



HUMAN
RIGHTS
WATCH

Out of Control

Mining, Regulatory Failure, and Human Rights in India



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Summary

India's mining industry is an increasingly important part of the economy, employing hundreds of thousands of people and contributing to broader economic growth. But mining can be extraordinarily harmful and destructive if not properly regulated—as underscored by a long list of abuses and disasters around the world. And because of a dangerous mix of bad policies, weak institutions, and corruption, government oversight and regulation of India's mining industry is largely ineffectual. The result is chaos.

The scale of lawlessness that prevails in India's mining sector is hard to overstate. Even government officials acknowledge that the mining sector faces a myriad of problems, including widespread “illegal mining.” Generally speaking, that refers to cases where operators harvest resources they have no legal right to exploit. Official statistics indicate that there were more than 82,000 instances of illegal mining in 2010 alone—an annual rate of 30 criminal acts for every legitimate mining operation in the country. But this report argues that an even bigger problem is the failure of key regulatory mechanisms to ensure that even legal mine operators comply with the law and respect human rights.

Global standards of industry good practice have evolved to recognize that unless mine operators exercise caution and vigilance, direct harmful impacts on surrounding communities are likely. In India and around the world, experience has shown that without effective government regulation, not all companies will behave responsibly. Even companies that make serious efforts to do so often fall short without proper government oversight.

This report is not a targeted investigation of particular companies or headline-grabbing “megaprojects.” Rather, it describes how and why key Indian public institutions have broadly failed to oversee and regulate mining firms and links some of these regulatory failures to human rights problems affecting mining communities. The report uses in-depth case studies of iron mining in Goa and Karnataka states to illustrate broader patterns of failed regulation, alleged corruption and community harm. It shows how even mines operating with the approval of government regulators are able to violate the law with complete impunity. Finally, it offers practical, straightforward recommendations on how the Indian government could begin to address these problems.

International law obliges India's government to protect the human rights of its citizens from abuses by mining firms and other companies. India has laws on the books that are designed to do just that, but some are so poorly designed that they seem set up to fail. Others have been largely neutralized by shoddy implementation and enforcement or by corruption involving elected officials or civil servants. The result is that key government watchdogs stand by as spectators while out-of-control mining operations threaten the health, livelihoods and environments of entire communities. In some cases public institutions have also been cheated out of vast revenues that could have been put towards bolstering governments' inadequate provision of health, education, and other basic services.

In iron mining areas of Goa and Karnataka states visited by Human Rights Watch, residents alleged that reckless mine operators had destroyed or contaminated water sources they depend on for drinking water and irrigation. In some cases, miners have illegally heaped waste rock and other mine waste near the banks of streams and rivers, leaving it to be washed into local water supplies or agricultural fields during the monsoon rains. This can render water sources unsafe and decrease agricultural fertility. Rather than seek to mitigate any damage, some mine operators puncture the local water table and then simply discard the vast torrents of water that escape—permanently destroying a resource that whole communities rely on.

In some communities visited by Human Rights Watch, farmers complained that endless streams of overloaded ore trucks passing along narrow village roads had left their crops coated in thick layers of metallic dust, destroying them and threatening economic ruin. In some areas, Human Rights Watch witnessed lines of heavily-laden mining trucks several kilometers long grinding along narrow, broken roads and leaving vast clouds of dust in their wake. Some residents pointed to the same metallic dust coating their homes and even local schoolhouses, and worried about the potential for serious respiratory ailments and other health impacts that scientific studies have associated with exposure to mine-related pollution. In some of these communities, people have suffered intimidation or violence for speaking out about these problems. All of these allegations echo common complaints about mining operations across many parts of India.

Some of India's mining woes have their roots in patterns of corruption or other criminality. For instance, this report describes how mining magnate Janardhana Reddy allegedly used his ministerial position in the state government of Karnataka to extort huge quantities of

iron ore from other mine operators—using government regulators as part of his scheme. The evidence shows that state government agencies in Karnataka alone may have been cheated out of billions of rupees (hundreds of millions of dollars) in revenue—depriving the state of funds that could have been put towards the improvement of the state’s dismal health care and education systems.

As lurid as some of India’s mining-related corruption scandals have been, Human Rights Watch believes that the more widespread problem is government indifference. Even in Karnataka, ineffectual regulation played a key role in allowing criminality to pervade the state’s mining sector. And many of the alleged human rights abuses described in this report result not from patterns of corruption or criminality but from the government’s more mundane failure to effectively monitor, let alone police, the human rights impacts of mining operations. Many public officials openly admit that they have no idea how prevalent or how serious the problems are. In effect, India’s government often leaves companies to regulate themselves—a formula that has consistently proven disastrous in India and around the world.

In some cases the harm communities have suffered because of nearby mining operations is well-documented by scientific studies or research by Indian activists. But in many others, the data simply does not exist to confirm or refute alleged harms or their links to mining operations. Some community activists may wrongly attribute health or environmental problems to nearby mining operations. Others may fail to perceive a link that does in fact exist. All of this uncertainty is part of the problem—in far too many cases, government regulators fail to determine whether companies are behaving legally or responsibly, or whether they are causing harm to their neighbors.

India’s tiny Goa state encapsulates all of these problems. State government regulators there admit they have no real idea whether individual mining firms are complying with the law, and the evidence shows that many are not. Activists and even the current chief minister allege widespread illegalities and, surprisingly, local mining industry officials do not deny such allegations. One company executive interviewed by Human Rights Watch spoke of “chaos and corruption” and a “total lack of governance” in the state’s mining sector. A spokesperson for the Goan mining industry estimated that nearly half of all mining in the state violates various laws and regulations.

The problems in Goa reflect nationwide failures of governance in the mining sector. From initial approval to ongoing oversight, the mechanisms in place to regulate and oversee India's mining industry simply do not work.

The only mechanism directly tasked with weighing a proposed new mine's potential impacts on the human rights and livelihoods of affected communities is the environmental clearance process, usually undertaken by the central government's Ministry of Environment and Forests (MOEF). Despite its name, the environmental clearance regime is explicitly empowered to consider impacts on local communities and their rights, not just environmental issues. But the process is hopelessly dysfunctional.

Often, clearances are granted or denied almost entirely on the strength of Environmental Impact Assessment (EIA) reports commissioned and paid for by the very companies seeking permission to mine. By design, the reports give short shrift to the issue of human rights and other community impacts, focusing on purely environmental concerns. Many do not even explicitly mention the responsibilities of mining firms to respect the human rights of affected communities. Some companies treat mandatory public consultations around the reports as an irritating bureaucratic hurdle rather than an important safeguard for affected communities.

Worse still, there is considerable evidence that that these crucial EIA reports are often extremely inaccurate, are deliberately falsified, or both. In some cases, reports incorrectly state that issues of potential regulatory concern—the presence of rivers or springs, for instance—simply do not exist. Sometimes important conclusions are simply cut and pasted from one report to the next by authors who appear to assume that regulators will not bother to read what they have written. In the most notorious example of this phenomenon, a mine in Maharashtra state received clearance to proceed even though its EIA report contained large amounts of data taken verbatim from a similar report prepared for a bauxite mine in Russia. Officials' failure to detect such blatant falsification is emblematic of the broader absence of meaningful government oversight.

Unsurprisingly, under this framework, mining projects are almost never denied environmental clearance. And once a mine is operational it experiences comparably lax government oversight of its actual compliance with the terms of those clearances. A few dozen officials across India are responsible for monitoring thousands of mines and other

projects nationwide and are rarely able to make site visits to any of them. Instead, they rely almost entirely on compliance reports provided by mining companies themselves.

India's Ministry of Environment and Forests is singled out for detailed criticism in this report. This is not because its failures are greater than those of other government institutions with responsibilities towards the mining sector, but because the success of its efforts is essential to any hope of minimizing mining sector human rights problems. Human Rights Watch believes that fixing the environmental clearance regime and other processes linked to the ministry are among the most promising immediate and concrete steps the central government could take to safeguard the human rights of mining-affected communities.

Increasingly, the chaos in India's mining sector has deep political and economic implications. In 2011, scandals rooted in public revelations about corruption and abuse in the mining sector overtook the state governments in both Karnataka and Goa. Karnataka's chief minister was forced to resign and much of the state's mining industry was effectively shut down by a belated government crackdown, at vast economic cost. In March 2012, Goa's state government was voted out of office partly due to rising public anger about scandals plaguing that state's mining industry.

India's central government should not succumb to the temptation to treat the problems in Goa and Karnataka as isolated issues. Both states' mining debacles reflect nationwide problems that need to be treated as such. Underscoring that point, in early 2012 potentially explosive investigations into the mining industry were underway in Jharkhand and Orissa states.

Admittedly, the chaos in India's mining industry has some of its roots in much broader patterns of corruption and poor governance that are not easily solved. Nonetheless, there are pragmatic steps the Indian government could take to repair some of the most glaring regulatory failures. Problems would still remain absent broader improvements in governance, but the reforms recommended by this report would give determined regulators more appropriate tools to do their jobs and make it harder for abusive companies to escape scrutiny. The measures proposed in this report would also have impacts far beyond the mining industry, since some of the same broken institutions also regulate and oversee other potentially harmful industries. At this writing, India's parliament was considering a proposed new mining law that is in some respects remarkably progressive—but it does not seek to address the core problems described in this report.

The government should dramatically improve the process for considering proposed new mining projects, to ensure that it comprehensively and credibly considers possible human rights and other community impacts. This means mandating a greater and more explicit focus on human rights in the environmental clearance process. It also means having adequate numbers of regulators who can take far more time and care in evaluating new proposals, including through site visits wherever appropriate. The government should also end the practice of requiring companies to select and pay the consultants who produce their Environmental Impact Assessment reports—this creates a glaring conflict of interest that recent government efforts at improved quality control do not adequately address.

It is also important for the government to assess how much damage has already been done under the current, woefully inadequate regime. Human Rights Watch recommends a comprehensive study of the Environmental Impact Assessment reports underpinning the clearances for all existing mines in the country, to determine how many incorporate blatantly erroneous or fraudulent data. In late 2011 Goa's state government helped sponsor an independent effort to do just this; if successful it could serve as a model for other states and for the central government. Wherever deliberate falsification of EIA data is discovered, those responsible should be appropriately prosecuted. In all cases where materially important errors are discovered, mining operations should be halted pending the completion of a new assessment.

Human Rights Watch also calls on the central government to improve the system for monitoring the human rights and environmental impacts of existing mines. In particular, the capacity and mandate of the Ministry of Environment and Forests to actively monitor compliance with the terms of the environmental clearances underpinning mines and other projects needs to be dramatically improved.

At the state level, governments in mining areas should work to bolster the mandates and capacity of key institutions, including the pollution control boards and mines departments, that have often failed to contribute to effective oversight of the mining sector. They should also work to establish strong and effective *Lokayukta* (anti-corruption ombudsman) institutions, or bolster the institutions they already possess. Where any or all of these institutions require additional financial resources, governments should consider earmarking a portion of revenues earned from the mining industry for that purpose.

Key Recommendations

The key recommendations to the Indian government are explained in more detail at the end of this report, in the section titled “Reining in the Abuse: Practical Steps Forward for India’s Government.”

To the Government of India

- Ensure that regulatory officials focus attention on potential human rights and other community impacts of proposed new mines, either through the existing Environmental Impact Assessment process or through a new assessment process focused exclusively on human rights impacts.
- End the practice of requiring mining firms to select and pay the consultants who carry out their Environmental Impact Assessment reports. Assessments could be funded through a general fund paid for by mining firms but under government control.
- Empower the Expert Appraisal Committees to carry out a more thorough review of the potential negative impacts of proposed new mining projects, including through frequent site visits. This will require substantial additional staffing and other resources as well as a slower rate of project consideration and approval.
- Draft rules requiring a more thorough and detailed consideration of the results of any mandatory public consultations required by the approvals process for a new project.
- Impose robust sanctions, including criminal prosecution where appropriate, on mining companies and consultants whose Environmental Impact Assessment reports contain materially important data that is falsified or negligently incorrect.
- Initiate an independent review of the Environmental Impact Assessment reports underpinning all existing mines, with a view to determining how many of them are based on materially false or misleading data. Temporarily halt mining operations whose Environmental Impact Assessment reports contain materially important false data, require their operators to reapply for clearance, and appropriately sanction those responsible.
- Empower and instruct the Ministry of Environment and Forests to carry out more thorough and proactive monitoring and oversight of existing mining projects,

- including by providing the staff and other resources necessary to fulfill this role effectively.
- Explore ways to ensure that institutions accredited to carry out Environmental Impact Assessments are also well trained in human rights principles and in global best practices for human rights impact assessments in the mining sector.

To India's State Governments

- Consider the creation of new *Lokayukta* institutions, or bolster those offices already in existence, ensuring that they benefit from adequate levels of independence, resources and human capacity along the lines of Karnataka State's institutional model.
- Strengthen key state-level regulatory institutions including mines ministries and pollution control boards to ensure that they are able to contribute effectively to robust oversight of mining operations. To the extent resources or capacity-building is required, consider earmarking some state government revenues derived from mining activities for this purpose.

To the United Nations Special Rapporteurs on the Right to Health and on the Right to Safe Drinking Water and Sanitation

- Request to visit India to further evaluate the impact of inadequate government regulation of the mining sector on the rights of Indians to health and to water.

Methodology

This report is based primarily on six weeks of field research in India that was carried out during two separate trips, one in May-June 2011 and the other in September 2011. Human Rights Watch interviewed more than 80 people in New Delhi, Karnataka and Goa. In Karnataka state, we carried out interviews in Bangalore, Hospet, Bellary, and Sandur. In Goa state, we conducted interviews in several towns and villages, including Panjim, Margao, Mapusa, Raia, Quepem, Rivona, Caurem, and other mining-affected communities. We spoke with state and central government officials including regulatory officials, anti-corruption investigators, police, state legislators, and political leaders. We also interviewed independent analysts, mining company officials, human rights and anti-mining activists, and members of mining-affected communities—including people who alleged suffering human rights abuse.

In addition to our field research, Human Rights Watch conducted extensive review of relevant documentation, including Environmental Impact Assessment reports, the minutes of Expert Appraisal Committee meetings, NGO reports, court rulings, scientific studies of mining's community impacts in India, and the detailed reporting on mining-related corruption produced by anti-corruption authorities in Karnataka state.

The names and other identifying details of some interviewees have been withheld to prevent possible retaliation against them.

Human Rights Watch has carried out research into the human rights impacts of mining operations around the world. We elected to focus on India's mining industry because it is one of the world's largest mineral producers and a country where, at least on paper, public officials have given considerable thought to using regulation to mitigate the harmful impacts of mining. Goa and Karnataka provided useful case studies of the broader problems affecting India's mining sector because they both juxtapose astonishingly serious regulatory failures with a relatively high level of capacity on the part of state-level governments. Human Rights Watch also believes that the problems in India's mining sector—as well as the recommendations this report offers to address them—are of relevance for other countries struggling to ensure that mining activity takes place responsibly and without harm to affected communities.

I. Background: “Illegal Mining” in India

Mining, Megaprojects and Controversy

Fueled by rising international demand, India’s mining sector is booming. The country produced some Rs 200,000 crore (US\$44 billion) worth of minerals during 2010-2011, and total production has more than doubled between 1993 and 2011.¹ The Indian government has fixed its sights on a 9 percent rate of economic growth and many planners view continued expansion of the mining sector as essential to any hopes of hitting that target.² On a more human scale, India’s mines provide direct employment to several hundred thousand people and indirectly help sustain the livelihoods of many thousands more.³

Mining can be a uniquely destructive and dangerous industry if not managed and regulated responsibly.⁴ Critics have long alleged that the push for industrialization and growth “creates pressure [on regulators] to look the other way” instead of demanding that mines and other industrial projects adhere to the law.⁵

Large-scale industrial and infrastructure “megaprojects” have a long history of controversy in India. Many have been criticized for trampling on the rights of local communities whose land they require, and some have caused extraordinary devastation. In India’s most

¹ Ministry of Mines, *Annual Report 2010-2011, Mineral and Metal Scenario*, (Delhi: Ministry of Mines, 2011), <http://mines.gov.in/annual201011/chap3.pdf> (accessed May 29, 2012). India extracts a range of minerals including important quantities of iron, zinc, manganese, bauxite, copper, gold and chromite. Ministry of Mines, “Annual Report 2010-2011, Annexure 3.1: Production of Selected Minerals 2006-07 to 2010-11,” March 29, 2011, <http://mines.gov.in/annual201011/an3.1.pdf> (accessed May 29, 2012), pp. 144-145.

² Human Rights Watch interviews with industry officials and independent analysts, Delhi and Bangalore, May 2011. See also Ajoy K. Das, “India sets target of \$210bn addition to GDP from mining, by 2025,” *Mining Weekly*, December 12, 2011, <http://www.miningweekly.com/article/india-sets-target-of-210bn-addition-to-gdp-from-mining-by-2025-2011-12-12> (accessed January 23, 2012). India is not on pace meet this target; its annual growth rate dropped below 7 percent in the fourth quarter of 2011. See James Lamont, “Indian GDP growth drops below 7%,” *Financial Times*, November 30, 2011, <http://www.ft.com/intl/cms/s/0/d76f6f38-1b18-11e1-8b11-00144feabdco.html#axzz1gM8GF8F8> (accessed May 30, 2012). Mining accounts for roughly 1.2% of India’s GDP.

³ This report does not focus on small-scale, artisanal mining. It is estimated that India’s formal mining sector employed some 700,000 people in 1999. Owing partly to the growth of mechanized mining, that number has gradually declined even as production has increased. Tata Energy Research Institute (TERI), “Overview of Mining and Mineral Industry in India,” December, 2001, <http://pubs.iied.org/pdfs/Goo615.pdf> (accessed May 30, 2012) pp. 26-28.

⁴ See below, Mining and Human Rights: Government’s Duty to Regulate. See also, for example, Paul R. Epstein et. al, “Full cost accounting for the life cycle of coal,” *Annals of the New York Academy of Sciences*, vol. 1219, (2011), pp. 73-98.

⁵ Human Rights Watch interview with activist Kanchi Kohli, Delhi, May 13, 2011.

notorious industrial disaster, several thousand people were killed by a cloud of toxic fumes that escaped from a Union Carbide pesticide plant in the city of Bhopal in 1984.⁶

As sensational as India's "megaprojects" often are in terms of potential impacts and sheer scale, the larger story with India's mining industry lies in far more numerous smaller projects. India has some 2,600 active mines and for every mining megaproject that attracts widespread civil society criticism and press attention, there are hundreds of smaller mines that do not attract much scrutiny outside of the local populations they impact directly. Their cumulative impact is enormous but, as this report shows, the government has completely failed to ensure that those mines are run responsibly and to prevent them from harming the communities around them.

Patterns of Illegal Activity in India's Mining Sector

India's mining sector is rife with illegality, some of it viscerally shocking and some of it relatively arcane. The most brazen criminality involves the extraction of minerals from land that a mine operator has no legal right to work on, commonly referred to as "illegal mining." In some cases this takes place hidden deep in isolated forests, or centers around rapid fly-by-night operations with only a handful of machines and laborers working in a very small area.⁷ Because even the smallest mines and quarries are difficult things to hide, operators of such mines often develop corrupt relationships with public officials who are happy to look the other way.

Measured by quantity extracted, most of this "illegal mining" targets what Indian law refers to as "minor minerals" like sand and gravel used for construction and other purposes.⁸ With rising global prices, however, other minerals including iron, manganese and coal are increasingly being looted in the same way.

