A new framework for sustainable mining

By Mukul Sharma

As the demand for minerals grows, the huge revenues generated from it are all too often fuelling conflicts and human rights violations, increasing poverty and undermining sustainable development. The new legislation the government is introducing must ensure transparency in allocation of mining concessions, and ensure participation of, and consultation with, communities affected by mining projects.

After introducing the new National Mineral Policy 2008, the government is planning to repeal the prevailing Mines and Minerals (Development and Regulation) Act 1957 and introduce new legislation, most likely in the coming session of Parliament. The ministry of mines is holding consultations with other central ministries, state governments and other stakeholders, which are mainly corporate bodies.

The new draft of the Mines and Minerals (Development and Regulation) Act (MMDR) talks of investor-friendly regimes, private sector participation, generation of additional revenues, grant of concessions, power to state governments, creation of a mineral fund, curbs on illegal mining and protection of host population. However, at a time when the mining sector in the country is characterised by an abundance of controversies, corruption, abuse of power, illegality and violations, the government should review the past practices in resource extraction projects, and identify criteria for future decision-making, guided by a human rights framework. To effectively mitigate economic, social and environmental impacts, the collective participation of all stakeholders, including scientists, banks and public interest groups, as well as inhabitants of the mining sites, is required, to assess past experiences and create new regulatory frameworks.

Mining and extractives: Global and national trends

Demand for access to the world's limited natural resources is growing, as new economies seek raw materials to fuel their growth. As more actors try to get a slice of the pie, environment and peoples' rights are increasingly vulnerable. The extractive and energy sectors (oil, gas, mining, hydro-electric power, biofuels/agrofuels) are
widely associated with serious violations, including forced evictions, violations of the rights to adequate food, housing, water, sanitation and health.

These sectors are also associated with sexual violence, discrimination, harassment, denial of peaceful assembly and violations of the right to life, including killings and disappearances, as a direct result of the manner in which security operations (whether public or private) associated with the industry are carried out.

The communities most frequently affected in this way are poor, vulnerable or marginalised groups, including indigenous people. There are a number of reasons why the energy and extractive sectors are associated with wide-ranging violations. The nature of extractive and energy industries is invasive, and the associated processes and waste materials are polluting (affecting water, soil and health, if not well regulated and monitored). These sectors also involve commodities of considerable value that are under the control of the state but that are exploited by private actors through state-investor contracts.

The majority of commodities are found in remote, largely poor areas, where systems of accountability are often weak, offering considerable opportunities for abuse of public office for private gain and corruption. Security forces, whether private or public, are directly involved in extractive and energy projects, in a manner not seen in most other industries. Companies in these sectors often enjoy particularly close ties with governments, either because of links to national energy security policies, or direct state ownership, or through joint ventures and other frameworks like public-private partnerships. There has, overall, been a lack of appropriate and effective regulation and legislation at the national and state levels in these sectors. The global demand for these commodities, some of which are relatively scarce, and the increasing demand from emerging economies such as China, has also led to political complacency when it comes to effectively regulating the extractive and energy sectors. There is also a lack of government capacity and understanding in various cases.

Changes in production trends

Mining is a fast expanding sector in this country. The total value of mineral production (excluding atomic minerals) during 2008-09 is estimated at Rs 115980.53 crore. Though mineral production is reported from 23 states and union territories, the bulk of value of mineral production is confined to a few states (including offshore areas) such as Orissa, Chhattisgarh, Jharkhand, Madhya Pradesh, Andhra Pradesh, Gujarat, Karnataka and Maharashtra.

During 2007-08, the public sector continued to play a dominant role in mineral production, accounting for 67% or Rs 72,863 crore in the total value. Small mines,
which were mostly in the private sector, continued to be operated manually either as proprietary or partnership ventures. The minerals which were wholly mined/recovered by the public/joint sector in 2007-08 were copper ore and concentrate diamond, dunite, fluorite (graded) and concentrate phosphorite/rock phosphate, rock salt, sand (others), selenite and sulphur. By and large, almost the entire production of lignite, gold (primary and secondary of indigenous origin) and gypsum was from the public sector. In 2007-08, the public sector accounted for a sizeable 92% production of coal, 85% of petroleum (crude), 76% of natural gas (utilised), 76% of tin concentrate, 97% of barytes, 75% of kyanite, 71% of sillimanite and 68% of magnesite.

