Mines and Minerals (Development and Regulation) Act, 1957 mandates the setting up of a District Mineral Foundation (DMF) in every mining district with the objective to “work for the interest and benefit of persons and areas affected by mining related operations”, since 2015. The DMF can serve as a potential opportunity for attempting to extend relief, rehabilitation and compensation to those communities directly and indirectly affected by mining. By December 2017, over Rs 14,600 crore had been collected under 337 DMFs in 12 mineral-rich states. Model DMF

Rules and a Model DMF Trust Deed have been notified by the Central Government and has been followed by State Governments notifying the same at the State Level. However, the verdict on just how much of the utilization of DMF has led to a corrective impact on mining affected regions and communities, is divided. The lack of transparency in the allocation, planning, utilization and expenditure of funds collected under DMF has resulted in issues such as poor representation of affected communities and CSOs in the governance architecture of the DMF, non-participatory and non-inclusive processes of planning of utilization of funds and political interference in decision making all of which are contributing to the systemic inadequacies witnessed across the board in the implementation of DMF as of today. Transparency as a result can play an extremely important role in ensuring the judicious use of DMF funds to those who need it the most. In terms of this stage, the following information is required to be in the public domain:

- i. Contribution to DMFT by the leaseholder
- ii. List of directly and indirectly affected villages
- iii. List of directly and indirectly affected individuals/communities
- iv. Baseline parameters of:
 - Air pollution
 - Water pollution
 - Workers affected by silicosis and other occupational diseases on account of mining
 - Budgetary allocations for essential services – health, education, water supply, social security
- v. Proposals received by the Governing Council of the Trust for utilization of funds
- vi. Norms on the basis of which Governing Council accepts or rejects proposals received
- vii. Composition of Governing Council and minutes of meetings
- viii. List of approved and rejected proposals
- ix. Technical and Financial Estimates; Financial and Administrative Sanctions; Work Orders for approved projects
- x. Utilization Certificates for work completed
- xi. List of individual and collective beneficiaries
- xii. Endline parameters of:
 - Air pollution
 - Water pollution
 - Workers affected by silicosis and other occupational diseases on account of mining
 - Budgetary allocations for essential services – health, education, water supply, social security

8. *Mine Closure:*

Leaseholders are bound to return surface land to the original landholders in the conditions under which they received them. As a result, in terms of this stage, the following information is required to be in the public domain:

- i. Progressive Mine Closure Plan

9. V. Suggested next steps

It is necessary for those activists and CSOs working on making extraction more accountable to citizens through greater transparency, and those working on strengthening transparency and accountability in public service delivery, to come together to make this Charter's demand a reality. This can enable both kinds of organizations to complement each other's strengths and gains and therefore build an effective, credible and practical transparency framework for the extractive industry that uses existing spaces and mechanisms and ensures their better implementation.

The information identified above should not remain a mere wish list of information that citizens and collectives hope for disclosure. Some of the information articulated is already mandated to be shared in the public domain, whereas for some information no such mandate exists. As a campaign there is a need to engage with Government at some stages to demonstrate the ways in which this information must be disclosed. In other cases, there will be a need to engage with statutory authorities and media for petitioning the Government in making the information public.

The following are some of the activities that a campaign demanding transparency in the EI would include:

- i. Submit complaints to the State & Central Information Commission under Section 18, RTI Act to order the concerned Public Authority to proactively make available information identified in the Charter in the public domain as it is in the public interest.
- ii. Write to Government and Members of Parliament with recommendations and demands to amend the Mines Minerals and Development Regulation Act, 1957 for incorporating a provision for "Prior Consent before Auction". The 'Pre-Legislative Policy' notified by the Ministry of Law in 2013 is a legal basis for the same.
- iii. Advocate for the strengthening of The Whistle Blowers Protection Act, 2011 to make it effective and implementable specifically from the point of those exposing corruption in the EI. Citizens should be rewarded as per provisions in other countries, thus providing them incentives.
- iv. Form a group to focus on "Payments to Governments" disclosures, in order to agree which payments to demand, and carry out a power mapping stakeholder analysis to make mandatory payments disclosure a reality.
- v. Advocate for the introduction of audit of entities involved in extraction within the scope of audits take up by the Comptroller and Auditor General of India. Further advocate for the conduct of social audits of projects as per the Auditing Standards of Social Audit as developed by the C&AG and demonstrate a pilot with a willing Government at an appropriate level.

- vi. Advocate for India to be a member of the Extractive Industry Transparency Initiative and the Open Government Partnership to commit to and comply with international standards of disclosure and transparency
- vii. Developing a model web disclosure portal in order to demonstrate how a single portal can be developed as a platform for hosting information related to all stages of mining. Subsequent to this, it can be advocated for emulation at the Central and State level
- viii. Conduct workshops with activists, citizens and campaigns to access information and mine data currently being disclosed and use it effectively in advocacy efforts
- ix. Develop templates for disclosure of information required at all levels that can communicate the nodes of information in a de-mystified manner
- x. Work with a State Government/District Collector to demonstrate model DMFT disclosures which can then be advocated for emulation