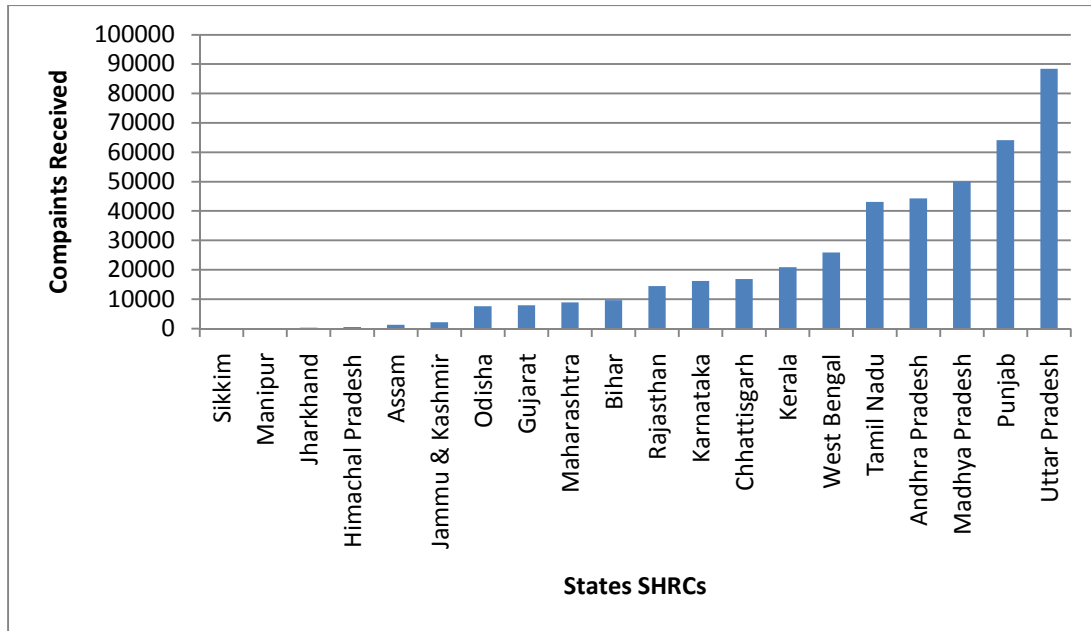


Human Rights Defenders and Mining – Few Reflections

Information on human rights defenders and violations of human rights has been a talking point within the civil society and it is this solidarity space between organizations that has kept the issues of defenders known to a larger spectrum of legal, academic, legislative and institutional actors like the National Human Rights Institutions. As a matter of fact, nearly 4.22 lakh complaints were received by 20 SHRCs from 2007 till 2010-11 [state wise complaints are shown in the graph below].



Although there are several parameters under which the complaints can be filed online but there is no record of as to how many complaints were filed using the e-route and how complaint classification is done of complaints received in writing or through post. The quality of information lacks from all quarters and remains in complete domain of the NHRIs and their subsidiaries. As also mentioned in the report of Special Rapporteur on the situation of Human Rights Defenders in 2011, there are categories of human rights defenders, in particular defenders working on rights of marginalized groups, working on economic, social and cultural rights; Right to Information activists; journalists and women and child rights. All these categories are in true sense applicable to all sectors, including mining. Lack of information in public domain has restrained transparency and in an effort to obtain information, and to use it to protect rights of people, environmental abuse, loss of natural resources has become a threatening proposition for defenders¹.