⁶ The actual death toll from the Bhopal disaster is hotly disputed. See "US Exec. Arrest Sought in Bhopal Disaster," Associated Press, August 1, 2009, <http://www.cbsnews.com/stories/2009/07/31/world/main5201155.shtml> (accessed May 30, 2012); "Rallies Held over Bhopal Disaster," *BBC News Online*, December 3, 2004, http://news.bbc.co.uk/2/hi/south_asia/4064527.stm (accessed January 23, 2012). As many as 500,000 more victims suffered or continue to suffer long-term health problems. "Company Defends Chief in Bhopal Disaster," Associated Press, August 2, 2009, <http://www.nytimes.com/2009/08/03/business/global/03bhopal.html> (accessed May 30, 2012).

⁷ For a detailed description of common patterns of illegal mining activity in India, see Karnataka Lokayukta, "Report on the Reference Made by the Government of Karnataka Under Section 7(2-A) of the Karnataka Lokayukta Act, 1984," No. Compt/LOK/BCD/89/2007/ARE-2, December 18, 2008.

⁸ Email communication from Vijay Kumar, then-Indian Secretary of Mines, to Human Rights Watch, October 2, 2011.

What is “illegal mining?”

The term “illegal mining” is a regular feature of public discourse in India, but there is considerable disagreement about what the term actually means. Many industry critics—and some government officials—say that it means any illegal action by a mining company in the course of its operations.⁹ This leads some activists to assert that almost *all* mining in India is “illegal,” on the theory that few mines manage to comply with every legal requirement all of the time.

Mining companies complain that this wrongly creates the impression of a rogue industry busily plundering India’s natural resources in total defiance of the law, when in fact some of the industry’s problems are more subtle and complex.¹⁰ Mining firms, along with India’s Ministry of Mines, favor a much narrower definition that generally encompasses only two things: mining on land a mine operator has no legal right to exploit, and failure to pay required tax and royalty on extracted minerals.¹¹ They refer to all other illegal acts by mining firms with less alarming terms like “violations” of other laws or “irregularities.”

This semantic battle generates great confusion as well as ample room for obfuscation. For example, when Human Rights Watch asked an assistant geologist in Goa’s Mines Department to assess the scale of the state’s illegal mining problem, he replied, “Everything may not be 100 percent legal, but illegal mining is not there.”¹²

This report describes a broad range of illegalities that have an impact on human rights. Most do not fall within the government’s definition of outright “illegal mining.” Whatever term is used, the damage done to vulnerable communities and public institutions is just as real.

⁹ Human Rights Watch interviews with activists and government officials, Delhi, Bangalore and Panjim, May and September 2011. A groundbreaking 2011 report on illegal mining by Karnataka State’s *Lokayukta* (anti-corruption ombudsman) declared that, “Any mining activity, including extraction and transport, in contravention of lease conditions [the conditions set by government on the acceptable amount and methods of production] is illegal.” Karnataka Lokayukta, “Report on the Reference Made by the Government of Karnataka under Section 7(2-A) of the Karnataka Lokayukta Act 1984, Part II,” No. COMPT/LOK/BCD/89/2007, July 27, 2011, p. 12. The report is accessible online at http://www.thehindu.com/multimedia/archive/00736/Report_on_the_refer_736286a.pdf.

¹⁰ Human Rights Watch interviews with Rahul Baldota, Executive Director, MSPL Limited, Hospet, Karnataka, May 23, 2011 and S. Sridhar, Executive Director, Goa Mineral Ore Exporters’ Association, Panjim, Goa, May 25, 2011.

¹¹ Technically speaking, the Ministry of Mines defines illegal mining as “illegalities arising out of [any section of] the Mines and Minerals Act.” Email from Kumar, October 2, 2011.

¹² Human Rights Watch interview with RV Shetgaonkar, Assistant Geologist, Mines Department, Panjim, May 27, 2011.

The sheer scale of the illegality that pervades India's mining sector is hard to overstate, and few people on any side of the issue would deny this. Vijay Kumar, then-secretary of India's Ministry of Mines, acknowledged to Human Rights Watch that illegal mining is "endemic," adding that, "the seriousness varies from State to State, mineral to mineral and from time to time depending on market forces."¹³ In 2010, India's parliament convened a commission of inquiry into illegal mining headed by retired Supreme Court Justice M.B. Shah. Shah's interim report, submitted in early 2012, found that:

There is enormous and large scale multi-state illegal mining of iron ore and manganese ore running into thousands of crore every year, having several pernicious and evil effects on the national economy, good governance, public functionaries, bureaucracy, public order, law and order. It has encouraged huge corruption at all different levels in public life, mafia in society and money power....This has to be stopped immediately and effectively.¹⁴

According to Mines Minister Dinsha Patel, there were at least 82,000 cases of "illegal mining" in 2010 and another 47,000 between January and September 2011—some presumably involving multiple incidents linked to the same operations.¹⁵ That figure is hard to rely on or interpret; central government figures are based entirely on state government reporting, and some states are more zealous about detecting and reporting illegalities than others.¹⁶ Regardless, the implications are staggering—the government's own figures imply an annual rate of 30 illegal acts for every officially sanctioned mine in the country. Officials freely acknowledge that they have no estimate of how many cases go undetected, and the central government does not track the number of prosecutions or convictions in mining-related cases across India.¹⁷

¹³ Email from Kumar, October 2, 2011.

¹⁴ Shri Justice M.B. Shah Commission of Inquiry for Illegal Mining of Iron Ore and Manganese, Ministry of Mines, "First Interim Report, Summary," undated, <http://mines.nic.in/writereaddata/Contentlinks/8b8068968b7542boa1ebf77c9862c654.pdf> (accessed May 30, 2012). The full text of the report is available at <http://mines.nic.in/index.aspx?level=1&lid=673&lang=1>.

¹⁵ "Over 82k illegal mining cases detected in 2010: Govt," *Press Trust of India*, August 14, 2011, <http://www.business-standard.com/india/news/over-82k-illegal-mining-cases-detected-in-2010-mines-ministry/144328/on> (accessed May 30, 2012); "47K illegal mining cases between Jan-Sep '11," *PTI News*, April 30, 2012, http://zeenews.india.com/news/nation/47k-illegal-mining-cases-between-jan-sep-11_772640.html (accessed May 30, 2012).

¹⁶ The largest number of reported cases of illegal mining has been in Maharashtra State, which recorded more than 34,000 cases of illegal mining in 2010. According to the Ministry of Mines, this does not reflect a disproportionately high rate of illegal mining in the state so much as unusually vigorous state government efforts to detect and crack down on rampant illegal mining of sand used for construction purposes. Email from Kumar, October 2, 2011.

¹⁷ Email from Kumar, October 2, 2011.

The outright looting of mineral resources from land that mine operators have no right to work on is a dramatic act of criminality that grabs headlines in India. The country's mineral wealth is effectively ripped out of its own soil and then sold illegally without any of the proceeds accruing to public institutions. But Human Rights Watch's research reveals that the most important problem in India's mining sector is a less sensational but far more widespread kind of abuse: the ease with which "legal" mine operators working on legitimate mining leases are able to circumvent or ignore laws meant to protect the public from harm. As this report shows, India is faced with a state of regulatory collapse in the mining sector—with disastrous results.

The two case studies in this report focus on two different facets of India's mining chaos. The mining mess in the iron-rich state of Goa offers a clear window into the human toll of a broader institutional breakdown of regulatory machinery that plagues India's entire mining sector. The lurid mining scandals in Karnataka State reveal the mutually reinforcing impacts of an out-of-control mining industry and pervasive rot and corruption in public institutions. These problems are two sides of one coin, each reinforcing the other.

II. Goa Case Study: Regulatory Collapse and its Consequences

Background

Goa is far better known for the two million vacationers who throng its beaches every year than for its iron mines.¹⁸ But starting just a few kilometers inland from its coastal resorts, the state has about 90 working mines that yielded some 45 million tons of iron ore in 2010—20 percent of India’s total.¹⁹ Goan iron was worth well over Rs 21.5 crore (US\$5 billion) in 2011 and production has skyrocketed in recent years in response to rising global prices.²⁰ State government officials estimate that the mining industry directly employs some 20,000 people and indirectly supports the livelihoods of tens of thousands more.²¹

Goa is a tiny state and many of its mines are clustered closely together and directly adjacent to nearby communities. The local industry is dominated by three large firms that all have their roots in the state: Fomento, Salgaocar and Sesa Goa; the last of which was acquired by mining giant Vedanta in 2007.

“A Total Lack of Governance”

The mining industry in Goa stands as a stark example of the broader patterns of regulatory collapse described later in this report. Goan anti-mining activists²² complain that mine operators flout the law while government institutions plagued by incompetence, incapacity or corruption stand by and do nothing.²³

¹⁸ Tourism statistics from Goa’s Ministry of Tourism are available online at <http://www.goatourism.gov.in/statistics/225>.

¹⁹ Human Rights Watch interview with R.V. Shetgaonkar, May 27, 2011. Goa has some 180 valid mining leases, but most are not operational and many never have been. Iron ore accounts for 94% of mining in the state. Goa Mineral Ore Exporters’ Association (GMOEA), *A Study of Contribution of Goan Iron Ore Mining Industry*, (New Delhi: National Council of Applied Economic Research, 2010), p. i.

²⁰ The value of Goa’s iron production increased by 48 percent from IFY 2009 to IFY 2010 alone. Ministry of Mines, “Annual Report 2010-2011, Mineral and Metal Scenario” 2011, <http://mines.nic.in/writereaddata/Contentlinks/be6cfa52b2fa4283bc947acf918be5eb.pdf> (accessed May 29, 2012).

²¹ Human Rights Watch interview with R.V. Shetgaonkar, May 27, 2011. See also GMOEA study, which estimates that 19,000 people are directly employed by mining firms and that 60,000 more are indirectly employed by the industry, including transporters, port workers, hoteliers and others. Goa Mineral Ore Exporters’ Association, *A Study of Contribution of Goan Iron Ore Mining Industry*, p. 19.

²² Human Rights Watch uses the term “anti-mining activist” to refer to activists who campaign for a halt to mining activity, as opposed to activists who accept the industry’s existence but critique its negative impacts, calling for more responsible operation and greater accountability for abuse.

²³ Human Rights Watch interviews with civil society activists, Panjim, Margao and Quepem, May 2011.

Surprisingly, when Human Rights Watch put these allegations to key state government and industry officials, many acknowledged that they were true. A senior official with one of Goa's top three mining companies, speaking on condition of anonymity, put it this way: "There is a total lack of governance in the mining sector. The government has no idea what is going on.... Absent a real change in governance, there will just be more corruption and more chaos from year to year."²⁴ An official in Goa's own mines department complained to Human Rights Watch that the state and central governments' approach to oversight of the mining sector was "lethargic to an extreme."²⁵

Even mining industry spokesman S. Sridhar estimated to Human Rights Watch that 40 percent of all mining operations in Goa fail to comply with at least some laws and regulations and that perhaps another 5 percent is entirely illegal, taking place on land miners have no right to work on. "The remaining mining is done legally," he said.²⁶ Then-Goa Environment Minister Alexio Sequeria told Human Rights Watch he thought the true figures were less alarming but added, "He [Sridhar] should know better than me."²⁷

P.S. Banerjee, general manager for Fomento, one of Goa's "big three" mining companies, told Human Rights Watch that his company's own operations were meticulous in adhering to the letter of the law. But speaking of the industry more broadly, he said that "Mining in Goa works in shades of gray. The problem is not just legal versus illegal mining, but there is a huge gray area in between and that is the most important issue." Banerjee described this approach to the law euphemistically as "creative compliance."²⁸ But in practical terms, "creative compliance" simply means non-compliance that government regulators fail to detect or respond to.

Failure to Track Basic Indicators of Compliance

Consent to Operate

On paper, Goa's Pollution Control Board has the responsibility to verify whether mining companies (and other industries) are complying with India's air and water

²⁴ Human Rights Watch with mining company senior official, 2011 [identifying details withheld].

²⁵ Human Rights Watch official with senior mines department official, Panjim, 2011 [identifying details withheld].

²⁶ Human Rights Watch interview with S. Sridhar, Executive Director, Goa Mineral Ore Exporters' Association, Panjim, May 25, 2012.

²⁷ Human Rights Watch interview with Alexi Sequeria, then-Goa State Environment Minister, Raia, Goa, June 1, 2011.

²⁸ Human Rights Watch interview with P.S. Banerjee, General Manager, Fomento, and Apoorva Misra, CFO and Head of Marketing and Sales, Fomento, Panjim, September 23, 2011.

acts.²⁹ Those laws are important tools to help ensure that mines do not cause serious harm to human health and the environment. But in practice, the board is ineffectual and carries out little meaningful oversight activity of mining or any other industry. As of late 2011, the board had only 16 technical staff to oversee the environmental and pollution-related practices of the entire mining industry as well as of every other business in the state—including even visiting cruise ships.

Then-Goa Environment Minister Alexi Saqueria was dismissive of the board’s oversight role, calling it a “mere post office” that did little more than ferry paperwork between the central government and operations based in Goa.³⁰ But in principle, the board is one of Goa’s key oversight institutions. It has the power to conduct surprise inspections, including of mine sites, and to shut down operations that do not maintain consents to operate issued by its staff— but it does not have the manpower to do either of these things. Board Chairman Simon DeSousa told Human Rights Watch that with his office’s small staff, “We are handicapped. It is impossible to oversee all these industries.”³¹

Perhaps worse, Dr. DeSousa admitted to Human Rights Watch that he had no idea whether mining firms and other companies were bothering to maintain the “consent to operate” from his own office they are legally required to possess. These consents are normally given and renewed almost automatically if miners can prove that they have obtained all other required government clearances—in practical terms they serve as a way for the state government to verify that miners are in compliance with other baseline legal obligations. “It is quite possible that 40 percent of mines are operating without clearances,” DeSousa told Human Rights Watch. “Some mines may not have obtained consent to operate from the board—we cannot police that. We cannot see who is operating illegally unless someone complains.” He blamed the problem on his office’s lack of a coherent filing system.³²

²⁹ India’s Central and State-level Pollution Control Boards were created by law in 1974 with a mandate to address water pollution in particular. Water (Prevention and Control of Pollution) Act, No. 6 of 1974, <http://www.moef.nic.in/legis/water/wat1.html> (accessed May 30, 2012), Chapter II. The boards’ mandates were expanded to cover issues of air pollution as well in 1981. Air (Prevention and Control of Pollution) Act, No. 14 of 1981, <http://envfor.nic.in/legis/air/air1.html> (accessed May 30, 2012).

³⁰ Human Rights Watch interview with Alexi Saqueria, June 1, 2012.

³¹ Human Rights Watch interview with Dr. Simon DeSousa, Chairman, Goa State Pollution Control Board, Panjim, May 30, 2011.

³² Ibid.

Under mounting public pressure due to a scandal around allegations of mining-related illegalities and corruption in the state, the board stated in 2011 that 41 of Goa's 90 mines were not in compliance with the law. Outside parties apparently informed board officials that it had not issued those mines with up-to-date consents to operate, and questioned whether they possessed the other government clearances needed to obtain them. Thirty-four of the forty-one leaseholders reportedly failed to comply with an initial deadline and were told to cease operations until necessary permissions could be obtained.³³ While the board's action was an important step to bring the state's mines into compliance with the law, the board still lacks any independent means to track compliance.

Production Figures

Goa's Mines Department tracks production figures based entirely on figures submitted by mine operators themselves. The department had only 12 technical staff as of September 2011 and Dr. Hector Fernandez, the department's senior geologist, conceded to Human Rights Watch that the government had no way of verifying whether company figures were accurate. "With this staff we cannot," he said, "It's impossible."

This means that the state does not actually know if mines are producing ore in excess of what they claim, thereby cheating the government out of tax revenue and royalties. Critics allege that this is precisely what has taken place.

A September 2011 report by the Goa legislature's Public Accounts Committee detailed what it called unexplained discrepancies between production and export figures. Those could translate into steep revenue losses for the state government, since no royalties or other taxes would be paid on unreported production.³⁴ Industry officials questioned the figures, arguing that there could be benign explanations for many of the apparent discrepancies.³⁵

³³ See Murari Shetye, "When RED came under the scanner," *Times of India*, December 27, 2011, http://articles.timesofindia.indiatimes.com/2011-12-27/goa/30560766_1_illegal-mining-operational-mines-mining-controversy (accessed May 30, 2012).

³⁴ Report of the Chairman of the Public Account Committee of the Fifth Legislative Assembly of the State of Goa, September 2011, p. 44. The report is available online at <http://www.goachronicle.com/goa/expose/18651-goachroniclecom-leaks-the-pac-report-part-1> and <http://www.goachronicle.com/goa/expose/18651-goachroniclecom-leaks-the-pac-report-part-2> (accessed January 26, 2012). See also Megha Bahree, "Mining Probe Threatens Top Indian Party," *Wall Street Journal*, November 16, 2011, <http://online.wsj.com/article/SB10001424052970204323904577036121909213912.html> (accessed May 30, 2012).

³⁵ Some companies and government officials contend that the report's figures are a red herring, and that export figures in excess of total reported production are due to mine owners gathering and exporting some of the 750 million tons of low grade iron ore "fines" that were heaped into waste dumps in years past when there was no viable market for them. Human Rights Watch interviews with

Alarmingly, the state government could neither confirm nor deny the allegations because it did not have any data of its own.

Central Government Failures

The Indian central government imposed a moratorium on new mining leases in Goa in February 2010, apparently at the request of the state government.³⁶ However, this did not result in remedying deficiencies with the clearances underpinning the state's existing mines. Many of Goa's mines appear to have been established on the basis of Environmental Impact Assessments that contained erroneous or fabricated data—a nationwide problem that is discussed in detail below.³⁷ As detailed below, a government-commissioned study of the EIA reports underpinning all of Goa's currently operational mines seems likely to confirm widespread fabrication of data in those reports.³⁸

In theory, the environment ministry's regional office in Bangalore monitors whether mines in Goa and neighboring states are operating in compliance with the law and with the terms of their environmental clearances—and can shut them down if they are not. But in practice, regional office staff rarely visits the state and have never halted the operations of any mine in Goa.³⁹ This problem—also a nationwide affliction—is addressed in detail below.⁴⁰

Conflicts of Interest and Allegations of Corruption

If it is illegal, why does the Government not act? Because the government is involved, politicians are involved. At every level, everywhere. Bureaucrats, everyone. If I point it out, they will stop my legal mining, so I have to keep my mouth shut.

—S. Sridhar, spokesperson, Goa Mineral Ore Exporters Association, May 2011⁴¹

mining industry officials, Panjim, September 2011; Letter from Anil Subramaniam, Under Secretary to the Government of India, to the Secretary of Goa's Mines and Geology Department and others, October 11, 2011, on file with Human Rights Watch.

³⁶ Letter from Jairam Ramesh to Digimbar Kamat, February 22, 2010 (on file with Human Rights Watch).

³⁷ See below, India's Environmental Impact Assessment Regime: Rotten Core of a Broken System.

³⁸ See below, India's Environmental Impact Assessment Regime.

³⁹ Human Rights Watch telephone interviews with K.S. Reddy and Satish Aggarwal, Bangalore and Delhi, September 2011.

⁴⁰ See below, Weak Oversight of Existing Mines.

⁴¹ Human Rights Watch interview with S. Sridhar, Panjim, May 25, 2011.

Many Goan mine operators are increasingly reliant on contractors to operate their mines or transport their products to the port. Encouraged by the vast profits being made in the mining sector, Goan politicians have gotten in on the mining business by becoming contractors themselves. A 2011 investigation by the *Goa Herald* newspaper documented the alleged involvement of six senior state government officials in the mining business. Some denied any involvement while others openly admitted it to the paper.⁴²

The trend towards using contractors is driven largely by economic considerations—labor costs are lower and companies do not wish to invest heavily in new equipment that may lose its value if commodity prices and iron production decline.⁴³ But in some cases there is also a political calculation. Some contractors are hired because their ties to politicians make them better able to either navigate or evade the regulatory framework, not because of their competence or reputation for responsible operation.