At least three developments have taken place in the mining sector after liberalisation measures were initiated in 1991. First, the National Mineral Policy 1993 and 2008, and subsequent legislative changes removed the restrictions on foreign equity holding in the mining sector, enabling any company registered in India, irrespective of foreign equity holding, to apply for mining concessions. The role of the State was hence relegated only to that of a facilitator and regulator. The private sector became the main source of investment in exploration and production.

Second, states and their governments increasingly became the major sites of decision-making. Their exclusive powers in lease, renewal, termination, expansion and amalgamation were vastly increased. Even the area restrictions of mining lease/prospecting licence/reconnaissance permits have been substantially liberalised by making such restrictions applicable state-wise instead of to the country as a whole.

Third, though there is a reference to 'sustainable development framework' in the policy, it remains limited to mining plans, scientific methods and information technology on the one hand and improvement of local infrastructure, maintenance of community assets and services and human resources development on the other. Vital issues of environment, habitat of local communities, rights to natural habitat, community rights and transparency have not been addressed.

The production trends have visibly changed in the last couple of years. For example, the value of metallic minerals in 2007-08 at Rs 24,038 crore increased by about 31% over the previous year. Among the principal metallic minerals, iron ore contributed Rs 18,495 crore or 76.9%. About 32% of the total iron ore production was shared by public sector companies like SAIL (including IISCO), NMDC, etc. The share of the private sector became as high as 68%. Mining of chromite is now mostly dominated by private sector producers. Tata Steel (formerly TISCO), IMFAL, Balasore Alloys Ltd, Jindal Strips Private Ltd and FACOR have their own plants, and jointly accounted for 63% of total production during 2007-08. The production of manganese ore is also dominated by companies in the private sector, mainly MOIL, Tata Steel, SMIOR and Mangilal.
Rungta. Along with this, illegal mining is widespread all over the country.

**Illegal mining in top 10 states**

<table>
<thead>
<tr>
<th>States</th>
<th>No. of Cases (2006-June’09)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>35,411</td>
</tr>
<tr>
<td>Gujarat</td>
<td>23,240</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>17,900</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>16,068</td>
</tr>
<tr>
<td>Karnataka</td>
<td>11,896</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>7,932</td>
</tr>
<tr>
<td>Kerala</td>
<td>7,685</td>
</tr>
<tr>
<td>Chhatisgarh</td>
<td>6,923</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>5,074</td>
</tr>
<tr>
<td>Haryana</td>
<td>3,141</td>
</tr>
</tbody>
</table>

*Source: Ministry of Mines, Government of India, data released on December 7, 2009. The Indian Bureau of Mines has identified 17 states where illegal mining is going on. The worst affected are Bellary-Hospet in Karnataka, Obullapuram, Kurnool and Cuddapah in Andhra Pradesh, Keonjhar and Barbil in Orissa, and Jod and West Singhbhum in Jharkhand.*

Instead of strengthening and re-energising vital institutions like the Geological Survey of India (GSI), the Indian Bureau of Mines, and the Institute of Miners Health, all of whom have contributed immensely in the past, these liberal reforms have actually led to their terminal decline or they have been made into supporting agencies of the private sector. For example, under the National Mineral Policy 2008, the Geological Survey of India remains the principal agency in the country for geological mapping and regional mineral resources assessment. However, GSI programmes are prioritised and chalked out after taking into account the exploration work undertaken by the private sector, for which the existing arrangement of programme formulation through the Central Geological Programming Board (CGPB) has been revamped. A high-powered committee was also constituted to suggest the revamping of GSI, and gave its report in March 2009.