Considering information dissemination as central to the core of human rights issues is not exact but a close call on making governments more accountable, transparent and respectful towards human rights. To say that information dissemination precede decision making is one aspect of releasing disclosures by public authorities which have essential bearing over community’s need and survival, like mining activity. The disclosure is case to case basis and involves the principle of Free Prior Informed Consent (FPIC) which is not readymade but disclosures like decision

¹ JUA 09/09/11 Case no.: IND 19/2011 State Reply: 21/09/11 **Alleged killing, attacks and threats against women human rights defenders.** Can be accessed here; [https://spdb.ohchr.org/hrdb/19th/UA_India_09.09.11_\(19.2011\).pdf](https://spdb.ohchr.org/hrdb/19th/UA_India_09.09.11_(19.2011).pdf)

making on a particular issue made available to the community when the occasion arises. There is complete absence of such a mechanism. The mining life cycle and consultation with people at each stage has been talked about in the upcoming legislation on administration and regulation of mines and minerals [Mines and Minerals (Development & Regulation) Bill 2011] which should expand its scope to include benchmark human rights issues in a particular mine and around it and propose for fast track redress mechanism to make mining more responsible.

In the recently concluded parliament session where investigations into coal and alleged role played by the government in influencing the report by CBI there is an upward trend of human rights violations [Reply to LSUQ no. 5740].

- While Uttar Pradesh, the populous state has almost 59% of the total case registration [2010-11], the overall trend is rising by leaps – from 12.49% annual increase in 2011-12 to 13.15% in 2012-13.
- Another factor is the increase in number of unsolved cases, from 1.25% in 2010-11 to 12.34% in 2012-13. What is considered as solved case depends on the parameters or replies received by commission and quality of orders adhered by the state and its authorities?
- So far 23 states have set up SHRC, most of the major mining states like Chhattisgarh, Odisha, Jharkhand (established in 2011) have commissions at state level.
- From 2010, the NHRC has initiated a separate registry for atrocities on human rights defenders but the threat and attack on defenders has increased as reported by NHRC (Data).

Part III of the Constitution on Fundamental Rights lays down civil and political rights as justiciable. Articles 14 to 18 guarantee the right to equality and discrimination is thereby prohibited on grounds of caste, religion, race, sex, and place of birth. Abolishment untouchability is also included (art. 17). Articles 23 and 24 also guarantee the right not to be subjected to exploitation and prohibit human trafficking and forced labour. Cultural and educational rights of minorities are also specifically protected under articles 29 and 30.

Part IV of the Constitution sets out economic, social and cultural rights that are non-justiciable as the Directive Principles of State Policy. They are recognized as fundamental the governance of the country, to serve as guidelines for the framing and passing of laws. While the rights contained therein are not directly enforceable by the courts, through its progressive judicial activism over the years, the Supreme Court has endeavoured to achieve their justiciability, primarily by referring to article 21 of the Constitution, the right to life, amounting to the right to life with dignity.

Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya Mission to India (10–21 January 2011)

Some Observations of the Special Rapporteur on the situation of human rights defenders in context of protecting natural resources and advocating rights.

Defenders working on economic, social and cultural rights, Right to Information Activists

71. In the context of the country's economic policies and despite legal requirements of consultation and rehabilitation, defenders engaged in denouncing development projects that threaten or destroy the land, natural resources and the livelihoods of their community or of other communities have been targeted, increasingly on a joint basis, by State agents and private actors and are particularly vulnerable.

72. In Assam, indigenous communities who were not consulted on the construction of mega-dams and criticized such projects because of their human rights and environmental consequences were branded by the authorities as

anti-Government activists. This is the same rhetoric used under the Armed Forces (Special Powers) Act. Defenders live in constant fear. In Assam, one defender was tortured with electric shocks while in detention and a woman defender was shot. Three defenders were killed in Manipur.

73. In Andhra Pradesh, defenders who denounced environmental issues and sensitized citizens about their right to land have been branded as sympathizers of Naxalites, or being Naxalites.

74. In Kerala, defenders protecting natural resources (forest, land and water) have been repeatedly arrested, beaten and in some instances killed because of their activities.

76. In Orissa, anti-mining campaigners have been killed and the police reportedly claimed that they were Maoists. Many corporate projects, which caused land grabbing and displacement, were undertaken with the collusion of the Government. A defender denouncing bonded labour spent 110 days in jail. In Orissa, women defenders are at the forefront of demonstration against dams. Forty-two women defenders were put in jail for protesting against the building of a dam. 77. In West Bengal, an activist who denounced the sponge iron pollution in the state and the health consequences on the population was arrested in January 2010 on the charge of sedition. He was released four months later. Another activist advocating for a clean environment was arrested.

