DRAFT
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Sharing the benefits of mineral wealth with citizens
The Periphery Development Fund in Orissa[1]

SECTION 1: BACKGROUND AND CONTEXT

Orissa has almost all of India's chromite and nickel deposits, half its bauxite and over one-third of the national iron ore deposits. Given the growth spurt in the international economy and the dramatic increase in the prices of minerals, extraction of major minerals in Orissa too has proceeded rapidly in the last 5-7 years. The rate of growth in mining and quarrying has averaged about 9 percent in the last 12 years and more recently the rate of growth in this sector has been second only to agriculture. With the rapid growth of extractive industries the world over, the discourse on sharing the benefits of mineral-based growth with citizens and the environmental and social sustainability of mineral-based industries has also strengthened. Relatedly, movements questioning this sustainability and watch-dog groups have also become stronger, drawing attention to the need for ensuring that citizens, particularly the poorest and those most directly in contact with these industries get a share of this growth. In India, this discussion has proceeded through a broad paradigm of "inclusive growth".

Table 1: Orissa has a large share of the national mineral deposits

Mineral/ore	**Orissa's deposits as a proportion of national deposits**
Chromite	97.36
Nickel ore	95.09
Graphite	76.66
Bauxite	49.74
Iron ore	33.91
Manganese	28.57
Fire clay	25.07
Coal	24.37
Mineral sand	23.33
Pyrophylite	21.24
Vanadiferous magnetite	20.83
China clay	13.34
Dolomite	12.0
Lime stone	1.30
Lead Ore	1.08
Talc-Soap stone	0.34

Source: Directorate of Geology, Orissa, Bhubaneswar.
http://rc.orissa.gov.in/index3.asp?linkid=25&sublinkid=21

The GoO has been a front-runner in anticipating the impacts of this new growth process. During the late 1990s and early millennium, a series of opportune events prompted the GoO to set in place its model for benefit sharing. It was influenced most strongly by the landmark Supreme Court judgment of Samatha v/s the State of Andhra Pradesh in 1997 (known popularly as the Samatha judgment). The judgment lays out the tension between the rights of the state and its responsibilities to citizens - tribals in particular - when exploiting mineral resources. Its conclusion is clear – it is the right of the state to exploit its mineral wealth but the state also has

[1] This assessment note is written by a team led by Maitreyi Das with V. Ramakrishnan and Varsha Marathe (South Asia Sustainable Development Department-Social Development, The World Bank). The team is grateful to the Development Commissioner, Secretaries in the Departments of Planning and Coordination, Steel and Mines, Revenue and Disaster Management, Panchayati Raj, Rural Development, Women and Child Development, Mass Education, JS Dept of ST/SC, Director Social Welfare, other officers of the departments of Steel and Mines and Health who gave comments during two presentations based on this draft on July 19, 2007. Comments from Marina Wes and Junaid Ahmad (both World Bank) are also gratefully acknowledged.

the duty to safeguard the interests of tribals who reside in the mineral rich areas. It also lays out a framework for sharing of benefits of mining between private companies and citizens, with the role of the state as facilitator and enforcer. In 2003, the Revenue Department of the GoO in pursuance of the directives of the Supreme Court (which applied only to AP, but GoO took a proactive stance) pronounced the establishment of "Periphery Development Committees" in several districts which were predominantly inhabited by adivasis or Scheduled Tribes[2]. These Committees were formed under the Chairmanship of the Revenue Divisional Commissioner and were mandated to "examine and recommend the development activities in the area" and to draw up shelves of projects to be undertaken as well as identify the implementing agencies for a Periphery Development Programme"[3]. It simultaneously set up a Cabinet Sub-Committee and a Committee of Secretaries to make recommendations based on the Samatha judgment.

The Periphery Development Fund (PDF) that is the subject of this assessment came into being as a result of the recommendations of the Cabinet Sub Committee. In 2004, the Department of Steel & Mines outlined a set of policy decisions to ensure that any "transfer of land for developmental activities, establishment of industries and operation of mining leases in scheduled areas should bring about encouraging socio-economic development of the tribal population"[4]. The Notification states that any development in Scheduled Areas should be accompanied by a fool proof rehabilitation policy and that such policy as well as issues pertaining to "periphery development" be effectively monitored through Committees/Trusts constituted for the purpose.