Officials with two different Goan mining firms, speaking on condition of anonymity, told Human Rights Watch that companies often selected contractors with political ties for the wrong reasons, and that contractors linked to politicians often displayed little interest in working responsibly or even obeying the law. “Sometimes you proactively go to a politician and say, ‘Look, let’s do this together,’ so you get it done faster,” one company official said, adding that he disapproved of the practice. “Politicians have entered into this mining business and are spoiling the names of established mining companies. Their actions tar the reputation of the whole industry.”⁴⁴ An official with another mining firm complained about companies’ use of contractors with “no competence or value added except that they work well with politicians.”⁴⁵

Jaoquim Alemao, until March 2012 Goa’s politically influential Minister of Urban Development, started a company called Rhissa Mining Services. The company is run by his son. The former minister does not deny his involvement in the mining business and says

⁴² Sujay Gupta, “Politicians in Goa Love Mining: Here’s the Full Story,” *Goa Herald*, September 25, 2011, <http://www.heraldgoa.in/News/Main%20Picture%20News/POLITICIANS-IN-GOA-LOVE-MINING-HERE-rsquo-S-THE-FULL-STORY/52832.html> (accessed May 30, 2012).

⁴³ Human Rights Watch interview with Mahesh Patil, Associate Vice President—HSEC, Sesa Goa Limited, Panjim, May 30, 2011.

⁴⁴ Human Rights Watch interview with senior mining company official, 2011 [identifying details withheld].

⁴⁵ Human Rights Watch interview with senior mining company official, 2011 [identifying details withheld].

that Rhissa's only role is to purchase heavy machinery and rent it out to established mining firms, which is not illegal.⁴⁶

Some observers have raised concerns about the true nature Rhissa's activities. Rama Velip, a farmer and anti-mining activist in the south Goa village of Rivona, says he was approached by a representative of Rhissa who attempted to persuade him to abandon his opposition to nearby mining developments—mines that Rhissa had little or no clear economic stake in.⁴⁷ He told Human Rights Watch that he felt he was being approached by the powerful minister behind the company, rather than the company itself.

Goa's Mineral Ore Exporters Association was not clear about Rhissa's role in the local industry. When asked, association spokesman S. Sridhar shook his head slowly and replied: "I don't know what he [Joaquim Alemao] is doing. I really don't know." But he later added that, "Naturally if a politician is there I will give him the contract if it is economical to me....It happens everywhere."⁴⁸

These practices are worrying because they create conflicts of interest that can lead public officials to push back against, rather than support, action by already weak regulatory officials. Then-Goa Environment Minister Alexi Sequeria said that he had no financial stake in the mining industry but defended the right of other government officials to enter the business. While acknowledging that conflicts of interest were possible, he asked Human Rights Watch, "You talk in terms of wanting a clean government, but how am I supposed to look after my family if you say I should not do business?"⁴⁹

Some in Goa's mining industry also allege that corruption often plagues their attempts to comply with the law by obtaining necessary clearances and permissions. Activists allege that this problem also pushes weak regulatory institutions even deeper into complacency and inaction.

⁴⁶ The *Goa Herald* reported that Alemao is involved with at least six different mines in Goa and that most of that work is carried out through Rhissa mining. Sujay Gupta, "Politicians in Goa Love Mining," *Goa Herald*.

⁴⁷ Human Rights Watch interview with Rama Velip, Rivona, Goa, May 26, 2011.

⁴⁸ Human Rights Watch interview with S. Sridhar, Panjim, May 31.

⁴⁹ Human Rights Watch interview with Alexi Sequeria, June 1, 2011.

Some company officials complain that it can be almost impossible to obtain necessary government clearances in a reasonable amount of time without bribing officials to move necessary paperwork through the system. Industry spokesman S. Sridhar told Human Rights Watch:

Unless you go and talk to them personally nothing is happening. There is corruption everywhere in getting these approvals. If I do not want to pay a bribe I have to wait four or five years. So I'll pay the bribe to get the approval or I'll just start producing [illegally] while I wait.⁵⁰

Local activists also allege that police officers also profit from the mining industry by purchasing trucks they contract out to haul ore from mine sites—creating a conflict of interest when local protests shut down a mine that helps supply their income.⁵¹ India's Prevention of Corruption Act outlaws such practices but critics allege that some police officials circumvent the law by putting trucks in the names of their wives or relatives.⁵² A police official at the station in Quepem whose officers have been deployed to break up mining-related protests in the area told Human Rights Watch that, "No police officer in Quepem owns a [mining] truck. It's different if a wife or children are doing business."⁵³

Human Rights Impacts

South Goa's cluster of iron mines is relatively new, with most springing up within the last 10 years (modern, mechanized mining has been taking place in north Goa for several decades). Human Rights Watch visited mining-affected communities in south Goa's Quepem *taluk* [district] and found evidence that some communities are suffering precisely the kind of harm that government regulation of the industry is supposed to prevent.

The mostly agricultural communities in south Goa are profoundly divided in their attitudes towards the industry. Residents who allege that mining has destroyed vital groundwater supplies, ruined crops and created serious health risks have protested strenuously against

⁵⁰ The Goa Mineral Ore Exporters' Association (GMOEA) claims as members 15 companies accounting for 70% of the state's mineral production, including all of the "big three." Ibid.

⁵¹ Human Rights Watch interviews with civil society activists, Panjim, Margao and Quepem, May 2011.

⁵² Human Rights Watch interview with Abhijeet Prabhudessia, Margao, Goa, May 27, 2011; Human Rights Watch interview with John Fernandes, Quepem, Goa, February 26, 2011.

⁵³ Human Rights Watch interview with S.S. Narvekar, Police Inspector, Quepem, Goa, May 28, 2011.

local mine operators. On the other side of the divide, villagers who have derived direct economic benefits from mining activity—often by purchasing trucks they hire out to haul ore away from the mine sites—have emerged as ardent proponents of the industry.⁵⁴

Health, Environmental and Livelihood Concerns

Health Concerns

Some residents of mining-affected communities told Human Rights Watch they worried that dust emissions from passing ore trucks could be linked to respiratory disease in their communities.⁵⁵ “People are getting breathing problems,” one farmer complained.⁵⁶ Hundreds of heavily laden ore trucks pass through narrow roads leading through those communities every day, spewing clouds iron-rich dust as they pass. According to residents, the dust settles in thick coats on the crops that stand in nearby fields, on homes, and even on a schoolhouse that sits adjacent to the road.⁵⁷

Sufficient data does not exist to measure the extent of any health damage caused by dust emissions in mining areas of Goa—neither the state nor central governments have carried out any studies to obtain that data. A 2001 study of mining areas in Goa found that overloaded ore trucks were responsible for “fugitive dust emissions...sharply exceeding the ambient national air quality standards for residential areas.”⁵⁸ Broader studies of the health impacts of dust emissions by iron mines have generally focused on occupational health issues, not impacts on surrounding communities. But such studies indicate that inhalation of iron oxide can cause respiratory ailments. Studies also indicate that

⁵⁴ Some mining firms in Goa back villagers seeking bank loans to purchase trucks. Companies see this as an effort to ensure local economic benefits from the mines; company critics contend that the loans are simply an effort to buy off potential critics. For a documentary film made from the perspective of opponents of the mining operations in southern Goa, see Kurush Canteenwala, Centre for Communication and Development Studies, “Goa, Goa, Gone,” 2009, <http://infochangeindia.org/Infochange-documentary.html> (accessed May 30, 2012).

⁵⁵ Human Rights Watch interviews with residents of Rivona and Cuarem, Rivona and Caurem May 26 and May 28, 2011. A 2001 study in mining-affected communities in Goa found that 40 percent of polled residents “felt that the major cause of ill health in the village was due to the high dust levels in the region.” See Ligia Noronha, “Designing tools to track health and well-being in mining regions of India,” *Natural Resources Forum*, vol. 25, (2001), p. 61.

⁵⁶ Human Rights Watch interview, Caurem, May 28, 2012.

⁵⁷ On just a single six kilometer stretch of road near a large mine in northern Goa, a study found that overloaded and speeding ore trucks generated as much as 2770 tons of ore spillage per year, largely in the form of dust. See Central Pollution Control Board, “Comprehensive Industry Document on Iron Ore Mining,” COINDS/___/2007-08, August 2007, http://www.cpcb.nic.in/upload/NewItems/NewItem_105_iron_ore_mining_31.07.08.pdf (accessed May 30, 2012), pp. 4-22.

⁵⁸ Noronha, “Designing Tools to track health and well-being,” *Natural Resources Forum*, p. 60, also noting that, “The large quantity of ore transported on private and public roads has been identified as one of the major sources of dust pollution. This results in a deterioration of ambient air quality in many villages, as truck routes pass directly through settlements.”

exposure to silica, which is often a constituent part of iron ore dust, may be linked to serious ailments including silicosis and other lung diseases such as lung cancer.⁵⁹

Some communities in Goa resort to making use of surface water for at least part of the year because their groundwater supplies have been damaged or destroyed by nearby mining operations. In some cases that surface water is itself contaminated by runoff from the same mines.⁶⁰

In 2010, India's Ministry of Environment and Forests declared its intention to commission a study on the environmental impacts of all existing mines in Goa, but at the time of writing the study had yet to be carried out.⁶¹ So far, however, the state and central governments have not treated the potential health impacts of irresponsible mining with the seriousness they deserve. In an interview with Human Rights Watch, then-Goa Environment Minister Alexi Sequeria professed the government has not been able to act because people in mining-affected communities are uninterested in their own health:

The local in many areas believes that money is God. You and I may believe he is sacrificing his health but he does not care. Locals own trucks and are provided things by mining companies—money, air conditioners. So even if this activity is taking a toll on their health, they will not allow us to act.⁶²

Water and Agriculture

People living in and around two south Goa villages visited by Human Rights Watch—Rivona and Caurem—complained that adjacent mines have polluted nearby rivers and streams through irresponsible waste disposal and that natural springs used to irrigate fields have been

⁵⁹ See Kishore Kumar Banerjee, He Wang and Dino Pasaniello, "Iron-Ore Dust and its Health Impacts," *Environmental Health*, vol. 6, No 1., 2006, pp. 11-16; Jay F. Colinet, Andrew B. Cecala, John A. Organiscak, Douglas E. Pollock, Gregory J. Chekan and Ed D. Thimons, "Improving Silica Dust Controls for Metal/Nonmetal Mining Operations in the United States," *National Institute for Occupational Safety and Health*, undated, www.cdc.gov/niosh/mining/pubs/pdfs/isdcf.pdf, (accessed May 30, 2012).

⁶⁰ See Central Pollution Control Board, "Comprehensive Industry Document on Iron Ore Mining," p. 4-23, noting that in some parts of Goa, because of dried up of wells and springs due to mining, "the affected population will tend to resort to surface waters including the rivers and streams that are the recipients of the effluent waters from the working pits. The water discharged from the pits is normally laden with suspended solids derived from within the pit." For more on mining's impact on groundwater supplies in Goa, see *Ibid.*, pp. 4-28.

⁶¹ Letter from Jairam Ramesh to Digimbar Kamat, February 22, 2010 (on file with Human Rights Watch). See also D.S. Ratha and G. Venkataraman, "Environmental impact of iron ore mines in Goa, India," *International Journal of Environmental Studies*, vol. 47 (1995), pp. 43-53; and Noronha, "Designing tools to track health and well-being," *Natural Resources Forum*.

⁶² Human Rights Watch interview with Alexi Sequeria, June 1, 2011.

destroyed as mines puncture the water table and damage aquifers. “Because of water pollution, there is no water for agriculture,” said farmer and anti-mining activist Rama Velip. “Some wells are dry. Some spring water is destroyed.”⁶³ Other residents of the two communities echoed his complaint.⁶⁴ “I have had no sugar cane for three years,” said one farmer who alleges that dust and groundwater pollution have destroyed his crops. Another local resident said that since mid-2010, “murky water is suddenly coming from the springs,” and attributed this to nearby mining activity.⁶⁵ Other farmers alleged that their crop yields had decreased dramatically due to clouds of iron-rich dust from passing trucks that settle on and kill their crops.⁶⁶

Most mines in Goa operate below the water table, and many are forced to continually pump out vast quantities of water in order to keep mine pits dry. Often, mine operators simply discard the water rather than reinject it into the ground to help regenerate the resource.⁶⁷ One woman living near Caurem told Human Rights Watch that in 2011, one nearby mine broke through the water table and unleashed a torrent of water that flowed from the mine site down a hill and across a nearby road for more than a week; by the time it stopped flowing, nearby springs had completely dried up.⁶⁸

Many of these claims are impossible to verify because sufficient data does not exist—and that is part of the problem. Public officials have done nothing to study alleged harms caused by the cumulative impact of mining operations in south Goa, and do not know how many mine operators are engaged in irresponsible and illegal practices that could bring about such harm. The data that does exist, however, is troubling.

Goa mining industry spokesperson S. Sridhar told Human Rights Watch that mining did not cause any loss of drinking or irrigation water anywhere in Goa. “Water is available everywhere,” he said.⁶⁹ But a study published by his own association in 2010 acknowledged that mining in Goa has “quantitative and qualitative impacts on the water regime in and

⁶³ Human Rights Watch interview with Rama Velip, Rivona, Goa, May 26, 2011.

⁶⁴ Human Rights Watch interview with farmers, Rivona, Goa, May 26, 2011.

⁶⁵ Human Rights Watch interview with residents of Rivona village, Rivona, Goa, May 26, 2011.

⁶⁶ Human Rights Watch interview with residents of Rivona village, Rivona, Goa, May 26, 2011.

⁶⁷ See Ligia Noronha, “Designing tools to track health and well-being in mining regions of India,” *Natural Resources Forum*, p. 60, noting that mining has “resulted in a large amount of groundwater being tapped. A further consequence is that shallow wells are drying up in some villages, and the local community is experiencing water shortage problems.”

⁶⁸ Human Rights Watch interview, Quepem *taluk* [district], Goa, September 22, 2011.

⁶⁹ Human Rights Watch interview with S. Sridhar, Panjim, May 31.

around the mines,” including through pollution and through damage to aquifers.⁷⁰ And one mine near Caurem was shut down in March 2011 for damaging local springs, dumping its waste on the banks of a nearby river and causing other harm.⁷¹ Its closure followed extended protests by local residents.⁷² One villager told Human Rights Watch that before the mine shut down, company officials met with villagers to ask, “What do you want? Money? Something to implement in the village?” We said we don’t want anything, just our land and our water.”⁷³

A 2009 study by the National Environmental Engineering and Research Institute (NEERI) found that mining around Sirigaon village in north Goa had created “water scarcity” by puncturing the water table and reducing the area available for groundwater recharge by rain.⁷⁴ The study also found that silt carried as runoff from mine waste dumps had “degraded the soil fertility in the agricultural fields” around the village.⁷⁵ Such mine runoff problems are common in Goa and are exacerbated when mine operators locate waste dumps close to riverbanks—generally in violation of the terms of their environmental clearances. Goa receives more than 3000 mm of rainfall annually and monsoon rains often cause these dumps to collapse, causing pollution and heavy siltation of agricultural fields, irrigation canals, rivers and creeks. Studies have found that this phenomenon can have serious negative impacts on agricultural yields, groundwater quality and fish populations that mining-affected communities depend on.⁷⁶

Human Rights Watch observed that some mine operators distribute water in metal drums to communities whose own water supplies have been destroyed or damaged. This practice implies the creation of localized water scarcity problems that did not exist prior to the onset of mining activity. It also begs the question of how the impacted communities will

⁷⁰ Goa Mineral Ore Exporters’ Association (GMOEA), *A Study of Contribution of Goan Iron Ore Mining Industry*, p. 31.

⁷¹ Human Rights Watch interviews with residents of Caurem, May 2011; Human Rights Watch interview with Alexi Sequeria, June 1, 2011.

⁷² See, for example, “Cavrem locals firm on mine closure,” *The Navhind Times*, March 2, 2011, <http://www.navhindtimes.in/goa-news/cavrem-locals-firm-mine-closure> (accessed May 30, 2012).

⁷³ Human Rights Watch interview with resident of Caurem village, Caurem, Goa, May 28, 2011.

⁷⁴ National Environmental Engineering and Research Institute (NEERI), “Assessment of the depletion of groundwater sources and land degradation in Sirigaon village, Goa and mitigation measures (Sirigaon Report),” March 2009, pp. iii, 18-101. The study also found that efforts by one mining company to recharge groundwater supplies damaged by its operations had yielded “very insignificant” results. *Ibid.*, p. iv.

⁷⁵ National Environmental Engineering and Research Institute (NEERI), Sirigaon Report, pp. iv, 101-104. See also See also Central Pollution Control Board, “Comprehensive Industry Document on Iron Ore Mining,” pp. 4-30.

⁷⁶ Mohan Yellishetty and William J. Darlington, “Effects of monsoonal rainfall on waste dump stability and respective geo-environmental issues: a case study,” *Environ. Earth Sci.*, vol. 63, (2011), pp. 1169-1177; Mohan Yellishetty, P.G. Ranjith, D. Lalit Kumar, “Metal Concentrations and metal mobility in unsaturated mine wastes in mining areas of Goa, India,” *Resources, Conservation and Recycling*, vol. 53, (2009), pp. 379-385.

obtain drinking and irrigation water after mining operations have been completed—the damage to their aquifers will not vanish when local iron deposits are exhausted. Simon DeSousa of Goa’s Pollution Control Board acknowledged to Human Rights Watch that depletion of water resources by mining was a problem in south Goa. Asked why miners were allowed to dig below the water table if that was the case, he said he did not know.⁷⁷

Protest and Response

In 2011, growing local discontent around the impact of iron mining operations in south Goa led to peaceful protests and also to violent confrontations between local residents and mine employees.⁷⁸ Residents of Caurem told Human Rights Watch that in a separate incident in April 2011, fights between angry villagers and private security guards at one mine site left individuals on both sides injured.⁷⁹

Residents in Rivona and Caurem have staged prolonged sit-in protests, blocking the roads providing access to local mine sites. Protesters told Human Rights Watch that in May 2011 they were confronted by a group of truck drivers who threatened violence if they did not clear the road; ultimately the police dispersed the protesters and arrested at least 94 people.⁸⁰

Quepem police official S.S. Narvekar told Human Rights Watch that the arrests were a “preventative” measure to avert violence between anti-mining activists and truck drivers, that they were carried out with “minimum force” and that all those detained were released at the end of the same day.⁸¹ Many of the villagers arrested see things differently, and allege that police carried out a *lathi* (baton) charge against them without being provoked.⁸²

Narvekar acknowledged the seriousness of the protesters’ complaints, but said the police were powerless to address those issues. “If the [state government] confirmed that what these mines are doing is illegal, it would be different,” he said. “But without that, on what basis can we ask them to stop?”⁸³

⁷⁷ Human Rights Watch interview with Dr. Simon DeSousa, Panjim, May 30, 2011.

⁷⁸ Human Rights Watch interviews with Fomento officials and Goan activists, May and September 2011.

⁷⁹ Human Rights Watch interview with Residents of Caurem, Caurem, May 28, 2011.

⁸⁰ Human Rights Watch interviews with activists and protesters, Margao, Rivona and Caurem, May 2011.

⁸¹ Human Rights Watch interview with S.S. Narvekar, May 28, 2011.

⁸² Human Rights Watch interviews with attorney John Fernandes and residents of Caurem, May 26, 2011.

⁸³ Human Rights Watch interview with S.S. Narvekar, May 28, 2011.