94. At the time of the visit, there had been as many as 10 cases of extrajudicial killings recorded in 2010 of individuals who had filed under RTI. These activists had denounced: land scams, administrative corruption, corruption in public distribution system and *sand mafia*, school irregularities, and various malpractices in Maharashtra; scams in a welfare scheme in Bihar; sought information on the funding of a pipeline in Andhra Pradesh; *exposed illegal mining*, and sought details about the illegal electricity connection obtained by the Torrent Power Company in Gujarat. One of these activists was a police home guard who sought information on Government funds and activities undertaken by his village chief in Katghar in Uttar Pradesh.

It is only when the Sustainable Development Framework (SDF), as proposed in the bill, recognizes principles which can be put to practice like benchmarking of human rights issues and provide space for defenders to become stakeholders and not victims to the development induced decision making, they can play a vital role to enrich this framework to make worth implementing. This SDF and respect for human rights cannot be realized unless all holes are plugged, like witness protection², priority consideration of cases with human rights organizations and commissions and host of recommendations made by the Special Rapporteur³ on situation of Human Rights Defenders. In mining context when provision on SDF has been made, it is time to realize the inseparability of mining, environment, human rights and defenders and make these inclusive to the framework.

² Report of the High Commissioner for Human Rights on witness protection, A/HRC/15/33

³ <http://www.ohchr.org/Documents/Issues/Defenders/A-HRC-19-55-Add1.pdf>

MINERAL CONCESSIONS – TRENDS IN PENDENCY

S. No.	Name of the State	Quarterly Report received up to	No. of pending Applications			TOTAL	No. of pending LOIs	No. of pending renewal applications
			RP	PL	ML			
	TOTAL	21.09.2011	452	15535	30898	46885	919	1716
	TOTAL	01.12.2011	456	15877	30403	46736	975	2088
	TOTAL	15.03.2012	458	15910	28149	47034	696	2065
	TOTAL	19.04.2012	464	13930	28141	42535	412	2045

The trend in mineral concessions is a broad indicator as what intensity minerals are being looked at as an economic gain. If we just look at the two quarters as indicated above, it reflects that there are an increasing number of mineral concession applications which are pending at state levels. The lessening number of Letter of Intent (LOI) only indicates stamp by the government but stuck due to one or the other reason – whether on the issue of various clearances or otherwise, is not indicated. The renewability of a lease as mentioned under rule 24A of Mineral Concession Rules expects the proponent to apply for renewing of mining lease before 12 months of its expiry but there exists no central database on the expiry of leases to avoid deemed renewal of mining lease which may not be good for mineral development & conservation and avoids scientific and regulatory checks thereupon making it more liable for non-compliance. It may be kept in mind that the leases for minerals as specified under Part A & B of the First Schedule need prior approval of the central government, in other cases, it is the state government which grants lease.

PENDENCY AS PER THE QUARTERLY REPORTS COMPILED BY MINISTRY OF MINES

S. No.	Name of the State	Quarterly Report received up to	No. of pending Applications			TOTAL	No. of pending LOIs	No. of pending renewal applications
			RP	PL	ML			
		21.09.2011						
1	Andhra Pradesh	10-Sep	32	1697	2796	4525	136	71
2	Chhattisgarh	11-Mar	65	1933	761	2759	18	18
3	Goa	10-Sep	12	636	93	741	0	
4	Gujarat	11-Jun	14	1411	3628	5053	28	497
5	Haryana	11-Jun	5	218	425	648	10	19
6	Himachal Pradesh	11-Mar	2	16	9	27	0	
7	Jharkhand	10-Sep	72	777	3015	3864	609	350
8	Karnataka	11-Jun	136	2787	16169	19092	17	190
9	Kerala	10-Jun	10	0	43	53	43	7
10	Madhya Pradesh	10-Sep	56	4003	1275	5334	33	155
11	Maharashtra	11-Jun	11	150	88	249	23	41
12	Orissa	11-Mar	26	1791	1594	3411	0	188
13	Rajasthan	11-Jun	0	69	0	69	0	
14	Tamil Nadu	11-Mar	11	47	1002	1060	2	163
	TOTAL		452	15535	30898	46885	919	1716