The Notification prescribes two kinds of approaches to benefit sharing from mining and these are in keeping with the R&R Policy and other government decisions and are based on the Samatha judgment:

- **A private goods approach** evidenced in using a share of profits to support households directly through for instance the R&R policy that lays out the parameters of compensation to individuals displaced by new land acquisition[5]. Specifically it recommends earmarking upto 5 percent of equity of the mining industry and other commercial projects coming up in the Scheduled Areas for the displaced tribal persons based on the value of their land acquired and;

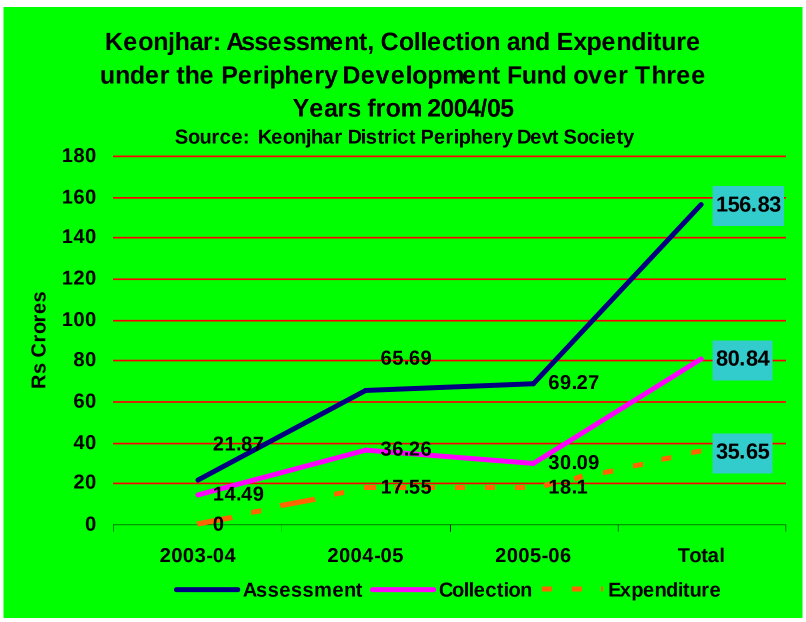
- **A public goods approach** evidenced in using a share of profits from the mining sector to fund public goods (like roads) as evidenced in the creation of a *Periphery Development Fund* in Scheduled Areas within a radius of 50 kms.

The use of the term "periphery" may confuse readers unfamiliar to Orissa. It has its origins in the informal administrative lexicon to denote far-flung areas – usually inaccessible places that were located away from the headquarters. Interestingly, it also conforms to the "core-periphery" concept popularized in the development literature by Wallerstein and others[6]. However, in 2004, the Revenue Department of Orissa clarified the use of the term "periphery" to mean the entire district where a particular industry or mining establishment is set up and in those cases where the industry is established in two adjoining districts; both the districts were to be considered as periphery. Later, the Department of Steel and Mines while pronouncing the establishment of

[2] See Resolution No.REH-12/2003 38464/R dated August 4, 2003 issued by the Revenue Department
[3] See Govt of Orissa, Revenue Department, Letter No. 33167/R dated August 21,2004)
[4] Govt of Orissa, Dept of Steel & Mines, Notification dated January 15, 2004
[5] Parallel to other policy decisions, the GoO had also set in motion the drafting of on the most forward looking R&R poloicies – one that was finaliuzed and issued in May 2006.
[6] See Wallerstein, Immanuel. 1979. *The Capiltatist World-Economy* Paris: Cambridge University Press

Periphery Development Funds, took periphery to mean areas situated within 50 km of a mine. We discuss this in more detail later in this paper.

The literature on benefit sharing in the context of extractive industries is based primarily on the manner in which revenues accruing from mining are managed and put to use in benefit-sharing arrangements. These are usually in the form of funds established from a portion of the royalties and other revenues. The Orissa example in this context is a unique one. Since royalties from mining in India are the collected by the state government but belong to the central government, Orissa has tried a novel experiment by setting up Fund to which mining companies contribute in addition to what they pay as taxes and royalties. The international evidence also points to the fact that setting up funds from mining profits (or revenues) and using them for the development of the areas from which they accrue is by no means an easy task. A recent review of such instruments shows the importance of governance and accountability frameworks, strong local institutions and proactive role of the government as being the key drivers of success. In particular, the involvement of citizens even before leases are granted and their continuing representation and voice in the decisions of the fund are most important to ensure both effective functioning and managing perceptions of local residents[7].