Threats and Violence

There have been occasional reports of violence and direct threats against anti-mining activists in Goa. Nilesh Gaukar, a resident of Caurem village who helped organize local anti-mining protests in 2011, told Human Rights Watch that he received an anonymous phone call in early May warning him that “mine owners and contractors” were planning to attack him. On May 12, as he alighted from a public bus at the nearby industrial estate where he worked, a man wielding an iron bar attacked him:

I got off the bus and as I was going to the gate someone hit me with an iron rod. Ten or 15 people were around [but] he got away on a motorcycle—one person was waiting there on the bike. I saw him get on the bike and flee. He tried to get me on the head but only got me on the shoulder and elbow.⁸⁴

Gaukar spent four days in the hospital and when he returned home, police officials in Quepem provided him with a 24-hour police guard. No one was arrested.⁸⁵

Another prominent local voice against mining, Cheryl DeSousa, told Human Rights Watch that she has suffered a long string of phone calls threatening violence against her and her daughter in extremely graphic terms. DeSousa owns more than 200 acres of farmland in the heart of south Goa’s iron mining belt and has participated in anti-mining protests by nearby villagers.

DeSousa says that she has been approached with highly lucrative offers to buy her land but has consistently refused, partly because her late husband is buried there. She told Human Rights Watch that because of her refusal to sell, she has received numerous threatening phone calls from anonymous callers. She said that some have threatened to gang rape her teenage daughter and throw acid on her face. “They also told me that my problem is that I haven’t had a man in so long, and they will fix that.” She did not file a complaint with the police, describing that as a “waste of time.”⁸⁶

⁸⁴ Human Rights Watch interview with Nilesh Gaukar, Caurem, May 28, 2011.

⁸⁵ Human Rights Watch interview with S.S. Narvekar, May 28, 2011.

⁸⁶ Human Rights Watch interview with Cheryl DeSousa, south Goa, September 22, 2011. See also Aimee Ginsburg, “And She Wore Iron,” *Outlook India*, May 23, 2011, <http://www.outlookindia.com/article.aspx?271812> (accessed May 30, 2012).

An Inevitable Scandal

When Human Rights Watch first visited Goa in May 2011, industry and state government officials appeared complacent about the state's mining troubles. Many of those who openly acknowledged the worst problems described above expressed no urgency to correct them.

By September 2011, the situation had changed dramatically. This was due largely to the arrival of a Commission of Inquiry convened by the central government and headed by retired Supreme Court Justice M.B. Shah. The Shah Commission was tasked with investigating illegal mining of iron ore and manganese nationwide.⁸⁷ Goa—to the apparent surprise of Goan politicians and industry leaders—was the commission's first stop. Within days, Shah began talking to the press, making statements that seemed highly critical of the mining industry and the state government.⁸⁸

Many in the government considered this especially alarming, coming on the heels of a scandal that had brought down the government in neighboring Karnataka state earlier in the year.⁸⁹ Prominent critics of the state's ruling Congress Party began calling for the resignation of Goa's chief minister, Digambar Kamat, who in addition to being chief minister since 2007, had held the post of mines minister for more than a decade.

National media attention focused suddenly and intensely on Goa. Some Goans expressed hope that the scandal could lead to real accountability, and that the Shah Commission would name names. Sujoy Gupta, editor of the *Goa Herald*, told Human Rights Watch that he hoped that due to the Shah Commission's work, "the ugly face of illegal mining will be exposed because the individuals involved will be exposed. That is what has been missing in the past."⁹⁰ The Shah Commission's report was submitted to the central government in March 2012, but to date has not been made public.

⁸⁷ The Shah Commission was given an 18 month mandate by India's parliament in November 2010. In March 2012 the central government's Ministry of Mines indicated that it would seek to have the commission's mandate, due to expire in May 2012, extended by one year. See "M.B. Shah Commission Likely to Get One Year Extension," *PTI*, March 29, 2012, <http://news.in.msn.com/business/article.aspx?cp-documentid=5975835> (accessed April 30, 2012). Justice Shah's first interim report is available online at <http://mines.nic.in/index.aspx?level=1&lid=673&lang=1>.

⁸⁸ See, for example, "High Export Prices Encouraging Illegal Mining: Justice Shah," *Moneycontrol*, October 20, 2011, http://www.moneycontrol.com/news/business/high-export-prices-encouraging-illegal-mining-justice-shah_602290.html (accessed May 30, 2012).

⁸⁹ For more on the mining scandal in Karnataka, see below, Karnataka Case Study.

⁹⁰ Human Rights Watch interview with Sujoy Gupta, Editor, *Goa Herald*, Panjim, September 20, 2011.

By late 2011 the mining industry was focused on trying to avoid a shutdown of iron exports similar to the one that decimated the industry in Karnataka. Industry spokespeople emphasized the potentially devastating impact an industry shutdown could have on the state economy as well as mine workers, their families, truck drivers and others who rely on mining for their incomes.⁹¹ “Any good doctor can find 10 things wrong with you even if you are perfectly healthy,” Goa mining industry spokesman S. Sridhar told Human Rights Watch. “But why should he want to put you in the hospital for that?”⁹²

Not all industry officials were convinced that a temporary shutdown was such a bad idea. An official with one of Goa’s major mining firms, speaking on condition of anonymity, told Human Rights Watch: “I would be happy if they stopped all mining and said, ‘OK, let’s look at everything fresh, make sure everything is clean and get rid of the bad operators and *then* restart it.’ My company might not be happy and maybe some people would get hurt but personally, I would be very happy.”⁹³

A Test for Goa’s New Government

In February 2012 the Congress Party lost control of Goa in statewide elections. In part, the vote was seen to reflect rising public anger over the state’s increasingly public mining scandals.⁹⁴ The opposition Bharatiya Janata Party (BJP), eager to turn the tables on its Congress Party rivals after being tarnished itself by the scandal in Karnataka, had sharply criticized the state government’s failure to curb abuses in the mining sector.⁹⁵

In March 2012, Manohar Parrikar was sworn in as chief minister of a new BJP-led government. As an opposition legislator, Parrikar had publicly denounced the state government’s failure to tackle its mining problems in harsh terms. A 2011 report Parrikar wrote as a member of the legislature’s Public Accounts Committee found that, “Mining

⁹¹ See “Mining Association Admits to Illegal Exports from Goa,” *The Peninsula*, November 22, 2011, <http://www.thepeninsulaqatar.com/india/173367-mining-association-admits-to-illegal-exports-from-go.html> (accessed May 30, 2012).

⁹² Human Rights Watch interview with S. Sridhar, Panjim, September 21, 2011.

⁹³ Human Rights Watch interview with mining company senior official, , (identifying details withheld), 2011.

⁹⁴ See “Goa ex-minister blames mining scam for loss,” *IANS*, March 14, 2012, http://twocircles.net/2012mar14/goa_exminister_blames_mining_scam_loss.html (accessed May 30, 2012).

⁹⁵ See “Parrikar slams Goa speaker, removed as PAC chief,” *Press Trust of India*, October 7, 2012, http://www.thestatesman.net/index.php?option=com_content&view=article&show=archive&id=385802&catid=36&year=2011&month=10&day=8&Itemid=66 (accessed May 30, 2012).

in the state is beset with substantial illegalities” and concluded that there had been a “complete breakdown” of all key regulatory institutions in the state. The report also alleged that illegalities by miners had “resulted in strain on the infrastructure, ecology, [and] agriculture and threatens to destroy the water security of the state, if not curbed immediately.”⁹⁶ Parrikar’s report found that “Environmental Impact Assessment studies have been found to be manipulated or...full of incorrect data” regarding the presence on or near mining leases of protected tribal populations; schools; agricultural fields; and water bodies.⁹⁷

As an opposition politician, Parrikar’s criticisms of the Kamat government carried with them a strong implicit commitment to reform. In an interview with Human Rights Watch in September 2011—before the election that made him chief minister—he said: “I am a supporter of regulated, properly controlled mining” and accused the state and central governments for failing to implement that kind of control. “If you are just going to give permission for every single mine, what is the point of needing permission? If every application is granted it means you are either careless or corrupt.” He also alleged that widespread corruption lay behind many of the state government’s worst oversights, saying some illegalities by miners were so conspicuous that, “this is only possible when a politician is there. It is not just incapacity. They are looking the other way.”⁹⁸

Even before the February 2012 election, public criticism spurred some welcome action on the part of Goa’s hitherto lethargic state government. Goa’s woefully understaffed Pollution Control Board was allocated funds to hire dozens of new staff in late 2011—a prerequisite to any kind of credible monitoring by that office.⁹⁹ In addition, then-Environment Minister Alexi Sequeria partnered with a Goan NGO to assess the credibility of the Environmental Impact Assessment reports underlying every mine in the

⁹⁶ Manohar Parrikar, Public Accounts Committee, “Report of the Chairman of the Public Accounts Committee of the Fifth Legislative Assembly of the State of Goa,” September 2011, p. 44. The report is available online at <http://www.goachronicle.com/goa/expose/18651-goachroniclecom-leaks-the-pac-report-part-1> and <http://www.goachronicle.com/goa/expose/18651-goachroniclecom-leaks-the-pac-report-part-2> (accessed January 26, 2012).

⁹⁷ *Ibid.*, p. 60.

⁹⁸ Human Rights Watch interview with Manohar Parrikar, Panjim, September 24, 2011. See also M.V. Ramsurya, “We will close down all illegal mines in Goa: Manohar Parrikar,” *Economic Times*, March 9, 2012, http://articles.economictimes.indiatimes.com/2012-03-09/news/31139739_1_illegal-mining-ore-mine-leases (accessed May 30, 2012), quoting Parrikar as saying that “Illegality is only permitted by a lethargic government. We will change that.”

⁹⁹ Human Rights Watch interview with Simon DeSousa, Panjim, September 21, 2011.

state—an initiative described in more detail below.¹⁰⁰ In 2012, the state government announced that all of Goa’s 460 licensed iron ore traders would have to reapply for licenses to continue their business; only 186 elected to re-apply.¹⁰¹

¹⁰⁰ For more details on this initiative, see below, India’s Environmental Impact Assessment Regime.

¹⁰¹ “Indian iron ore mining mess—274 iron ore traders in Goa vanish,” *PTI News*, April 18, 2012, http://www.steelguru.com/indian_news/Indian_iron_ore_mining_mess_274_iron_ore_traders_in_Goa_vanish/259538.html (accessed June 4, 2012).

III. Regulatory Collapse in India's Mining Sector

A complicated patchwork of government agencies is responsible for oversight and regulation of India's mining sector. At the central government level, the Ministry of Mines and the Indian Bureau of Mines bear direct responsibility for overseeing the sector.¹⁰² But responsibility for many important aspects of government oversight—including key human rights and environmental concerns—are spread out among numerous agencies with broader areas of responsibility. For instance, a proposed or existing mine's impacts on nearby communities and on the environment must be vetted and monitored by the Ministry of Environment and Forests—this is one of the most important areas of regulatory dysfunction described in the pages that follow.¹⁰³

Complicating the picture further still, a variety of state-level agencies including state-level environment ministries, pollution control boards, and mines departments exercise oversight responsibilities.¹⁰⁴ In some cases effective regulation under India's legislative framework requires several disconnected and geographically scattered government agencies to work in concert with one another—not always a realistic proposition.

India's central government acknowledges that its capacity to effectively regulate the mining sector falls short. In a letter to Human Rights Watch, then-Mines Secretary Vijay Kumar wrote that, "There is no doubt that regulatory institutions of the [mining] sector are underfunded, understaffed and overstretched."¹⁰⁵ But this is only one small part of a much bigger problem.

¹⁰² For a detailed description of regulation of India's mining sector, see Mines and Minerals (Development and Regulation) Act, 1957, <http://mines.gov.in/mmr.html> (accessed May 30, 2012). However, the Ministry of Mines has no responsibility for governance of the coal mining sector, which is overseen by the Ministry of Coal, or for the exploitation of petroleum and natural gas. See <http://www.coal.nic.in/welcome.html>.

¹⁰³ Numerous other agencies have roles to play in specific circumstances. For instance, if a proposed mine would result in the conversion of forest land, a forest clearance is required. If it is in close proximity to a wildlife reserve, wildlife clearance must be obtained. See Ministry of Environment and Forests (MOEF), "Procedure for consideration of proposals for grant of environmental clearance under EIA notification, 2006, which involve forestland and or wildlife habitat," December 2, 2009, http://envfor.nic.in/divisions/iass/env_Procedure_proposals.pdf (accessed April 30, 2012), noting that "It has now been decided that...The proposals for environmental clearance will not be linked with the clearances from forestry and wildlife angle...as these clearances are independent of one another."

¹⁰⁴ For example see above, Goa Case Study.

¹⁰⁵ Email communication from Vijay Kumar, October 2, 2011.

Government oversight of the mining sector displays a bizarre combination of procedural bloat and substantive inactivity. From the perspective of mining firms, government regulation is often overly bureaucratic and cumbersome. “The rules are so stringent that not a single soul thinks of being able to comply with all of them,” asserted one Bangalore-based lawyer and activist.¹⁰⁶ Yet government regulation has proven largely ineffectual in preventing abuse and ensuring compliance with the law. Some safeguards are so poorly designed that they are set up to fail. Others are hobbled by poor implementation, low capacity, uncertain political will and corruption.

The following pages do not attempt to analyze the legal framework that governs India’s mining sector in its entirety. Rather, they examine the handful of key regulatory failures that are most directly related to human rights problems caused by mining. Human Rights Watch believes that the most straightforward way India’s government can make progress in protecting mining-affected communities against damage to their health, water and other basic human rights is to address the failures described below.

The Answer is Always Yes: Government Approval of New Mining Operations

The Indian government rarely comes across a mining project it does not like. One of the key hurdles most proposed mining projects must clear is the Ministry of Environment and Forests’ environmental clearance process. Government statistics obtained by India’s Environmental Impact Assessment Resource and Response Centre (ERC) show that from 2006-2008 the ministry approved 587 new mining projects while rejecting only 10. From August 2009 to July 2010, the ministry approved 102 new mining projects while rejecting only three. The same overwhelming trend is reflected across other industries as well: out of 2, 515 mining, power, industrial and construction projects that sought environmental clearance during the same years, the ministry rejected only 20.¹⁰⁷

¹⁰⁶ Human Rights Watch interview with B.T. Venkatesh, Bangalore, May 16, 2011.

¹⁰⁷ These statistics were provided in response to Right to Information Act requests filed by the centre. “There is still only one in a hundred chance of having your EC rejected!!!,” *Environmental Impact Assessment Resource and Response Centre*, undated, https://docs.google.com/viewer?a=v&q=cache:q9MO03DKz98J:www.ercindia.org/files/ECpress.doc+&hl=en&gl=us&pid=bl&srcid=ADGEEsQ_oYog1n911Eoob2Wmm3hgE_KDYhQ9Ggx6M3PVbj2LYyohKxz2KgpBMXwLIP7oTzrQkRXb2Mj8gslxSGPZBmVWRvqYK72lwtHIT2S7wjfVH48yrDaPnRayp8kQ8mA5mZj7l3&sig=AHIEtbThqT-pMu2FWIVDgpfsr6ig2_mUWg&pli=1 (accessed May 30, 2012). Statistics from earlier years are comparable. See Kanchi Kohli and Manju Menon, *Calling the Bluff: Revealing the State of Monitoring and Compliance of Environmental Clearance Conditions* (New Delhi: Kalpavriksh, 2009), p. 4.

Many critics allege that these lopsided numbers reflect an approval process that does not seriously examine the potential dangers and negative impacts of new mines and other projects. Jairam Ramesh, who headed the Ministry of Environment and Forests from May 2009-July 2011, even said he would like to see a higher rejection rate, because “That will mean we are doing a good job.”¹⁰⁸

As described below, the environmental clearance process often does nothing to verify that proposed new mines are likely to comply with the law—or even that they intend to do so.

Inadequate Consideration of Community Impacts

The Indian government weighs the potential environmental impacts of new mining projects through several different clearance procedures.¹⁰⁹ Only one of these also considers a new mine’s potential impacts on the human rights of the people around it—the environmental clearance process carried out by the Ministry of Environment and Forests. All mines of a certain size are required to undergo this process.¹¹⁰

The environmental clearance process is meant to integrate consideration of environmental impacts with consideration of possible human rights and other impacts on affected communities—everything from serious health risks to possible destruction of vital water sources to impact on agriculture and other cornerstones of a potential mine site’s local economy. But in practice, the likely human impacts of a proposed mine are given short shrift even there. Prominent lawyer and activist Ritwick Datta told Human Rights Watch that the

¹⁰⁸ “Environment Ministry to get Stricter with Clearances,” *EIA Resource and Response Centre*, <http://www.ercindia.org/news12.php> (accessed May 30,, 2012).

¹⁰⁹ For instance, in addition to the environmental clearance process, proposed mines that would operate on forest land require forest clearances, and proposed mines that might impact on protected wildlife require wildlife clearances. Proposed mines that would operate on land inhabited by tribal groups protected by India’s constitution (“scheduled tribes”) are also subject to additional government scrutiny.

¹¹⁰ The general rule is that all mines whose lease covers an area of at least 50 hectares are required to seek environmental clearance through the central government; smaller mines are considered by state-level authorities. But regardless of size, any proposed mine that would exist within 10 kilometers of a protected or ecologically sensitive area, or an interstate boundary, must be considered by the central government, not state authorities. The central government also considers applications by all mines where state governments have not set up the appropriate bodies to deal with these responsibilities. Ministry of Environment and Forests (MOEF), “Notification, Extraordinary, Part II, and Section 3, Sub-section (ii), Ministry of Environment and Forests,” published in the *Gazette of India*, September 14, 2006 (“2006 EIA Notification”), <http://moef.nic.in/legis/eia/so1533.pdf> (accessed May 30, 2012). In practice this means that many mines smaller than 50ha are required to approach the central government for environmental clearance.

environmental clearance process “supposedly incorporates social impact assessment but in reality they don’t bother with social impacts at all.”¹¹¹ This is not hyperbole.

As described below, the environmental clearance process relies almost entirely on Environmental Impact Assessment (EIA) reports commissioned by mining firms (or the proponents of other industrial projects). The lengthy reports are required to assess the socio-economic, health and other community impacts of a proposed new project.¹¹² Often, however, the reports devote only several paragraphs of boilerplate text to considering community impacts.¹¹³ Many EIA reports do not refer explicitly to the human rights of affected communities or the rights obligations of mining firms at all.

Even on paper, this process does not treat the potentially severe human rights impacts of a new mining project with the seriousness they require. And in practice it is often a farce, grounded in superficial consideration of data that is often inaccurate or deliberately falsified.

India’s Environmental Impact Assessment Regime: Rotten Core of a Broken System

I find it very strange and foolish to mine illegally because all of the things you are doing illegally, you could be doing legally if you just ask them [the government].

– Lawyer and Activist Ritwick Dutta, June 2011¹¹⁴

India’s Environmental Impact Assessment process is intended to ensure scrutiny and rigor in evaluating the possible negative impacts of proposed new mines and other projects.¹¹⁵

¹¹¹ Human Rights Watch interview with Ritwick Datta, Delhi, June 3, 2011. See also Amnesty International, “Don’t Mine us out of Existence,” 2010, <http://www.amnesty.org/en/library/asset/ASA20/001/2010/en/oa81a1bc-f50c-4426-9505-7fde6b3382ed/asa200012010en.pdf> (accessed May 30, 2012), p. 26, arguing that because “EIAs are primarily focused on environmental impacts they [are] inadequate as a tool to assess the potential human rights impacts.”

¹¹² 2006 EIA Notification, <http://moef.nic.in/legis/eia/so1533.pdf>.

¹¹³ In addition to the examples below, see Amnesty International, “Don’t Mine us Out of Existence,” 2010, <http://www.amnesty.org/en/library/asset/ASA20/001/2010/en/oa81a1bc-f50c-4426-9505-7fde6b3382ed/asa200012010en.pdf> (accessed May 30, 2012), pp. 26-27, critiquing what Amnesty International viewed as the cursory and inadequate treatment of human rights and other community impacts in EIA reports prepared for Vedanta’s proposed Nyamgiri hills mining project.

¹¹⁴ Human Rights Watch interview with Ritwick Dutta, June 3, 2011.