**New Mineral Policy and Draft Act**

The basic features of the New Mineral Policy 2008 relate to the role of the State,
changes in the regulatory environment to attract private investment, inventory of resources and reserves, and regulation of mining and revenue. The policy states that 'the role of the State will primarily be facilitatory and regulatory. Private sector will be the main source of investment in reconnaissance exploration'. The new NMP states that 'the regulatory environment will be improved to make it more conducive to investment and technology flows into prospecting and mining.' It says that the security of tenure will be assured and new instruments will be introduced and 'terms and conditions of existing instruments will be liberalised where needed'. Prioritisation of development of a proper inventory of resources and reserves, mining tenement registry and a mineral atlas has been laid down in the new policy.

The new policy is also based on the factum that India is a federal structure with a single economic space. It states that the revenues from minerals will be rationalised to ensure that the mineral-bearing states get a fair share of the value of the minerals extracted from the state concerned. New sources of revenue will be developed for the states. It is also stated that to give effect to the directions enunciated in the National Mineral Policy 2008, legislation proposals will be formulated and finalised in consultation with state governments before being introduced in Parliament.

The final draft of the new Mines and Minerals Development and Regulation Act proposes the biggest change in the role of the government. The Act proposes that the government and its agencies will no longer control the sector, but will regulate it through independent administrative and technical bodies and state tribunals. As such, the Central government will retain the power of prior approval only for coal and atomic minerals, deleting all other minerals from its purview. States will now be fully responsible for managing the new concessions even if the Centre has retained some specific powers to intervene in cases where there is contravention of the law. States will get new powers for notifying the new areas and the seamless transfer of leases along with security of tenure for investors.

According to the draft act, a National Mineral Fund, collected from a cess of up to 10% of the royalty to be levied on major minerals, will help to meet the objectives of sustainable development both on the technology front and people-related issues. Funds coming to the Centre will be used to promote scientific mining activities, including mine closures, and for beefing up the Indian Bureau of Mines to strengthen its enforcement role, while the funds going to the states will be used to improve local infrastructure and equip the people with job skills through local self-government bodies such as panchayats or gram sabhas.

A new framework for new legislation
In this scenario, the new legislation requires a new framework for sustainable mining. It should also be made clear what effective regulation entails since measures like suspension, cancellation and punishment have proved ineffective. The sheer absence of, or failure to use, appropriate prevention mechanisms and tools is also a reality. The state-corporate relationship is also a factor responsible for the poor regulation within the mining sector. For example, in many states, state-company joint ventures often result in the state being both shareholder and regulator, presenting a clear conflict of interest. In others, states are both promoters and regulators, leaving scope for massive corruption.

What is important for a sustainable framework is:

- Greater transparency at the national and state levels, the basis on which mining concessions are allocated, and, critically, what is done with the revenues.
- There should be checks and balances on the role of state-linked investments and financial support mechanisms and how they can be harnessed as a means of preventing or sanctioning companies in the mining sector.
- Participation of, and consultation with, communities affected by mining projects is vital to prevent human rights violations and for realising rights. The task is to engage with, and challenge, companies and industry bodies, in order to deepen understanding and to promote uptake of relevant robust policies and due diligence frameworks.

No doubt, the demand for minerals and extractives will grow, particularly from within the country and from economies such as China. Energy extraction and the huge revenues generated from it are all too often fuelling conflicts and human rights violations, increasing poverty and undermining sustainable development. Recently, the UN and others have highlighted serious human rights concerns associated with mining. The World Bank has responded to the mining problems by initiating an Extractive Industries Review, though the independence and inclusiveness of this review are questionable. There are also reasons to suggest the establishment of a Commission on Mining, Gas and Oil Extraction.

(Mukul Sharma is an independent writer and journalist. He has worked in NavBharat Times, Heinrich Boell Foundation, ActionAid International and Amnesty International. His book, Human Rights in a Globalised World: An Indian Diary, published by Sage, is due in April 2010)

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