Background to the Assessment: This assessment note has its origins in a recent proposal from the GoO to the World Bank to provide technical assistance (TA) in the broad area of operationalizing "inclusive growth". One of the key areas the GoO requested assistance for was the Periphery Fund. The TA proposal and this assessment note have their genesis in the preparation of the Orissa Social and Economic Development Loan (OSEDL) II – a development policy loan that provides budgetary support for policy changes to enhance inclusive growth. The macroeconomic dialogue that accompanies this loan envisages that natural resources, particularly mineral-based resources will be the major drivers of growth in Orissa in the coming years.

The methodology employed in this assessment included:

- Intensive discussions with key officials in the GoO, consultations with civil society, mining companies and focus groups with citizens
- In-depth assessment of one district – Keonjhar : Keonjhar was chosen for three reasons

[7] Fischer, Carolyn. 2005. *Review of International Experience with Benefit Sharing Instruments*. Mimeo

a. It was the first district to set up a PDF in 2003 and as such has the oldest PDF.
b. It has the largest reserves of iron ore and likely to be attract the largest industries and mining companies.
c. 45 percent of its population comprises Scheduled Tribes and ten of its thirteen blocks are designated Scheduled Areas, making it one of the largest districts with an intersection of mineral deposits and Scheduled Tribe population. This has larger ramifications for issues of shared growth than in other districts.

Due to the first two reasons Keonjhar has the largest contributions in its fund. The total collections over three years have crossed the Rs 80 crore mark (see Figure 1)

The assessment is organized as follows: Section 1 deals with the background and context of the PDF and set it within the overall context of Orissa's development. Section 2 describes the functioning of the PDF. Section 3 is an analysis of the main issues and reform options in the working of the Fund. The final Section 4 places the PDF within the overall context of social responsibly – both corporate social responsibility (CSR) by companies and state social responsibility where the state is viewed as facilitator and enforcer of mutually agreed CSR arrangements.

Box 1: Mining in Keonjhar District: Simultaneity of positive and negative impacts

In Keonjhar, the mainstay for iron ore extraction, since 2002-03, revenue from mining alone (with similar increases in revenue from sales tax and motor vehicle tax) went up by 250 percent. This spurt in mining activity has had attendant growth in trucks plying in the district, transporting the iron ore. It has had positive externalities in the form of local entrepreneurs who have entered the transportation business. Even agriculturists have taken loans to buy small fleets of 2 to 3 trucks to enter the fray. In fact, the assessment of the district administration is that majority of the trucks plying in the district are locally registered. Similarly, there has been the growth of small "dhabas" or roadside restaurants for truck-drivers.

This growth in the local transport business has been accompanied by a near-complete destruction of the roads infrastructure, as heavy trucks ply on roads meant for light vehicular traffic. Residents indicate that the most important issue in this scenario is the destruction of roads and traffic congestion which allows neither timely movement of goods nor public services, nor for residents to commute. Concomitantly, the number of people killed in road traffic accidents doubled in the three year period from 2002-2005. Similarly, the number of "rasta roko"* agitations went up from 4 in 2001 to 74 in 2005. NGOs working in the health sector have raised the issue of organized commercial sex work in the Joda-Birbil area (where mines are concentrated) and the attendant exposure of the population to HIV/AIDS. However, a rapid assessment such as this one only gives an idea of the tip of a potential iceberg and cannot capture the real complexity of these changes.

The district administration has estimated the resources needed for the roads network to be revamped. Even if all the proposals are accepted immediately, it will take an estimated five to seven years for the projects to reach fruition. In the meantime, the district administration is experimenting with different ways of regulating traffic such as allowing trucks to move only at night and enforcing it through local residents. Excessive controls on movement of trucks however have the potential of negatively affecting industry. Therefore, the issue of roads will have to be taken up through innovative and quick-result solutions if both the interests of miners and residents are to be protected. Mechanisms to internalize the externalities of the transport industry – whether through road-based pricing mechanisms or direct regulation -- and which part of government should have this responsibility are an important policy issues to be addressed.

* All figures from the Collector's office, as of July 2006.