¹¹⁵ India’s Environmental Protection Act was passed in 1986 but Environmental Impact Assessments have been required only since 1994. Ministry of Environment and Forests (MOEF), “Environmental Impact Assessment Notification,” S.O. 60(E), January 27, 1994, [http://envfor.nic.in/legis/eia/so-60\(e\).html](http://envfor.nic.in/legis/eia/so-60(e).html) (accessed May 30, 2012). For a discussion of how the EIA

Unfortunately, this key safeguard has been rendered largely ineffectual by negligent implementation and fraud.¹¹⁶

Mining firms and the proponents of other projects that need environmental clearances are required to hire consultants to produce EIA reports that assess the likely environmental and social impacts of their proposed operations.¹¹⁷ No government or other independent institution carries out a comparable impact assessment of its own. The EIA report is often the only source of relevant empirical data available to the regulators deciding whether to allow a project to go forward.

Even on paper this process is flawed. Requiring companies to select and pay the consultants who produce their EIA reports removes a potential financial burden from government but it also creates an inherent conflict of interest. As Sujeetkumar Dongre of the Goa-based Centre for Environmental Education told Human Rights Watch, “The big problem is that mining companies are the ones paying the labs, so the labs are obliged to say what the companies want.”¹¹⁸

Environmental clearances are usually granted or denied according to the recommendations of Expert Appraisal Committees set up by the Ministry of Environment and Forests. The committees often rely entirely on the data presented to them in the EIA reports. In general they do nothing to verify that the data is actually correct. For example, although they have the mandate to carry out field visits, they generally do not do so for lack of time and resources.¹¹⁹ Dr. Satish Aggarwal, chairman of the committee that reviews all proposals for non-coal mining projects, told Human Rights Watch that, “Our domain is the EIA report itself only....You have to believe the information provided by the [project] proponent is correct....Nothing beyond that can be done—if the data is false we cannot know unless it is very glaring.”¹²⁰

process sits within the legal and regulatory framework, see Kanchi Kohli and Manju Menon, *Eleven Years of the Environmental Impact Assessment Notification, 1994: How Effective Has it Been*, (Delhi: New Age, 2005), pp. 5-21.

¹¹⁶ See Kanchi Koli, “Is MOEF’s Green List of EIA consultants good enough?,” *Civil Society*, January 2012, pp. 28-29.

¹¹⁷ 2006 EIA Notification, <http://moef.nic.in/legis/eia/so1533.pdf>.

¹¹⁸ Human Rights Watch interview with Sujeetkumar Dongre, Centre for Environmental Education, Porovim, Goa, September 23, 2012.

¹¹⁹ The 2006 EIA notification provides that Expert Appraisal Committee members should carry out site visits to determine the appropriate terms of reference for an Environmental Impact Assessment “only if considered necessary” by the committee members. 2006 EIA notification, Section 7(i)(II), <http://moef.nic.in/legis/eia/so1533.pdf>.

¹²⁰ Human Rights Watch telephone interview with Dr. Satish Aggarwal, Delhi, September 28, 2011. The ministry has created separate Expert Appraisal Committees for coal and non-coal mining projects.

There is ample proof that EIA reports often do contain false data and that this goes undetected by government regulators. Some EIAs simply declare that issues of potential regulatory concern do not exist, in order to smooth a mine or other project's path to environmental clearance.¹²¹

In mid-2011 Goa's state government commissioned a two-year study of the EIA reports underlying the clearances given to every operational mine in the state, to be led by the non-profit Centre for Environmental Education. The preliminary findings are disturbing. Sujeetkumar Dongre, an official with the centre, told Human Rights Watch that:

There is a lot of false information in the reports I have gone through. Most companies have blatantly said, "There is no forest cover"—and this is a blatant lie. It's so they don't need to get a forest clearance. Most companies have said, there is no water course in the area—often a lie. Because if they say there is, no mining activities can take place within 50 meters of either bank. Some companies say there are no tribal communities—because then the tribal act would apply and companies will have to settle their rights first.¹²²

Sometimes even basic information about a proposed mining project is inaccurate. The centre found one EIA report that gave latitude and longitude coordinates for a mine site that would put it far out at sea.¹²³ Another, for a mine in north Goa, stated that the only wildlife in the area were "rat, Indian rat, common mouse, jackal, common mongoose, rhesus macaque, India hare." A rare government site visit subsequently revealed that herds of wild elephants were found in the area.¹²⁴ Dongre also said that in many cases the overall quality of the reports was so poor that they were "impossible to read or interpret."¹²⁵

¹²¹ In addition to the examples below, mining firm Vedanta was chastised by the Indian Supreme Court's Centrally Empowered Committee in 2005 for "deliberately and consciously" concealing the involvement of forest land in its proposed Nyamgiri Hills project in Orissa in order to avoid the need for forest-related regulatory clearances. Central Empowered Committee, "Report to the Supreme Court," September 21, 2005, para 31.

¹²² Human Rights Watch interview with Sujeetkumar Dongre, Centre for Environmental Education, Porovim, Goa, September 23, 2012.

¹²³ Human Rights Watch interview with Sujeetkumar Dongre, September 23, 2011.

¹²⁴ See Kanchi Kohli, "The Curious Case of the Pirna Mines," *MyLaw.net*, October 10, 2011, http://www.mylaw.net/Article/The_curious_case_of_the_Pirna_mines/ (accessed May 30, 2012).

¹²⁵ Human Rights Watch interview with Sujeetkumar Dongre, September 23, 2011.

Human Rights Watch examined the EIA report for a mine in south Goa, located in an area largely dependent on spring-fed agriculture, which declared that there was “no presence of any water resource within core zone,” meaning that no further consideration of the mine’s impact on groundwater supplies was necessary.¹²⁶ Farmers interviewed by Human Rights Watch in the same area in 2011 complained that nearby mines had destroyed their livelihoods by puncturing the water table and destroying the springs they relied on for irrigation and drinking water.¹²⁷

In some cases the authors of EIA reports simply cut and paste language from one report to the next. A 48-page EIA report prepared for a mine in south Goa devoted less than two pages to considering likely impacts on nearby communities and arrived at the following conclusion without any substantiation:

Though significant impact on environment is expected, but exploring the reserves in sustainable manner to meet the present day need cannot be stopped. Starting of these mines will also benefited to local community [sic] in creating substantial employment opportunities and increased revenue. Community identity will also improve.¹²⁸

The laboratory which authored that report carried out another EIA for a different mine in the same part of south Goa. The report’s perfunctory conclusions on community impact were identical from one report to the other.¹²⁹

In the most notorious example of this phenomenon, the proponents of a new mine in Maharashtra state submitted an EIA report that contained data on water quality, animal species and potential impacts that were taken verbatim from an EIA report done in 2004 for a bauxite mine in Russia. Not only important data, but entire paragraphs were duplicated.¹³⁰ Indian regulators approved the project before the fraud was exposed.¹³¹ This

¹²⁶ REAI/EMP of Carimol Cradimol Mine, M/s. Bhagavathi Ana Labs Ltd. Hyderabad, p. 2.41 (on file with Human Rights Watch).

¹²⁷ See above, Goa case study.

¹²⁸ REAI/EMP of Carimol Cradimol Mine, p 2.48.

¹²⁹ REIA/EMP of Carpadegga Codli Mine, p.1.62.

¹³⁰ See Ritwick Dutta and R. Sreedhar, “A Framework for EIA reforms in the Western Ghats,” *EIA Resource and Response Centre*.

¹³¹ Human Rights Watch interview with Ritwick Dutta. See also Padmaparna Ghosh, “Are the govt’s green clearances a farce?,” *Livemint*, December 27, 2007, <http://www.livemint.com/2007/12/27000203/Are-the-govt8217s-green-cle.html> (accessed May 30, 2012).

problem appears to be widespread; Sujeetkumar Dongre of the Centre for Environmental Education said that his initial review of the EIAs underlying mining projects in Goa showed cutting and pasting to be “rampant.”¹³²

In practical terms, it may matter little how inadequate the data flowing to government regulators is. Project approvals are granted so rapidly and in such numbers that it is not clear whether officials are seriously considering the data presented to them. It is not uncommon for Expert Appraisal Committees to consider the applications of 20 different mining projects in a single day.¹³³ Ruling on a challenge to one of the committees’ decisions, one Delhi High Court judge decried this “unseemly rush to grant environmental clearances for several mining projects in a single day” and noted that “We do not see how more than five applications for EIA clearance can be taken up for consideration at a single meeting of the [Expert Appraisal Committee].”¹³⁴

It is not clear whether some companies deliberately seek out consultants whose reports will not identify any problems with proposed mines, whether consultants simply work lazily or on the assumption that their clients prefer positive rather than accurate assessments, or some combination of the two. Whatever the case, the current system produces far too many shoddy reports that do nothing to help the government weigh a proposed mine’s likely impacts on nearby communities.

Mandatory Public Consultations: A Lost Opportunity

Most EIA reports must be subject to a public consultation that allows affected communities to voice any concerns about a proposed mine or other project’s likely impacts.¹³⁵ The purpose of the hearing is to ensure that the voices of affected communities are considered before approving the project. Minutes of the hearings are passed to the Expert Appraisal Committees that consider applications for environmental clearance.¹³⁶

¹³² Human Rights Watch interview with Sujeetkumar Dongre, September 23, 2011.

¹³³ See Ritwick Dutta and R Sreedhar, “A Framework for EIA reforms in the Western Ghats,” *EIA Resource and Response Centre*, para B(ii).

¹³⁴ *Utkarsh Mandal v. Union of India*, High court of Delhi at new Delhi, Writ Petition (civil) No. 9340/2009 and CM APPL Nos. 7127/09, 12496/2009, Judgment, November 26, 2009, para 45.

¹³⁵ See 2006 EIA Notification, <http://moef.nic.in/legis/eia/so1533.pdf>, sec. 7(i)(III).

¹³⁶ *Ibid*, sec. 7(i)(IV)(i).

This should be valuable, but too often the committee appears to dispose of any objections made at these consultations without serious consideration.

The Expert Appraisal Committees often “take note” of the issues raised at a project’s public consultation. But minutes of non-coal mining committee meetings examined by Human Rights Watch reveal that this often means very little. In some cases the committee simply lists all of the issues raised at a hearing in a single sentence and notes that the company seeking clearance has promised to address them all. In others the committee responds to all of the objections or concerns raised at public hearings for numerous different projects with virtually identical language.¹³⁷

To cite one representative example, Human Rights Watch reviewed the minutes of a 2009 meeting of the Expert Appraisal Committee for mining. Recommending approval of a proposed iron ore mine in Goa, the committee’s entire consideration of the results of the project’s mandatory public consultation was as follows:

The committee also took note of the issues raised in the Public Hearing and the Environmental Management Plan submitted by the proponent. The major issues raised were impact on Chapora River due to mining; impact on habitations and agricultural fields within the lease; impact on health due to mining operations; impact on school children; destruction of ground water aquifer due to proposed mining etc. The proponent clarified the concerns raised and also stated that issues raised and suggestions placed in the public hearing will be addressed as agreed.¹³⁸

On the same day, the committee approved seven other mining projects and in each case disposed of the public consultation with substantially identical three-sentence summaries: one sentence claiming that the committee “took note” of all objections raised at the consultation; one sentence briefly listing those objections; and one sentence noting that

¹³⁷ Human Rights Watch interview with Ritwick Dutta, Delhi, June 3, 2011. Minutes for most EAC meetings are available online at <http://moef.nic.in/modules/project-clearances/environment-clearances/>.

¹³⁸ Minutes of the 33rd Meeting of the Expert Appraisal Committee (Mining), Held during May 5-6, 2009 (on file with Human Rights Watch), sec. 33.2.3.

the project proponent had promised to address all of those issues without saying anything about how this might be done.¹³⁹

In one case, a Delhi High Court found that the Expert Appraisal Committee for non-coal mining projects granted clearance to restart a dormant mine in Goa after making only a “passing reference” to the objections raised at the required public hearing, even though 67 separate objections were registered and “Not a single application nor a single member of the public was in favor of restarting the mine due to grave environmental and social damage.”¹⁴⁰ The court, hearing a later challenge to that clearance, found this “totally unacceptable” and noted that if the EAC acted similarly in other cases it would “reduce every public hearing to a farce. The unacceptable consequence would be that notwithstanding any number of objections that may be raised, environmental clearance would nevertheless be granted.”¹⁴¹

This is precisely the state of affairs that many government critics describe. For instance, Amnesty International alleged that the public consultations held for Vedanta’s proposed Nyamgiri Hills project in Orissa State were inadequately advertised and did not offer any real opportunity for affected people to participate.¹⁴² Indian activists interviewed by Human Rights Watch say that such failures are commonplace, and that the consultations are often treated as an irritating bureaucratic hurdle rather than an important safeguard for affected communities.¹⁴³ A 2011 report by the EIA Resource and Response Centre summarized the problem this way:

Almost every other day in some part of India, a Public Hearing is held for obtaining the views of local people on proposed projects.... People generally participate with the genuine hope that their views will be considered by the decision makers. Unfortunately, the people are heard but their voice does not matter so far as the final decision is concerned.¹⁴⁴

¹³⁹ Minutes of the 33rd Meeting of the Expert Appraisal Committee (Mining).

¹⁴⁰ *Utkarsh Mandal v. Union of India*, High court of Delhi at new Delhi, Judgment, para. 7.

¹⁴¹ *Ibid*, para. 42.

¹⁴² Amnesty International, “Don’t Mine us Out of Existence,” pp. 28-31.

¹⁴³ Human Rights Watch interviews with human rights and anti-mining activists, Delhi, Karnataka and Goa, May and September 2011.

¹⁴⁴ Ritwick Dutta, Shibani Ghosh, R. Sreedhar, and Rahul Choudhary, “Making our Voices Matter: A Guide to Environmental Public Hearings,” *EIA Resource and Response Centre*, 2011. EIA Resource and Response Centre publications are available online at <http://www.ercindia.org/pub.php>.

Weak Oversight of Operational Mines

In theory, the Ministry of Environment and Forests' six regional offices monitor all mines' compliance with the terms of their environmental clearances. Mines and other projects are required to submit compliance reports to the ministry every six months. But due partly to resource constraints, there is virtually no in-field monitoring to verify the information contained in these reports—a situation that mirrors the problems with the EIA process described above. Rather, the reports are generally assumed to present an accurate and honest picture and are often the *only* basis for the ministry's determination that a mine is operating in compliance with the law.¹⁴⁵

Dr. Satish Aggarwal, member secretary of the Expert Appraisal Committee that deals with non-coal mining projects, told Human Rights Watch that the regional offices “rely largely on implementation reports by owners” in monitoring the performance of existing mines. “Self-monitoring,” he added, “is the best monitoring,” as anything more substantial is unrealistic.¹⁴⁶ But the Indian government often does not know whether a mine is complying with the law or not. The situation in Goa—described above—presents a stark example of these problems.¹⁴⁷

Longstanding Critiques

Research published by the Indian NGO Kalpavriksh has documented the Ministry of Environment and Forests (MOEF)'s failure to effectively monitor mines and other industries.¹⁴⁸ The study identified a number of key problems with the ministry's monitoring regime, including: a lack of consolidated information on monitoring at either the central or regional offices; inadequate capacity for monitoring at the MOEF regional offices; infrequent monitoring; inadequate action to punish non-compliance; the poor quality of monitoring and compliance reports; and a lack of interaction with affected communities during the monitoring process.

¹⁴⁵ Human Rights Watch telephone interviews with K.S. Reddy, Ministry of Environment and Forests, Bangalore Office, September 22, 2011 and Dr. Satish Aggarwal, September 28, 2011. See also Kohli and Menon, *Calling the Bluff*.

¹⁴⁶ Human Rights Watch telephone interview with Dr. Satish Aggarwal, September 28, 2011.

¹⁴⁷ See above, Goa Case Study.

¹⁴⁸ Kohli and Menon, *Calling the Bluff*.

The Kalpavriksh study found that some 12 to 24 staff across the MOEF's six regional offices were responsible for monitoring some 6,000 mines and other projects nationwide and that the rapid approval of new projects was continually adding to this unsustainable burden. Regional offices had no common approach to the frequency or extent of monitoring. Perhaps worse, the report found that the conditions laid down in environmental clearances are sometimes so vague or poorly constructed that objective monitoring of compliance was arguably impossible.¹⁴⁹

The Role of Corruption

Everyone is aware, and they are just standing there blinking.

– Syed Riyaz, Deputy Commissioner (Public Relations), Karnataka State Lokayukta, May 2011¹⁵⁰

Governance in India's mining sector is undermined by broader patterns of corruption that affect many public institutions. Corruption directly linked to mining appears to have grown worse in recent years as rising commodity prices have increased the potential spoils. One official with a major Goa-based Indian mining firm (who denied any involvement in corruption on the part of his own company) told Human Rights Watch that:

Simply put, the problem is greed. The systems are there but they break down because of greed. The [profit] margin is so high, I can afford to share 50 percent of the profit [through corruption] and still make millions.... As you go up the ladder the stakes go up and if you can afford to, you pay it...you say "I want to do this business. Here is your packet, please look the other way and go on vacation, or find me a loophole in the law."¹⁵¹

Some industry officials allege that it can be impossible to process necessary clearances and other approvals *without* paying a bribe. The official quoted above also alleged that, "officials look to hold [delay] my file so I will have to go to him repeatedly and he will say,

¹⁴⁹ Ibid, pp. 16-19.

¹⁵⁰ Human Rights Watch interview with Syed Riyaz, Deputy Commissioner (Public Relations), Karnataka State Lokayukta, Bangalore, May 17, 2011.

¹⁵¹ Human Rights Watch interview with mining company senior official, 2011 [identifying details withheld].

‘Give me money, give this man a job, give me a bribe.’”¹⁵² Some critics argue that it can be simpler to ignore regulators and accept any eventual consequences than to try in good faith to comply with the law. As Delhi-based activist R. Sreedhar put it:

If regulators approach you [for breaking the law], you pay a fine or a bribe depending whether the man is honest. But if you go seeking clearances it can be a never-ending story—bribe after bribe after bribe. Companies say, “Look, whether we comply or not [officials] will still ask us for the same bribe.”¹⁵³

The case study that follows provides detailed examples of corruption’s role in fueling abuse and illegality in the mining sector.

¹⁵² Ibid.

¹⁵³ Human Rights Watch interview with R. Sreedhar, Envionics Trust, Delhi, May 13, 2011.

IV. Karnataka Case Study: Criminality and Mining

The way they do illegal mining up there, you wouldn't believe there is a government here. It is not mining, it is looting.

–J.P. Hegde, former Member of Karnataka's Legislative Assembly, May 2011¹⁵⁴

Karnataka State is famous for having turned its capital, Bangalore, into one of India's first information technology hubs and leapfrogging a part of its economy into the 21st century. But by early 2011 the state had also become synonymous in the public imagination with illegal mining and corruption – and with good reason. Key state institutions had allegedly been captured by a wealthy Karnataka politician implicated in illegal mining. Every semblance of law and order in the state's mining sector was destroyed, the state was being bilked out of vast and badly needed revenues, and some of the very government agencies mandated to police mine operators were transformed into tools of extortion.¹⁵⁵

In Human Rights Watch's view, the scandal in Karnataka shows how weak government regulation of the mining industry provides fertile ground for the growth of corruption and criminality in Indian public institutions. For much of the Indian public, Karnataka's travails also came to illustrate the near complete impunity that well-connected public figures often enjoy in India. Even when the alleged looting of Karnataka's iron resources made national headlines and the involvement of high-ranking officials in the scandal became public knowledge, it seemed as though nothing would be done to stop the plunder. But the scandal in Karnataka ultimately showed how it was possible to end the very impunity it exemplified. Thanks to tenacious government investigators and rising public pressure, Karnataka's scandal offered lessons on how some level of accountability in the mining sector can be restored.

Seizing Control

Janardhana Reddy has humble origins, the son of a police officer in Karnataka's mining town of Bellary. But by 2008 he had risen to become one of Karnataka's most important political powerbrokers who has allegedly been deeply involved in illegal mining.