S. No.	Name of the State	Quarterly Report received up to	No. of pending Applications			TOTAL	No. of pending LOIs	No. of pending renewal applications
			RP	PL	ML			
		01.12.2011						
1	Andhra Pradesh	Sept-10	32	1697	2796	4525	136	71
2	Chhattisgarh	June-11	65	1909	742	2716	20	17
3	Goa	June-11	12	649	92	753	0	381
4	Gujarat	Sept-11	14	1305	3525	4844	34	507
5	Haryana	June-11	5	218	425	648	10	19
6	Himachal Pradesh	June-11	2	15	11	28	2	20
7	Jharkhand	Sep-10	72	777	3015	3864	609	350
8	Karnataka	Sept-11	143	2806	16317	19266	28	198
9	Kerala	Jun-10	10	0	43	53	43	7
10	Madhya Pradesh	June-11	52	4360	734	5146	26	137
11	Maharashtra	Sept-11	12	150	88	250	65	42
12	Orissa	June-11	26	1823	1613	3462	0	176
13	Rajasthan	Sept-11	0	121	0	121	0	0
14	Tamil Nadu	Mar-11	11	47	1002	1060	2	163
	TOTAL		456	15877	30403	46736	975	2088

S. No.	Name of the State	Quarterly Report received up to	No. of pending Applications			TOTAL	No. of pending LOIs	No. of pending renewal applications
			RP	PL	ML			
		15.03.2012						
1	Andhra Pradesh	10-Sep	32	1697	2796	4525	136	71
2	Chhattisgarh	11-Sep	65	1919	738	2722	17	16
3	Goa	11-Dec	12	660	93	765	0	379
4	Gujarat	11-Dec	14	1303	3607	4924	40	516
5	Haryana	11-Dec	7	204	419	630	10	19
6	Himachal Pradesh	11-Sep	2	15	11	28	2	21
7	Jharkhand	11-Dec	69	773	3049	3891	327	426
8	Karnataka	11-Dec	133	2840	16378	19351	28	201
9	Kerala	10-Jun	10	0	43	53	43	7
10	Madhya Pradesh	11-Sep	59	4273	708	5040	25	33
11	Maharashtra	11-Dec	13	149	57	219	67	41
12	Orissa	11-Dec	33	1884	1695	3612	0	158
13	Rajasthan	11-Sep	0	121	0	121	0	0
14	Tamil Nadu	11-Sep	9	72	1072	1153	1	177
	TOTAL		458	15910	28149	47034	696	2065

S. No.	Name of the State	No. of pending Applications				No. of pending lease/ licence execution cases	No. of pending renewal applications
		RP	PL	ML	TOTAL		
1	Andhra Pradesh	-	3	58	61	61	93
2	Chhattisgarh	65	1919	738	2722	17	16
3	Goa	12	660	93	765	0	379
4	Gujarat	14	1303	3607	4924	40	516
5	Haryana	7	204	419	630	10	19
6	Himachal Pradesh	2	15	11	28	2	21
7	Jharkhand	97	971	3241	4309	114	382
8	Karnataka	133	2840	16378	19351	28	201
9	Kerala	10	0	43	53	43	7
10	Madhya Pradesh	69	3789	729	4587	29	35
11	Maharashtra	13	149	57	219	67	41
12	Orissa	33	1884	1695	3612	0	158
13	Rajasthan	0	121	0	121	0	0
14	Tamil Nadu	9	72	1072	1153	1	177
	TOTAL	464	13930	28141	42535	412	2045