SECTION 2: FUNCTIONING OF THE KEONJHAR PERIPHERY DEVELOPMENT FUND

Keonjhar had set up a PDF even before the Department of Steel and Mines had issued its Notification of 2004. Recall in the previous section that the Revenue Department had in 2003 ordered the establishment of Periphery Development Committees (PDC). Pursuant to this order, Keonjhar established its PDC.

Governance Structure of the PDF: The PDF functions through two main mechanisms – the *Periphery Development Committee (PDC)* and the *Periphery Development Society (PDS).* The first is a decision-making authority and the second is an executing authority. The PDC was formed in accordance with the Revenue Department order for Sponge, Steel Industries and Mining Houses working in Keonjhar District in 2003. Its Chairman is the Revenue Divisional Commissioner (Sambalpur Division) with the Collector Keonjhar as Member Secretary and Convener. It has eight other members comprising public representatives and senior officials of the district but does not include the representatives of the mining companies. However, representatives of the mining companies in the district are invited to the general body meetings of the PDC. The Committee "examine(s) and recommend(s) the development activities to be undertaken in the area" and "draw(s) up shelves of projects to be undertaken as well as identify(ies) the implementing agencies for Periphery Development Programme".

The PDS on the other hand, is an autonomous society registered under the Societies Registration Act, 1860. The District Collector is the Chairman and the Deputy Director of Mines, (based in the mining area of Joda) is the Convener. It has five other members (two of whom are representatives of the Mining Association). The PDS is responsible for the collection of the periphery development contributions from the mining companies and for the implementation and supervision of the development activities approved by the PDC and funded from the periphery development contributions. The PDS has skeletal staff comprising engineers and accountants.

Calculation of contributions and payments to the PDF: The annual contributions from the mining companies are based on a negotiated settlement between the PDC and representatives of the companies. The actual collection proceeds along the same route as does any revenue collection by the district administration. Thus, in this case, the Deputy Director of Mines serves a demand notice to individual companies to collect their share of the periphery development contribution and the Mining Inspector does the actual collection. The contribution is generally collected in three or four installments and any deficit in payment is carried forward to the subsequent financial year. The contributions are deposited into the Bank Account/s maintained by the PDS in the local branches of commercial banks and the accounting of the funds is handled by the PDS. Companies may choose to pay either the whole amount or 75% of the demand raised to the PDS. If they choose the latter, the company is required to execute infrastructure works amounting to the remaining 25% on its own. These development activities that are company executed are also approved by the PDC and their physical and financial progress is reported to the PDC and PDS.

Expenditure from the PDF: The development activities from the PDF are decided by the PDC. The PDC invites proposals and approves a list of activities that are funded from the PDF. Once the PDC gives its approval, the disbursement of funds and implementation of the approved activities is the responsibility of the PDS. The projects is either directly implemented by the PDS or through line agencies like PWD, Rural

Development, BDO etc, in accordance with the procedures prescribed in the PWD Manual. If the PDS entrusts implementation to other agencies, payment is made either after the work is completed or in installments. It also pays an execution fee of 18% of the work estimate to the executing agency.

Table 2: Use of PDF in Keonjhar since Inception

Type of Projects	Approved	Completed	In Progress	Not started	Amount Allocated (Rs Crores)
Roads	68	30	29	9	25.54
Electrification	17	12	5	0	0. 43
Education	192	16	176	0	15.15
Health	209	31	82	96	7.95
Drinking Water	386	12	13	361	8.89
Sanitation	2	2	0	0	0.26
Other	29	20	9	0	4.58
Total	903	123	314	466	62.78

Audit and Monitoring of the PDF: In accordance of the stipulations imposed on a registered society, the accounts of the PDS are audit by a chartered accountant. The PDC is the monitoring authority and is supposed to review the progress at its quarterly meetings. Monitoring reports flow to the PDC but not to the state government.

SECTION 3: MAIN ISSUES IN THE KEONJHAR PDF AND OPTIONS FOR REFORM

Three kinds of issues are highlighted in this section – they are related to legality, administrative clarity (of rules and procedures) and to accountability and governance.

1. Legal standing of the PDF and issues of enforcement: Currently the PDF is based on government policies, orders and notifications. None of these has a legal standing, especially since the Samatha judgment did not apply to Orissa. So while, the initiative of the state government is laudable, yet without a sound legal foundation, it can function only on the basis of consultations with and goodwill of mining companies. In the current situation, any attempt to enforce payment can be interpreted as coercive by the industry prompting retaliation in the form of law suites and thereby putting to risk even those contributions collected. At least one mining company has gone to court against the enforcement mechanism for collection of contributions to the PDF.