¹⁵⁴ Human Rights Watch interview with J.P. Hegde, Bangalore, May 17, 2011.

¹⁵⁵ The film *Blood and Iron* provides one filmmaker's detailed account of patterns of illegal mining and corruption around the Bellary scandal. Paranjoy Guha Thakurta, *Blood and Iron*, 2010.

Bellary sits in a relatively poor corner of northern Karnataka, near the state's border with Andhra Pradesh state. The border region cuts across a rich belt of iron deposits exploited by miners in both states. Reddy entered the mining business in 2004 with a lease in Andhra Pradesh and soon moved to translate his wealth into political power in both states. By 2008 he reportedly controlled the votes of some dozen Karnataka state legislators—enough to bring down the fragile coalition government headed by BJP Chief Minister B.S. Yeddyurappa.¹⁵⁶ Reddy was named minister of tourism in the state government, and one of his two brothers became minister of revenue.

Reddy allegedly went to extraordinary lengths to dominate the Bellary region's booming iron mining industry. The potential profits were enormous—prices skyrocketed from roughly US\$40 per ton in 2004 to \$135 per ton in 2011.¹⁵⁷ “The chief minister [was] the mines and forest minister but he could not do anything to control the Reddys because they threatened to bring the government down,” said one mining industry official. “That is how the government became a mute spectator to the illegal acts of the Reddys.”¹⁵⁸

Reddy and his brothers Karunakara and Somashekara started a mining firm—Obulapuram Mining Company (OMC)—that operated in neighboring Andhra Pradesh. The brothers always claimed that they did no mining in Karnataka. In a way, this was true—the Reddys allegedly made a fortune by extorting production from mine operators in Karnataka rather than taking over mines themselves.

Reddy's interlocutors allegedly approached Bellary mine owners and told them that the government would shut their operations down unless they handed over part of their production. Their alleged choice of intermediary spoke volumes—two mine executives told Human Rights Watch that the Reddys' extortionate offer was conveyed to them by S.

¹⁵⁶ Reddy reportedly threatened to do just this on one occasion—in response to plans for a new state tax on the transport of iron ore. See Jim Yardley, “Despite Scandals, Indian Mining Bosses Thrive,” *New York Times*, August 18, 2010, <http://www.nytimes.com/2010/08/19/world/asia/19india.html> (accessed January 26, 2011).

¹⁵⁷ See Megha Bharee, “Mining Probe Threatens Top Indian Party,” *Wall Street Journal*, November 16, 2011, <http://online.wsj.com/article/SB10001424052970204323904577036121909213912.html> (accessed April 6, 2011).

¹⁵⁸ Human Rights Watch interview with Rahul Baldota, May 23, 2011. For more background, see Sanjana, “The Reddy Flag Over Bangalore,” *Tehelka*, June 14, 2008, http://www.tehelka.com/story_main39.asp?filename=Ne140608thereddyflag.asp (accessed January 26, 2012).

Muthiah, then the area's deputy conservator of forests.¹⁵⁹ The Reddys were running a protection racket using the very government regulators meant to oversee the industry.

The scheme worked. Of Bellary's several dozen mining leaseholders, only three openly refused to comply with the Reddys' demands. Human Rights Watch interviewed executives of two. One of the companies, MSPL Limited, was the largest private sector mine operator around Bellary in 2008; the company has large investments in wind power and other sectors of the economy as well. MSPL executive Rahul Baldota told Human Rights Watch: "They [Reddy and Muthiah] told us, you have to give me 30 or 40 percent of what you produce and I will sell it."¹⁶⁰ The company refused; its operations around Bellary were shut down by regulators after being denied or stripped of necessary permits in 2009.¹⁶¹

Another much smaller firm, Tumti Mines, also said they resisted the Reddys' demands. The firm's owner, Tapal Ganesh, alleges that forest department official Muthiah approached him in 2008 and proposed that he give 60 percent of his production to the Reddys "for the smooth running of our mine." He refused and says that just 10 days after that encounter forest department officials moved to shut down his only operational mine, alleging newly discovered illegalities.¹⁶²

While acts of mining-related violence were not common, Ganesh also alleges that in March 2010 he was attacked and beaten in broad daylight on the streets of Bellary by thugs. At the time of the attack he was waiting to meet with a government commission sent to investigate illegal mining in the area.¹⁶³ Ganesh suffered a broken ankle and wrist in the attack.¹⁶⁴ "Some four or five people came with big sticks and rocks, immediately dragged me from my vehicle and attacked me," he recalled. "They just took me down from the vehicle, beat me, and ran." The incident was widely reported in the media and its

¹⁵⁹ Human Rights Watch interview with Tapal Ganesh, Bellary, Karnataka, May 21, 2011; Human Rights Watch interview with Rahul Baldota, May 23, 2011. Muthiah, reached by phone, declined repeated requests for an interview by Human Rights Watch.

¹⁶⁰ Human Rights Watch interview with Rahul Baldota, May 23, 2011.

¹⁶¹ Ibid. See also Prince Matthews Thomas, "The Bellary Minefield," *Forbes India*, October 1, 2010, <http://forbesindia.com/printcontent/17722?id=17722> (accessed January 26, 2012).

¹⁶² Human Rights Watch interview with Tapal Ganesh, May 21, 2011.

¹⁶³ See "Prime petitioner against Reddys assaulted," *ANI*, March 29, 2010, <http://news.oneindia.in/2010/03/29/primepetitioner-against-reddy-brothers-attacked-inbellary.html> (accessed January 26, 2012).

¹⁶⁴ Human Rights Watch interview with Tapal Ganesh, May 21, 2011.

aftermath apparently captured on film.¹⁶⁵ Janardhana Reddy denied any involvement in the incident and suggested that Ganesh might have orchestrated the incident himself.¹⁶⁶

The Reddys also allegedly began moving border posts marking the Karnataka-Andhra Pradesh border to allow their Andhra Pradesh-based mines to swallow up land that was actually in Karnataka. Tapal Ganesh's mining lease sits adjacent to Karnataka's border with Andhra Pradesh; he alleges that one of his foremen was beaten up by employees of the Reddy-owned Obulapuram Mining Company when he tried to prevent them from shifting the border posts to consume part of his own lease.¹⁶⁷ As Bellary-based journalist Shivakumar Malagi described it, Reddy "crossed the Karnataka border like a king expanding his kingdom."¹⁶⁸

A Broader Collapse of Governance

Sensing the governance vacuum that had emerged, illegal miners swooped in to join the plunder of iron resources around Bellary, Sandur, and nearby communities.¹⁶⁹ Many launched small, short-term operations that were entirely illegal but which were left untouched by local authorities. Some farmers made what seemed to them like small fortunes overnight for simply walking away while their fields were illegally torn up and stripped of iron. We interviewed a farmer who had accepted a large cash payment (Rs 3 lakh, or \$6600) in return for vacating his iron-rich farmland while a team of laborers stripped it of ore. "It was illegal," he cheerfully admitted. "Twenty or 30 laborers removed all of the ore within one year." He identified the man who paid him only as "a businessman" from Bellary.¹⁷⁰

This situation spun out of control. Government officials allegedly gave out stacks of blank transit permits to miners—enabling them to transport unlimited quantities of ore for

¹⁶⁵ Video footage is available online at <http://www.youtube.com/watch?v=mLk1TjyZFNA> (accessed June 4, 2012).

¹⁶⁶ See "Janardhana Reddy denies involvement in attack on Tapal Ganesh," *PTI*, March 29, 2010, http://www.dnaindia.com/bangalore/report_janardhan-reddy-denies-involvement-in-attack-on-tapal-ganesh_1364900 (accessed January 26, 2012).

¹⁶⁷ Human Rights Watch interview with Tapal Ganesh, May 21, 2011. See also Price Matthews Thomas, "The Bellary Minefield," <http://forbesindia.com/printcontent/17722?id=17722>.

¹⁶⁸ Human Rights Watch interview with Shivakumar Malagi, *Deccan Herald* Correspondent, Bellary, Karnataka, May 21, 2011.

¹⁶⁹ Human Rights Watch interviews with local residents and civil society activists, Hospet, Bellary and Sandur, May 2011.

¹⁷⁰ Human Rights Watch interview with farmer, Sandur, Karnataka, May 22, 2011.

foreign export without reporting or paying royalties on it.¹⁷¹ Politicians and public servants began writing “letters of recommendation” asking regulatory officials to treat particular miners with leniency or favor.¹⁷² In one of the Karnataka scandal’s most sensational twists, several thousand tons of iron ore that had been impounded at the port of Bellikiri for lack of proper documentation simply vanished in 2010.¹⁷³

The scale and pace of illegal mining activities that consumed Karnataka through the end of 2011 may be unparalleled in India. This level of illegality would not have been possible without the acquiescence or participation of key government officials. As then-state anti-corruption chief Santosh Hegde told Human Rights Watch:

The state [government] blames the center and the center blames the state. Political leaders, forest department officials, revenue department officials, mines and geology department officials, road and transportation department officials—all are involved in it. It’s a big mafia.¹⁷⁴

One former Karnataka state legislator said, “When the thieves are controlling the government how do you expect the police to take action?”¹⁷⁵

Human Rights Impacts

The human and environmental toll of Karnataka’s illegal mining boom has not been objectively measured.¹⁷⁶ But activists and members of some affected communities allege that many have suffered real harm that went on unabated and unaddressed for several years during Karnataka’s illegal mining boom.¹⁷⁷ Their complaints mirror the human rights impacts of irresponsible mining operations in Goa and elsewhere in India.

¹⁷¹ Karnataka Lokayukta, “Report on the Reference Made by the Government of Karnataka Under Section 7(2-A) of the Karnataka Lokayukta Act, 1984 (PART-I),” December 18, 2008, pp. 102-103.

¹⁷² *Ibid.* p. 214.

¹⁷³ Karnataka Lokayukta, “Report on the Reference Made by the Government of Karnataka Under Section 7(2-A) of the Karnataka Lokayukta Act, 1984 (PART-II),” July 27, 2011, pp. 36-56. The report documented other widespread illegalities relating to ore export at Belekiri Port as well.

¹⁷⁴ Human Rights Watch interview with Santosh Hegde, Bangalore, May 17, 2011.

¹⁷⁵ Human Rights Watch interview with J.P. Hegde, Bangalore, May 17, 2011.

¹⁷⁶ See, however, Karnataka Lokayukta, “Report on the Reference Made by the Government of Karnataka Under Section 7(2-A) of the Karnataka Lokayukta Act, 1984 (PART-I),” which details allegations of environmental and community harm by mining firms that allegedly operated in violation of key laws and regulations around Bellary as of 2007.

¹⁷⁷ Human Rights Watch interviews with farmers and local activists, Sandur, Karnataka, May 22, 2011.

Human Rights Watch interviewed residents in the town of Sandur who alleged that rampant illegal mining had destroyed groundwater supplies and contaminated surface water.¹⁷⁸ A 2007 report prepared by India's Central Pollution Control Board noted that "the main cause of water pollution [in the Bellary-Hospet-Sandur area] during the short span of the rain season is due to wash off from the [mine] waste dumps. Due to unplanned dumping...[mine waste] gets deposited along the down slopes, stream courses, agricultural fields and ultimately reaches the tanks and reservoirs."¹⁷⁹ The collapse of government oversight of mining in Karnataka helped ensure that such practices continued unabated.

Crops around Bellary, Sandur and other communities were allegedly damaged or destroyed by massively overloaded ore trucks.¹⁸⁰ Human Rights Watch witnessed lines of trucks several kilometers long bumping along roads that had been largely destroyed by heavy traffic, many partially uncovered and generating clouds of red iron-rich dust as they went.¹⁸¹ Fields of cotton—a backbone of Bellary's economy prior to the iron ore boom— were rendered worthless after being covered in thick coats of red iron ore dust. Other farmers complained that crops died for lack of water when sources were polluted or destroyed.¹⁸² Many of the residents of Sandur *taluk* [district] interviewed by Human Rights Watch also believed that clouds of ore-laden dust had led to an increase in respiratory problems, but had no way of proving such assertions.¹⁸³ Some families reportedly sent their children to work as laborers at illegal mining sites, putting their health and safety at risk.¹⁸⁴

¹⁷⁸ Human Rights Watch interviews with residents of Sandur, Sandur, Karnataka, May 22, 2011.

¹⁷⁹ Central Pollution Control Board, "Comprehensive Industry Document on Iron Ore Mining," COINDS/__/2007-08, August 2007, http://www.cpcb.nic.in/upload/NewItems/NewItem_105_iron_ore_mining_31.07.08.pdf (accessed May 30, 2012) pp. 4-69.

¹⁸⁰ Human Rights Watch interviews with journalists, local residents and civil society activists, Bellary and Sandur, May 2011.

¹⁸¹ In Justice Santosh Hegde's Lokayukta report, he noted that "During the course of my journey, I noticed that roads in and out of Hospet and Sandur are practically not motorable by passenger vehicles, because of the frequency of the vehicles carrying minerals and also in view of the fact that these vehicles carry minerals in open-bodied vehicles, on either side of the road, vegetation has been damaged heavily." Karnataka Lokayukta, "Report on the Reference Made by the Government of Karnataka Under Section 7(2-A) of the Karnataka Lokayukta Act, 1984 (PART-I)," 2008, p. 55.

¹⁸² Human Rights Watch interviews with farmers and local activists from Sandur and Bellary, Sandur and Hospet, Karnataka, May 2011. See also Report on the Reference Made by the Government of Karnataka Under Section 7(2-A) of the Karnataka Lokayukta Act, 1984 (PART-I)," pp. 256-257.

¹⁸³ Ibid. A report prepared by India's Central Pollution Control Board in 2007 noted that, "Dust is the main pollutant in the Bellary-Hospet area [which includes Sandur]. The semi-arid climactic condition, combined with unscientific mining (specifically by smaller companies operating either manual mining or semi-mechanised mining) has worsened the situation." Central Pollution Control Board, "Comprehensive Industry Document on Iron Ore Mining," pp. 4-61.

¹⁸⁴ Human Rights Watch interviews with residents and local activists, Bellary and Hospet, May 2011.

Dangerous illegal activities by legitimate mine operators appeared to spike as well; a 2011 study ordered by the Indian Supreme Court's Central Empowered Committee reportedly found that widespread disregard for environmental regulations and the terms laid down in mines' environmental clearances had adversely affected the quality of surface and groundwater supplies in the Bellary-Sandur-Hospet area.¹⁸⁵

Perhaps the greatest impact of Karnataka's illegal mining binge lies in the valuable resources that have been plundered without doing anything to help realize the basic rights of the population. Under the International Covenant on Economic, Social and Cultural Rights, governments are obligated to use all available resources to achieve progressively the full realization of the rights to health and education along with other economic, social and cultural rights.¹⁸⁶ Allowing badly needed resources to be siphoned off through corruption can prevent public institutions from doing that. "A loss to the state of its deserved income has a big impact on the delivery of social services," Justice Hegde told Human Rights Watch. "That's also a human rights issue."¹⁸⁷

One Karnataka mining executive estimated that some Rs 13,500 to 22,500 crore (\$3 to 5 billion) worth of iron ore was illegally mined and sold without any royalty or tax being paid to the government during the illegal mining boom around Bellary.¹⁸⁸ At current rates that would translate into roughly Rs 1350 to 2250 crore (\$300 to 500 million) in lost royalty payments to the state government.

By comparison, Karnataka budgeted just Rs 10,500 crore on education and an even lower Rs 2600 crore on health services in IFY (Indian Financial Year) 2010.¹⁸⁹ Karnataka has worse rates of maternal mortality (213 per 100,000) and infant mortality (45 per 1000) than neighboring Kerala and Tamil Nadu states, and could certainly benefit from increased

¹⁸⁵ See Mahesh Kulkarni, "Mining study urges legal action," *Business Standard*, November 10, 2011, <http://www.business-standard.com/india/news/mining-study-urges-legal-action/454980/> (accessed January 26, 2012).

¹⁸⁶ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, art. 2(1). India ratified the covenant in 1979.

¹⁸⁷ Human Rights Watch interview with then-Lokayukta Chairman Santosh Hegde, Bangalore, May 17, 2011.

¹⁸⁸ Human Rights Watch interview with senior mining company official, Karnataka [identifying details withheld].

¹⁸⁹ See Government of Karnataka, "Karnataka Budget 2010-2011 Highlights," undated, <http://www.bijapur.nic.in/PDF/Budget-2010-11.pdf> (accessed January 26, 2012).

investment in public health.¹⁹⁰ Karnataka also faces considerable shortfalls in staffing for doctors and other health workers.¹⁹¹ A study by Columbia University's Earth Institute found that Karnataka required an additional Rs 320 crore (\$70 million) in annual public investment to scale up primary education in rural areas—a small fraction of the amount of revenue believed lost to illegal mining.¹⁹²

From Impunity to Accountability

Janardhana Reddy flaunted his wealth, building a veritable palace with an indoor pool and helipad that he proudly displayed to visiting journalists. He bought and donated a diamond-studded crown worth an estimated Rs45 crore (US\$10 million) to a temple in Andhra Pradesh.¹⁹³ These brazen displays of wealth seemed to court accountability but for several years, his impunity seemed ironclad.

Karnataka is one of 19 Indian states that has created a *Lokayukta* (an independent, state-level, anti-corruption ombudsman).¹⁹⁴ Karnataka's is unusually powerful and well-resourced. In July 2011 then-chairman Santosh Hegde released a 466-page report documenting extensive criminal activity linked to the state's mining sector, a "total failure of all supervisory machinery" maintained by government institutions, and patterns of official collusion that sustained these problems.¹⁹⁵ Hegde's report was stunning in the sheer amount of detail that it presented. With that report, the publicity around Karnataka's mining scandal grew to such proportions that it was a severe national embarrassment and a political liability to the opposition BJP, which controlled Karnataka's state government.

¹⁹⁰ See "High infant, maternal mortality rates sickening state," *Times of India*, January 20, 2011, <http://timesofindia.indiatimes.com/city/bangalore/High-infant-maternal-mortality-rates-sickening-state/articleshow/7322974.cms> (accessed January 26, 2012).

¹⁹¹ Ministry of Health and Family Welfare, "Health Indicators of Karnataka," undated, <http://mohfw.nic.in/NRHM/State%20Files/karnataka.htm#hp> (accessed January 26, 2012).

¹⁹² Nurupam Bajpai, Ravindra H. Dholakia and Jeffrey D. Sachs, "Scaling Up Primary Education Services in Rural India: Public Investment Requirements and Policy Reform," *Center on Globalization and Sustainable Development*, Working Paper no. 34, January 2008, <http://www.dise.in/Downloads/Use%20of%20Dise%20Data/Nirupam%20Bajpai,%20Ravindra%20H.%20Dholakia%20and%20Jeffrey%20D.%20Sachs.pdf> (accessed January 26, 2012).

¹⁹³ After Reddy's arrest the temple dismissed any suggestion of returning the crown. See "Tainted Reddy's Crown Won't be Returned: Tirupati Trust," *Times of India*, September 11, 2011, http://articles.timesofindia.indiatimes.com/2011-09-11/india/30141932_1_tirupati-trust-karnataka-minister-and-mining-gold-crown (accessed January 26, 2012).

¹⁹⁴ Sowmya Aji "Toothless Watchdogs," *India Today*, February 22, 2012, <http://indiatoday.intoday.in/story/lokalpal-lokayukta-offices-lack-basic-infrastructure/1/173027.html> (accessed June 1, 2012).

¹⁹⁵ Karnataka Lokayukta, "Report on the Reference Made by the Government of Karnataka Under Section 7(2-A) of the Karnataka Lokayukta Act, 1984 (PART-II)," p. 11.

Crucially, Hegde named names—including that of the chief minister, Yeddyurappa, and other government officials—and did not soften his findings. The report documented a pattern of donations by mining firms to an “educational trust” linked to Yeddyurappa. After detailed examination, the report concluded that these donations were in fact “sham transactions” that benefitted Yeddyurappa’s family members. It also concluded that the payments were made to induce favorable state government intervention with authorities in Delhi on behalf of the donors. Hegde characterized this as “illegal gratification to show official favor.” He concluded, “I consider it necessary to recommend to the Competent Authority to take appropriate steps to initiate criminal proceedings against the chief minister and such other persons who are involved” in the transactions.¹⁹⁶

The consequences were dramatic. In July 2011 Chief Minister Yeddyurappa resigned. Janardhana Reddy was arrested two months later by the Central Bureau of Investigation (CBI) and charged with numerous criminal counts along with his brother-in-law (the director of Reddy’s OMC mining company) and V.D. Rajagopal, who was Andhra Pradesh’s Director of Mines when OMC’s leases were granted in 2005.¹⁹⁷ When agents searched Reddy’s home they reportedly found some \$1 million in cash as well as a suitcase full of gold bars worth at least \$1.5 million.¹⁹⁸ The CBI also raided the offices of Reddy’s alleged accomplice in the forest department, S. Muthiah, and then arrested him in April 2012 on suspicion of crimes related to corruption and illegal mining.¹⁹⁹

The prosecution of Janardhana Reddy is important—not least because it shows that accountability is possible even for the powerful. It is not enough in and of itself, however. A government commission assembled to consider the implications of Hegde’s work recommended the prosecution of scores of current and former government officials. It remains to be seen whether any of them will be brought to book—and whether the impunity that allowed illegal miners to loot Karnataka has been crushed or merely bruised. Rahul Baldota of MSPL mining company told Human Rights Watch that, “There is a need for

¹⁹⁶ Ibid, p. 37.

¹⁹⁷ See “CBI chargesheets Janardhana Reddy in illegal mining case,” *Economic Times*, December 3, 2011, http://articles.economictimes.indiatimes.com/2011-12-03/news/30471914_1_charge-sheet-three-day-cbi-custody-obulapuram (accessed January 26, 2012).

¹⁹⁸ Hari Kumar and Jim Yardley, “India charges mining baron with fraud,” *The New York Times*, September 5, 2011, <http://www.nytimes.com/2011/09/06/world/asia/06india.html> (accessed June 1, 2012). See also Subramanya, “Reddy reaped 2800 crore by exporting 80 lakh tons of ore,” *Deccan Herald*, March 10, 2012, <http://www.deccanherald.com/content/233530/reddy-reaped-rs-2800-crore.html> (accessed March 21, 2012).

¹⁹⁹ See “CBI arrests 2 officials in mining scam case,” *Deccan Herald*, April 30, 2012.

deterrence. At least one of these officers [must be] punished—at least one, to show an example that you cannot do something which is wrong....We need to be able to hold our heads high again and not be ashamed you are from the mining business in Bellary.”²⁰⁰

As of March 2012 mining operations around Bellary remained shuttered pursuant to a Supreme Court order barring ore exports from the state, and it was not clear when production might be allowed to resume.²⁰¹ Thousands of households who had depended on the mines for their livelihood were out of work and local steel refineries were starved of raw materials.²⁰² Karnataka’s predicament triggered panic among some industry officials in neighboring Goa, where a new scandal began brewing in 2011.

²⁰⁰ Human Rights Watch interview with Rahul Baldota, May 23, 2011.

²⁰¹ In early 2012 some reports indicated that mining around Bellary could remain shut down for as long as several years. See “Iron ore mining mess— CEC for prohibition of operations of 49 mining firms,” *Steel Guru*, March 21, 2012, http://www.steelguru.com/indian_news/Indian_iron_ore_mining_mess_CEC_for_prohibition_of_operations_of_49_mining_firms/255514.html (accessed March 21, 2012).

²⁰² The mining industry in the Bellary/Hospet/Sandur area normally employs some 50,000 people directly and indirectly accounts for the livelihoods of between 300,000 and 500,000 more. Human Rights Watch interview with Rahul Baldota, May 23, 2011; Human Rights Watch interview with Shivakumar Malagi, May 21, 2011.

V. Mining and Human Rights: Government's Duty to Regulate

The Need for Regulation

Even the world's major mining firms generally acknowledge that mining can be a dangerous and destructive industry when not carried out responsibly—and that painstaking evaluation of possible negative impacts is imperative.²⁰³ Historically, many of the worst abuses or accidents could have been prevented by robust regulation, monitoring and oversight. Irresponsible and poorly regulated mining operations have damaged affected communities' rights to health, water and work. Mining has frequently been linked to catastrophic accidents or to violent human rights abuses as well. To cite several examples, in the past two decades alone:

- Large scale spills of cyanide and other hazardous waste from mines in Romania, Hungary, Ghana, Guyana and Spain have caused severe environmental damage and health concerns;²⁰⁴
- Admittedly irresponsible riverine waste disposal practices—allowed by government authorities— have threatened massive harm to communities in Papua New Guinea, China and elsewhere;²⁰⁵

²⁰³ See, for example, Sir Robert Wilson, Rio Tinto and International Council on Mining and Metals, "Plenary Address to World Parks Congress, Durban, South Africa," September 16, 2003, <http://www.riotinto.com/documents/Media-Speeches/worldParksCongress160903.pdf> (accessed January 5, 2012), stating "We agreed that the performance of our industry had too often been unacceptable; that some of the criticisms leveled against us were fair. In short, that we had better establish a sensible dialogue with some of our critics and resolve to improve our performance, so that we became part of the solution, not part of the problem." See also Barrick Gold, "Getting it Right: A Look at the Mine Approval Process," *Beyond Borders*, January 23, 2012, http://barrickbeyondborders.com/2012/01/barrick-gold-mine-approval-process/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+barrickbeyondborders%2FPNbN+%28Beyond+Borders+++Responsible+mining+at+Barrick+Gold+Corporation%29 (accessed January 27, 2012).

²⁰⁴ See "What Became of the World's Worst Environmental Disasters?," *CNN News Online*, July 27, 2010, <http://www.cnn.com/2010/US/07/27/interactive.disaster.recovery/index.html> (accessed January 24, 2012); "Hungary battles to stem torrent of toxic sludge," *BBC News Online*, October 5, 2010, <http://www.bbc.co.uk/news/world-europe-11475361> (accessed January 24, 2012); "Cyanide Spill Ghana's Worst Environmental Disaster," *Environment News Service*, October 24, 2001, <http://www.modernghana.com/news/17782/1/cyanide-spill-ghanas-worst-environmental-disaster.html> (accessed January 24, 2012); Earthworks and Oxfam America, "Dirty Metals: Mining, Communities and the Environment," 2004, <http://www.nodirtygold.org/pubs/DirtyMetals.pdf> (accessed January 24, 2012) p. 5; "Toxic waste spill threatens Spanish national park," *BBC News Online*, April 25, 1998, <http://news.bbc.co.uk/2/hi/europe/83661.stm> (accessed January 24, 2012).

²⁰⁵ In 1999 at BHP Billiton's Ok Tedi copper mine, tailings (liquid mine waste) discharged into the river overflowed river banks downstream, destroying community gardens and destroying swathes of vegetation. BHP Billiton subsequently admitted that the company should "never have become involved" with the project because of its dangerous waste disposal practices. See Bob Burton, "BHP admits Ok Tedi mine is environmental disaster," *Asia Times*, August 13, 1999,

- Allegations of forced displacement have tarnished mining operations in Indonesia, India, and elsewhere;²⁰⁶
- Public and private security forces have allegedly beaten, raped or killed people around mines in Tanzania, Papua New Guinea, Indonesia and elsewhere;²⁰⁷
- Fires, explosions, toxic gases and tunnel collapses have claimed hundreds of workers' lives at mines around the world including in China and the United States.²⁰⁸
- For years, dangerous practices by artisanal gold miners have exposed children to mercury or lead poisoning in Papua New Guinea, Mali and Nigeria while government agencies did nothing to address the problem.²⁰⁹

The Duty to Regulate to Protect Human Rights

Mining companies often chafe at government oversight, but few would dispute that some level of government regulation is necessary. No country entirely fails to regulate its domestic mining industry. Problems generally arise because regulation is either inadequate, poorly enforced or both.

While governments have primary responsibility for promoting and ensuring respect for human rights, corporations also have a number of responsibilities, as increasingly recognized by international law and other norms. These norms reflect an expectation that corporations should have policies and procedures in place that ensure human rights

<http://www.atimes.com/oceania/AH13Aho1.html> (accessed January 5, 2012). In January 2012, a massive cadmium spill from a mine in China threatened drinking water supplies for millions of people. See "China cadmium spill threatens drinking water for millions," *Reuters*, January 27, 2012, <http://www.reuters.com/article/2012/01/27/us-china-pollution-cadmium-idUSTRE8oQoIN2o12o127> (accessed January 27, 2012).

²⁰⁶ See Earthworks and Oxfam America, "Dirty Metals,"; Amnesty International, "Don't Mine us Out of Existence."

²⁰⁷ Human Rights Watch, *Papua New Guinea—Gold's Costly Dividend*, February 2011, <http://www.hrw.org/node/95776>; Geoffrey York, "Barrick's Tanzanian Project Tests Ethical Mining Policies," *Report on Business Magazine*, September 29, 2011, <http://www.theglobeandmail.com/report-on-business/rob-magazine/barricks-tanzanian-project-tests-ethical-mining-policies/article2183592/> (accessed January 24, 2012).

²⁰⁸ Almost 2500 miners were reportedly killed in China in 2010. "State Media: China Mine Accident Kills 16," *CNN News*, October 4, 2011, http://articles.cnn.com/2011-10-04/asia/world_asia_china-mine-deaths_1_mine-accident-coal-mine-safety-xinhua?_s=PM:ASIA (accessed January 24, 2012). For a chronicle of mining disasters in China as reported by the media see United States Mine Rescue Association, "China Mine Disaster Watch," <http://www.usmra.com/chinatable.htm> (accessed January 24, 2012). 37 miners died on the job in the US in 2011, down from 48 in 2010—a year that saw 29 miners killed in West Virginia's Big Branch Mine disaster. See Ken Ward Jr., "21 U.S. Coal Miners Killed in 2011, MSHA says," *Charleston Gazette*, January 5, 2012, <http://sundaygazetteemail.com/News/201201050145> (accessed January 24, 2012).

²⁰⁹ See Human Rights Watch, *Gold's Costly Dividend*; Human Rights Watch, *Mali—A Poisonous Mix: Child Labor, Mercury and Artisanal Gold Mining in Mali*, 1-56432-831-7, December 2011, <http://www.hrw.org/reports/2011/12/06/poisonous-mix>; "Nigeria: Child Lead Poisoning Crisis," Human Rights Watch news release, February 7, 2012, <http://www.hrw.org/news/2012/02/07/nigeria-child-lead-poisoning-crisis>.

abuses do not occur and that they undertake adequate due diligence to identify and effectively mitigate human rights problems.²¹⁰

Outgoing Special Representative of the UN Secretary-General on Business and Human Rights John Ruggie attempted to elaborate on the international human rights obligations pertaining to businesses in his “Protect, Respect and Remedy” framework.²¹¹ Ruggie’s framework describes the basic steps that companies should take to *respect* human rights, avoid complicity in abuses, and adequately *remedy* them if they occur. It also elaborates the governmental duty to *protect* individuals and communities from human rights abuses, including in connection with business activity.

In practical terms, a government’s obligation to protect human rights in the context of business activity “requires taking appropriate steps to prevent, investigate and redress such abuse through effective policies, legislation, regulations and adjudication.”²¹² Governments are also obligated to effectively enforce that legal framework once it is in place, to prevent abuse and to ensure accountability and redress where abuses do occur. Governments should also continually assess whether existing rules—and the enforcement of those rules— are actually adequate to the task of ensuring respect for human rights, and improve upon them if they are not.²¹³

In the context of potentially harmful industries like mining, both government and companies should assess the potential human rights impacts of proposed new operations

²¹⁰ There is, however, as yet no shared understanding of the full scope of businesses’ human rights responsibilities, whether these are or should be binding under international law, and if so, how they can best be enforced. In the past such issues have proven highly contentious.

²¹¹ UN Commission on Human Rights, “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie,” A/HRC/17/31, March 21, 2011, <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf> (accessed January 24, 2012). The guiding principles attached to the framework lack guidance with regards to government regulation of companies’ human rights impacts and have failed to call for mandatory monitoring and reporting of companies’ human rights impacts. Nonetheless, they serve as a useful guide to many of the human rights responsibilities of businesses and of the governments that oversee their activities. “UN Human Rights Council: Weak Stance on Business Standards,” Human Rights Watch news release, June 16, 2011, <http://www.hrw.org/en/news/2011/06/16/un-human-rights-council-weak-stance-business-standards>.

²¹² UN Commission on Human Rights, “Report of the Special Representative of the Secretary-General, Annex, I.A.1,” March 2011, <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf> (accessed June 1, 2012).

²¹³ The Guiding Principles note that states should “Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps.” *Ibid.*, B.3.

before allowing them to go forward.²¹⁴ In some cases—as in India— legal frameworks seek to achieve this by folding an assessment of possible human rights impacts into broader processes that also examine the likely environmental impacts of a proposed new mining operation or other industrial development.²¹⁵

Social and Economic Rights Obligations

International law obliges governments to achieve progressively the full realization of the rights to health, education and to water, commensurate with the extent of available resources.²¹⁶ In some contexts, tax and other revenues from mining operations are large enough to be potentially transformative in this regard.

In many contexts, weak or corrupt governments have failed to ensure that promised benefits are actually delivered. Where governments enter into lopsided contractual arrangements that unduly favor companies, or fail to monitor whether companies are satisfying their tax or contractual obligations, they may miss opportunities to advance basic human rights.²¹⁷ In other cases, even if the benefits do materialize they are siphoned away by corrupt public officials.²¹⁸ This has been especially true in the context of extractive industries such as mining and oil production—where the negative impacts financial returns are meant to offset are also often the most serious.

²¹⁴ The Guiding Principles note that companies should possess “a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.” Ibid, II.A.15.b.

²¹⁵ See above, Inadequate Consideration of Community Impacts.

²¹⁶ International Covenant on Economic, Social and Cultural Rights, art. 2(1). Article 12 provides for “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Article 13 recognizes “the right of everyone to education.” The right to water derives from article 11(1), which provides for the right to an adequate standard of living “including adequate food, clothing and housing,” and article 12(1), the right to health. Committee on Economic, Social and Cultural Rights (ESC Committee), General Comment No. 15 on the right to water (2002), available at [http://www.unhcr.ch/tbs/doc.nsf/o/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/Go340229.pdf](http://www.unhcr.ch/tbs/doc.nsf/o/a5458d1d1bbd713fc1256cc400389e94/$FILE/Go340229.pdf) (accessed March 27, 2012), para. 3. According to the ESC Committee: “The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.” para. 10.

²¹⁷ See Erin Smith and Peter Rosenblum, “Enforcing the Rules: Government and Citizen Oversight of Mining,” Revenue Watch Institute, November 9, 2011, <http://www.revenuwatch.org/publications/enforcing-rules> (accessed January 24, 2012).

²¹⁸ See, for example, Human Rights Watch, *Nigeria—“Chop Fine”: The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria*, vol. 19, no. 2(A), February 2007, <http://www.hrw.org/de/reports/2007/01/31/chop-fine>; Human Rights Watch, *Equatorial Guinea— Well Oiled: Oil and Human Rights in Equatorial Guinea*, 1-56432-516-4, July 9, 2009, <http://www.hrw.org/reports/2009/07/09/well-oiled-o>; Human Rights Watch, *Angola— Transparency and Accountability in Angola*, 1-56432-609-8, April 13, 2010, <http://www.hrw.org/reports/2010/04/13/transparency-and-accountability-angola-o>.

VI. A Nationwide Problem

It would be a terrible mistake for India's government to treat the scandals in Goa and Karnataka's mining industries as mere aberrations. The root causes of the chaos and abuse in both states' industries lie partly in the failure of national-level regulatory systems. It is reasonable to believe that the governance vacuum created by the failure of these systems generates similar human rights problems in other mineral-rich states, and there is evidence to support that point of view. In other mining states across India there have been consistent and widespread allegations of human rights abuses that mirror or compound the problems Human Rights Watch documented in Goa and Karnataka. To cite just a few examples:

- In 2011 and 2012, widespread protests confronted a planned US\$12 billion steel, mining and ports project to be built by the South Korean firm Pohang Steel Company (POSCO) in Orissa state. Activists and local critics alleged that the project would unfairly displace 700 families from their land and cause massive social and environmental harm. Many alleged that central government regulators had failed to adequately document the project's potential negative impacts or ensure that communities' rights could be protected if it went ahead.²¹⁹ In March 2012, India's Green Tribunal suspended the project's environmental clearance and ordered the Ministry of Environment and Forests to consider it anew.²²⁰
- In 2010, Indian mining giant Vedanta ran into intense public criticism over plans to develop a new bauxite mine and expand an existing refinery in Orissa State. Amnesty International and Indian activists alleged that the project had violated the rights of protected tribal communities and that it threatened severe adverse impacts on health, livelihoods, and local water supplies. Many alleged that a key

²¹⁹ For more on the POSCO controversy, see Meena Gupta, "Report of the Committee Constituted to Investigate into the proposal submitted by POSCO India Pvt. Limited for establishment of an Integrated Steel Plant and Captive Port in Jagatsinghpur District, Orissa," Submitted to the Ministry of Environment and Forests (MOEF), October 18, 2010, <http://moef.nic.in/downloads/public-information/report-committee-posco.pdf> (accessed January 5, 2012).

²²⁰ See "Tribunal Suspend's POSCO green clearance," *Economic Times*, March 31, 2012, http://articles.economictimes.indiatimes.com/2012-03-31/news/31266609_1_posco-project-environment-ministry-clearance (accessed April 9, 2012).

problem had been inadequate consideration of community impacts during its environmental clearance process.²²¹

- In some states, efforts by local activists to expose and confront mining-related abuses has been met with violence and brutality. In 2011 and 2012, activists and police personnel who confronted mining-related abuses or illegalities have been murdered in several Indian states.²²²
- In northeast India, activists and journalists have documented unregulated small-scale “rathole” coal mining operations that employ children in dangerous conditions.²²³
- In Jharkhand, communities living near coal mining operations have been threatened with serious damage to their health and even the physical destruction of their homes by underground coal fires that have raged unabated for years. The fires are linked both to large-scale coal mining operations and to small-scale mining and coal theft carried out by community members themselves.²²⁴

Human Rights Watch believes that the Indian government’s overall lack of credible information about the extent of mining-related human rights problems across India is also a centrally important problem. Because nationwide regulatory safeguards do not function as they should, India’s central government simply does not know where negative community impacts caused by irresponsible or poorly conceived mining operations exist or where they are most severe. Media and civil society attention tends to focus on large-scale “megaprojects,” not on India’s thousands of smaller and less sensational mining operations. Those often operate free of public scrutiny beyond the communities they impact directly.

²²¹ Amnesty International, “Don’t Mine us Out of Existence: Bauxite Mine and Refinery Devastate Lives in India,” AI Index: ASA 20/001/2010, February 2010, <http://www.amnesty.org/en/library/asset/ASA20/001/2010/en/0a81a1bc-f50c-4426-9505-7fde6b3382ed/asa200012010en.pdf> (accessed January 23, 2012).

²²² See, for example, Stephanie Nolan, “Activist nun who fought Indian mining companies brutally murdered,” *Globe and Mail*, November 17, 2011; Gethin Chamberlain, “What Really Happened to Shehla Masood?” *The National*, October 14, 2011; “Indian ‘mining mafia’ accused of killing policeman,” *BBC News Online*, March 8, 2012, <http://www.bbc.co.uk/news/world-asia-india-17308973> (accessed April 9, 2012); Lydia Polgreen, “A High Price for India’s Information Law,” *New York Times*, January 22, 2011, <http://www.nytimes.com/2011/01/23/world/asia/23india.html?pagewanted=all> (accessed April 9, 2012).

²²³ See Mark Magnier, “In northeast India coal towns, many miners are children,” *Los Angeles Times*, May 15, 2011, <http://articles.latimes.com/2011/may/15/world/la-fg-india-child-coal-20110515> (accessed April 9, 2012).

²²⁴ See Tim Sullivan, “Scavenging to Survive in India’s Belt of Fire,” *Sacramento Bee*, February 18, 2011, <http://blogs.sacbee.com/photos/2011/02/scavenging-to-survive-in-india.html> (accessed April 9, 2012).

In some states, the relationship between national-level regulatory failures and mining-related human rights problems may be even more important than it is in Goa and Karnataka. State governments in some other mining-rich states are weaker institutionally than those in Goa and Karnataka— where at least a few of the key state-level government actors have helped expose and combat mining sector abuses.²²⁵ For example, Karnataka benefitted from a strong and independent *Lokayukta* (anti-corruption ombudsman) whose work helped bridge some of the gap left by ineffective central government oversight. In Goa, state government regulators generally failed to detect or repair any of the damage caused by lax central government oversight of the mining industry, but the state has an unusually strong and vocal contingent of civil society actors who have helped shed light on problems unseen or ignored by government regulators.

²²⁵ The government of poor but mineral-rich Jharkhand state, for example, is widely seen as among the weakest and most corrupt in India. Between 2006 and 2012 Jharkhand has had two chief ministers who have faced serious criminal charges. Madhu Koda, Jharkhand's chief minister until 2008, was charged in 2009 with involvement in a corruption scandal involving more than Rs 3300 crore during his time in office. See Yatish Yadav, "Mahdu Koda and Associates Laundered staggering 3,356 crore," *India Today*, February 20, 2012, <http://indiatoday.intoday.in/story/madhu-koda-and-associates-laundered-staggering-rs-3356-crore/1/174473.html> (accessed April 9, 2012). Koda's successor in office, Shibu Soren, had been charged with murder in 2006 but was subsequently acquitted. See "Shibu Soren acquitted in murder case," *Press Trust of India*, August 23, 2007, <http://www.business-standard.com/india/news/shibu-soren-acquitted-in-jha-murder-case/295543/> (accessed April 9, 2012). The state also has some of India's worst education indicators, and instability as a result of the government's ongoing conflict with Maoist rebels. See, for example, Human Rights Watch, *India—Sabotaged Schooling: Naxalite Attacks and Police Occupation of Schools in India's Bihar and Jharkhand States*, 1-56432-566-0, December 9, 2009, <http://www.hrw.org/en/node/86827>.

VII. Reining in the Abuse: Practical Steps Forward for India's Government

The Indian government has taken some steps to combat illegal mining—encouraging states to set up more sophisticated mechanisms to track production and transport of ore, and coordinating discussions between concerned central and state government ministries to examine potential policy solutions.²²⁶ India's government has also supported a commission of inquiry into illegal mining of iron and manganese ore headed by retired Justice M.B. Shah, whose interim report produced several practical recommendations on how to curb illegal mining.²²⁷ But the government's goal should be to ensure responsible and rights-compliant mining activity, not merely to police the illegal production or transport of ore. To do this, more fundamental changes are needed. The following pages recommend and explain specific steps the government could take in that direction.

Beyond the New Mining Law

In early 2012, the Indian parliament was considering a new mining law that would make bold new efforts to manage the country's mineral resources in a more equitable and transparent manner. But the draft legislation does not address many of the core problems described in this report, and does not purport to.

The draft 2012 Mines and Minerals Development and Regulation (MMDR) Act would replace and improve upon its predecessor, an outmoded law passed in 1957. The new bill was drafted with extensive civil society consultation and has attracted considerable publicity because of its unprecedented efforts to secure concrete financial benefits for mining-affected communities. In particular, the law would require miners to share profits with

²²⁶ Email correspondence from Vijay Kumar, October 2, 2011.

²²⁷ The Shah Commission's first interim report expressed the belief that illegal mining of iron and manganese ore is widespread and responsible for widespread corruption, looting and other social problems. Its recommendations ranged from the highly ambitious—a ban on ore exports until the government brings the mining industry under greater control—to fairly narrow, technocratic interventions. The latter included recommendations on improved use of weigh stations and ore tracking systems to increasing the staff of key government institutions. Shri Justice M.B. Shah, Commission of Inquiry for Illegal Mining of Iron Ore and Manganese, "First Interim Report, Part-I," undated, <http://mines.nic.in/writereaddata/Contentlinks/af9f57c456d9415a924231f6e7ec3a67.pdf> (accessed May 1, 2012).

impacted communities through special government mechanisms set up to manage the flow of funds to eligible people.²²⁸

These provisions evoked strong opposition from the mining industry and have dominated public discussion around the proposed law.²²⁹ If the scheme works, it could dramatically improve conditions in mining-affected communities. Either way, the precedent would be of global importance; no other nation has mandated anything comparable. As Chandra Bushan of the Centre for Science and Environment put it, “In many ways [the draft law] is revolutionary. It implicitly accepts that mining belongs to the people—it looks after the poverty angle.”²³⁰

In all likelihood, the proposed law’s benefits-sharing provisions would succeed or fail depending largely on how rigorously and transparently the government oversees their implementation. Analogous direct benefits schemes have been plagued by corruption in India, or derailed by government officials who move preexisting benefits away from beneficiary communities in direct proportion to any new funds flowing in, leaving them with no net benefit.²³¹ The new benefits could also spark community conflicts around questions of eligibility if distribution is not managed carefully and transparently.

The proposed new MMDR Act also introduces other important, though less sensational changes.²³² Most important with regard to the problems described in this report, it would provide new mechanisms to combat illegality in the mining sector including new state- and

²²⁸ See Draft Mines and Minerals (Development and Regulation) Bill, 2011, Chapter VIII, available online at <http://pib.nic.in/archieve/others/2011/sep/d2011093002.pdf> (accessed January 30, 2012).

²²⁹ See S. Thiagarajan, “Draft Mining Bill will harm mining companies,” *Economic Times*, November 21, 2011, http://articles.economicstimes.indiatimes.com/2011-11-21/news/30424926_1_mining-companies-grant-mining-leases-illegal-mining (accessed January 26, 2012).

²³⁰ Human Rights Watch interview with Chandra Bushan, Centre for Science and Environment, New Delhi, September 26, 2011.

²³¹ Human Rights Watch interview with R. Sreedhar, New Delhi, September 26, 2011. See Centre for Science and Environment, “Sharing the Wealth of Minerals: Policies, practices, implications,” <http://www.cseindia.org/content/sharing-wealth-minerals-policies-practices-and-implications> (accessed January 30, 2012); “Nalco accused of neglecting peripheral villages,” *TNN News*, August 14, 2009, http://articles.timesofindia.indiatimes.com/2009-08-14/bhubaneswar/28201123_1_damanjodi-nalco-officials-villages (accessed January 30, 2012).

²³² These include provisions for more transparent allocations of mine leases; fundamental reforms of the Indian Bureau of Mines, and development of a sustainable development framework around mining. Human Rights Watch interview with Chandra Bushan, September 26, 2011. See also “Government update on reforms in mining sector in India,” *Steel Guru*, December 4, 2011, http://www.steelguru.com/indian_news/Government_update_on_reforms_in_mining_sector_in_India/239083.html (accessed June 1, 2012). A draft of the bill is available at http://www.prsindia.org/uploads/media/draft/Draft%20Mines%20and%20Minerals%20Bill_31%20March%202010.pdf.

center-level tribunals to try alleged acts of illegal mining. If these tribunals function effectively, they could form an important part of a broader policy framework aimed at restoring law-and-order to the mining sector—but they may accomplish little on their own. As this report shows, the range of harmful illegal acts that pervade the mining sector in India is far broader than just “illegal mining” as the government narrowly defines it. Many of those problems have roots outside the scope of the draft mining law, in other legislation or in broader problems of ineffective governance and corruption.

Key Recommendations

India’s government should be able to ensure that proposed new mining projects are subject to scrutiny capable of detecting likely negative community impacts or inevitable violations of the law. The current framework fails this test and often amounts to little more than a rubber stamp. At present, India’s government lacks any effective mechanism to ensure that new mining projects are not approved on the basis of incorrect or deliberately falsified data.

The following pages provide some explanation and context for the recommendations listed at the beginning of this report. Most aim to address important gaps in India’s regulation and oversight of the mining sector. If successfully implemented, many would also improve oversight of other industries saddled with the same flawed regulatory frameworks.

Dramatically Improve the Environmental Impact Assessment Regime

From a human rights perspective, the Environmental Impact Assessment (EIA) framework is the most important and also the most dysfunctional facet of the approvals process for proposed new mining projects. Human Rights Watch calls on the Indian government to undertake a number of specific reforms:

- *Mandate a stronger focus on community impacts.* While EIA reports do include an assessment of community impacts, this issue is often relegated to a mere footnote in reports whose overwhelming focus is on environmental concerns. The Ministry of Environment and Forests should amend the 2006 EIA Circular to mandate more lengthy and detailed consideration of community impacts within EIA reports, and require these to make specific reference to human rights protections under international law. Alternatively, the government could mandate an entirely

separate community and human rights impact assessment process to be undertaken alongside the EIA process.

- *Institute Independent Funding of EIA reports.* India's government should end the practice of requiring project proponents to select and fund the consultants who carry out EIA reports. This process does not allow for sufficient independence since the authors of EIA reports are financially beholden to project proponents. The central government could require companies to pay into a fund the government will use to select and hire the consultants who carry out the required EIAs.
- *More Thorough Consideration of New Projects.* The Expert Appraisal Committees that consider the EIA reports submitted for proposed mines and other projects should either slow down their consideration of new projects or dramatically expand their capacity to consider multiple projects at the same—including by expanding committee membership and providing them with permanent expert support staff. Committee members should be encouraged to undertake field visits to the sites of proposed projects, and be provided with the staff and funding they need to undertake that function regularly. Views reflected at mandatory public consultations around new mining projects should also be considered in more depth and responded to explicitly by the committees.
- *Better Quality Control.* The Indian government has recognized the poor quality of EIA reports as a problem and, since October 2011, it has limited the consultants allowed to perform this work to those accredited by the Ministry of Environment and Forests.²³³ Many critics have questioned whether this progress is rigorous enough and have criticized the choice of accrediting agency—the Quality Council of India—is independent from the consultants it is trying to accredit. One 2012 article noted that some of the consultants who have earned accreditation “have been involved in the worst EIA scenarios in recent times.”²³⁴ The laboratory cited above in the Goa case study as an apparent example of cutting and pasting, Bhagavathi Ana Labs, was among those that were accredited to carry out EIAs as of 2011.²³⁵ Certainly, the scale of existing problems means that considerable vigilance is needed for the government's accreditation measures to be meaningful.

²³³ See National Registration Board for Personnel and Training, *NRBPT Criteria for Registration of EIA Consultant Organizations*, October 2006, http://moef.nic.in/divisions/iass/eia_cons_organ.pdf (accessed January 27, 2012).

²³⁴ See Kanchi Koli, “Is MOEF's green list of EIA consultants good enough?,” *Civil Society Online*, January 2012, <http://www.civilsocietyonline.com/pages/Details.aspx?82> (accessed June 1, 2012).

²³⁵ See above Goa case study. The list of accredited consultants is available at <http://www.qcin.org/nabet/consorg.php#>.

A Review of all Existing Environmental Clearances for Mining Projects

While repairing the approvals process for new mining operations, the central government should also review the data underpinning existing mine clearances. Goa's state government has provided a useful model for this kind of an initiative—as discussed above, it has commissioned an NGO-led effort to examine the Environmental Impact Assessment reports underlying all mine clearances in the state to determine how many contain false or misleading data. The central government should undertake a similar initiative nationwide, or encourage and coordinate initiatives by the state governments to do so. The government should also ensure that all of the EIA reports reviewed through this initiative are published and made available online.

If the EIA report underpinning a mine clearance is found to contain materially important false information, the government should use its power to revoke that clearance and shut down the mine, forcing it to reapply for environmental clearance. Existing rules allow this where submission of false or misleading data is “deliberate” and “material.”²³⁶ Human Rights Watch recommends that the scope of that power be broadened to eliminate the requirement that the falsification be “deliberate” but retain the materiality requirement—that is, to allow for cancellation of any environmental clearance if it is based on materially important data that is found to be false or misleading. It is worth noting that a recent high court ruling held that *all* environmental clearances granted prior to 2006 are void and in need of renewal—if that precedent holds it could allow or even require the government to force new consideration of many existing mine clearances.²³⁷

Stricter Oversight of Existing Mines

The central government should institute more rigorous monitoring of mining projects. In particular, resources available to the MOEF regional offices responsible for much of that work should be dramatically increased. Those offices should have the staff and resources needed to conduct regular in-field assessments, including unannounced inspections. State governments should increase the resources available to state-level pollution control boards and mines departments to enable them to carry out in-field visits and inspections themselves.

²³⁶ 2006 EIA Notification, Section 8(vi), <http://moef.nic.in/legis/eia/so1533.pdf>.

²³⁷ *Shankar Raghunath Jog v. Talaulicar & Sons Pvt. Ltd*, High Court of Bombay at Goa, Judgment, August 12, 2011. Available at www.ercindia.org/files/Judgement%20oby%20High%20Court.PDF (accessed June 1, 2012).

Human Rights Watch also believes that the central and state governments should consider ways in which the Supreme Court's Central Empowered Committee (CEC) could be a useful model for expanded and more rigorous government oversight. In recent years the CEC, which has a mandate to monitor violations of the Forest Act, has launched numerous mining-related investigations and provided detailed, rigorous and independent critiques of illegal and irresponsible practices.²³⁸ The government could explore whether the CEC's model of independent, court-supervised monitoring could usefully be expanded into broader oversight of the mining industry.

New Steps to Ensure Accountability for Illegal and Abusive Actions

The patterns of corruption and impunity that underlie many mining-related abuses are impossible to separate from India's broader epidemic of official corruption. The scandal-plagued years of 2010 and 2011 across India brought a range of public institutions into disrepute, not just in the mining sector.²³⁹ India's regulatory framework is in urgent need of repair, but even a perfect system will fail to curb mining-related abuses unless impunity and corruption are reined in. As Chandra Bushan of the Centre for Science and Environment told Human Rights Watch:

They [regulatory officials] are right when they say they don't have the capacity to monitor. But with the kind of money that is there in mining, even capacity is useless without accountability. So you need to increase capacity but the bigger challenge is to redesign institutions for accountability—if you do that, even with the existing capacity you could see a big improvement.²⁴⁰

²³⁸ See Koli and Menon, *Eleven Years of the Environmental Impact Assessment Notification*, p. 54. A catalogue of opinions by the CEC is available online at www.cecindia.org.

²³⁹ See, for example, Heather Timmons, "Corruption Scandals, Market Drops Hit India's Rich," *New York Times India Ink Blog*, October 28, 2011, <http://india.blogs.nytimes.com/2011/10/28/corruption-scandals-market-drops-hit-indias-rich/> (accessed January 26, 2012); Edward Glaeser, "India's Next Steps: Looking for a Stable Public Sector," *New York Times Economix Blog*, November 23, 2010, <http://economix.blogs.nytimes.com/2010/11/23/indias-next-steps-looking-for-a-stable-public-sector/> (accessed January 26, 2012); "Transparency International Corruption Index: India drops to 95th position," *Economic Times*, December 2, 2011, http://articles.economictimes.indiatimes.com/2011-12-02/news/30467987_1_corrupt-country-australia-shares-cases (accessed January 26, 2012); "How Much do the Corrupt Earn," *Economic Times*, December 9, 2011, <http://economictimes.indiatimes.com/news/politics/nation/how-much-do-the-corrupt-earn/articleshow/11044056.cms> (accessed January 26, 2012).

²⁴⁰ Human Rights Watch interview with Chandra Bushan, September 26, 2011.

In Human Rights Watch's view, hopes of truly effective oversight over India's mining sector will depend partly on the government's ability to make progress against broader patterns of public-sector corruption. The signs on that front are mixed. A wave of corruption scandals in 2011 helped generate a wave of public protest demanding the creation of a long-promised powerful national-level corruption ombudsman—the *Lokpal*.²⁴¹ As of early 2012 the prospects for creating that institution were uncertain and beset with controversy on all sides. Some argued government proposals did not go far enough, while others contend that stronger proposals put forward by government critics would undermine democratic governance and that the pro-*Lokpal* movement had become conflated with the political interests of the opposition BJP.²⁴²

Regardless of whether nationwide reforms are pushed through, state governments can look to the example of Karnataka state's *Lokayukta* for inspiration. As discussed above, the *Lokayukta* is a state-level anti-corruption ombudsman and Karnataka's played a leading role in exposing the extent of political corruption behind the state's illegal mining scandals. Nineteen Indian states already have *Lokayuktas*, but their powers, resources and independence vary widely. Karnataka's is unusually powerful and well-resourced relative to those in other states—and its actions in response to the state's illegal mining problems show that this can yield important dividends, especially with strong leadership in place.²⁴³

²⁴¹ See Anuj Chopra, "Fatal Corruption," *Foreign Policy*, May 3, 2011, http://www.foreignpolicy.com/articles/2011/05/03/fatal_corruption (accessed January 26, 2012).

²⁴² See Arundhati Roy, "I'd Rather not be Anna," *The Hindu*, August 22, 2011, <http://www.thehindu.com/todays-paper/tp-opinion/article2380789.ece> (accessed January 26, 2012); Jason Overdorf, "India's anti-democratic revolution," *Global Post*, April 27, 2011, <http://www.globalpost.com/dispatch/news/regions/asia-pacific/india/110426/india-democracy-corruption-hazare> (accessed January 26, 2012).

²⁴³ See, for example, Sanjay Sharma, "Ineffective' Punjab lokpal wants Karnataka model," *Times of India*, April 23, 2011, http://articles.timesofindia.indiatimes.com/2011-04-23/india/29466211_1_congress-ministers-orders-action-karnataka (accessed January 30, 2012); Ramendra Singh, "Lokayukta lacks teeth, can't probe CM," *Express India*, August 29, 2011, <http://www.expressindia.com/latest-news/lokayukta-lacks-teeth-cant-probe-cm/838657/> (accessed January 30, 2012). The Karnataka Lokayukta Act is available online at http://lokayukta.kar.nic.in/karnataka_lokayukta_act.htm.

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Mining firms in India employ hundreds of thousands of people and are seen as central for rapid economic growth. But mining can be a uniquely destructive industry if it is not properly regulated. Irresponsibly run mining operations can damage the health, environment and livelihoods of the same local residents who are meant to benefit from mining.

Out of Control: Mining, Regulatory Failure and Human Rights in India details how Indian mining firms have escaped oversight by government regulators charged with protecting the public from harm. It describes a dangerous mix of weak institutions and poorly designed policies that have rendered key safeguards ineffectual and fueled endemic corruption. India's mining sector has witnessed a number of high-profile scandals in recent years, many of which were the foreseeable products of a broken regulatory system.

This report combines an analysis of regulatory failures that have direct human rights implications with primary research in the affected communities. Through case studies that examine the concrete impact of mining problems in the states of Goa and Karnataka, the report links national-level policy failures directly to real-world human rights problems.

Pragmatic recommendations in the report show how India's government can fix many existing mining problems. By bolstering key institutions and oversight regimes that the government already supports, real improvements in safeguarding the basic rights of mining affected communities are possible.

(above) Trucks carry iron ore from mines in Noamundi, Jharkhand State. Residents of a mining-affected town in Goa State told Human Rights Watch they worried that dust emissions from passing ore trucks could be linked to respiratory disease in their community.

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(front cover) Iron ore hauling truck in Keonjhar forest, Orissa State, India.

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