   Since the contributions cannot be enforced, large companies like SAIL have not made any significant contribution (partly because the leverage of the District Administration with large central government public sector companies is weak). Many large companies have their own CSR initiatives for communities which in many cases they consider as adequate and it may suffice if there is an adequate accountability and reporting framework on their CSR activities. Therefore, the state government may wish to explore the possibilities for providing a legal backing to the PDC either specifically for the purposes of the PDF or as part of a broader initiative to formalize a framework for CSR. The CSR framework would need to be developed in consultation with the private sector and civil society so that al sides accept its mandate.

2. Calculation of Contributions: In keeping with the letter and sprit of the Samatha judgment, the policy Notification of the Dept of Steel & Mines prescribes that “5 percent

of the net annual profit accrued in the project should be spent for development…" However, this has proven to be very difficult to implement. The phrase "5 percent of net profits of a project" is ambiguous and confusing and hard to compute since companies usually have consolidated financial reports, and profits cannot be easily attributed to the production of individual mines or "projects". As a result, the PDC Keonjhar arrives at a mutually agreed rate based on tons of mineral/ore taken out of the mine. Though the Deputy Director of Mines works out a crude calculation to arrive at a figure for the negotiations, the process is still opaque, subject to negotiation and discretion and liable to change every year, making it difficult for the PDC to estimate possible resource mobilization for any period of time beyond the current financial year. A possible alternative to negotiating rates annually, a table of rates be arrived at, based on consultation with the industry and keeping the rates stable for a short period (say 3/4 years). This would enable the PDC to estimate the future cash flows in a more definite manner enabling it to undertake projects with duration extending more than one year. It would also impart greater transparency to the process of assessment and collection.

3. <u>Selection of development activities for the PDF:</u> The PDF has the potential to be a robust source of untied funds with the capability to finance schemes reflecting local aspirations and priorities. It also has the potential to show how the state can facilitate and enforce social responsibility of large industries. In sum, it can be a vehicle for companies to contribute to local development, for communities to participate in the growth process- with the state as facilitator. In sum, it can be a vehicle to ensure that companies contribute to local development, for communities to participate in the growth process - with the state as facilitator. In reality, the process by which development activities are decided appears to be based on district level decisions with little say of the community. Review of the types of projects financed by the PDC/PDS show that the majority are based on lists generated at the level of the Sub Collector, BDO etc with out any formal means of public consultation to identify development priorities of an area. This is tied up with the absence of effective village level planning which hampers allocation of resources where they are really needed. Lack of clear rules and procedures for the expenditures from the Fund can give rise to allegations of favoritism and personal and political considerations weighing in during project appraisal and selection.

Box 2: Keonjhar Local Initiative for Benefit-Sharing

The Keonjhar Infrastructure Development Company LTD (KIDCO) is a Special Purpose Vehicle (SPV) set up by the mine owners and industries in Keonjhar district to undertake the development, operations and maintenance of the Palaspanga-Bamebari Road on BOT basis. The length of the road being constructed is 28 kms and the cost of the project is estimated at 69 crores. The conditions of the roads from Keonjhar to the mines located in Joda-Birbil is very poor leading to huge delays and disruptions to citizens and the mining business alike. This road in that context will ease the flow of traffic for all users. KIDCO has been promoted by nine prominent mining and sponge iron companies operating in Keonjhar. The Chairman of the company is the District Collector, even though the GoO does not have any equity participation. All funds are raised by the mining companies and execution is also entirely through them. The road is widely regarded to use the best available technology and KIDCO proposes to collect toll from the users of the road who are connected to the mining business. The Concession Agreement provides for sharing of revenues from toll collection with GoO after repayment of the project debt. This project is an excellent example of the private sector partnering with the Government to find a sustainable solution to a pressing infrastructure requirement of the region and to share the benefits from mining profits with the general population.

4. PDF as a source of development funds: There are at least three issues with regard to the use of the PDF funds in local development.

    a. If the PDF is meant to be a mechanism to provide public goods, greater clarity is needed to ensure that it is an additionality and to existing funds. Table 2 earlier shows that expenditures appear to be on the same subjects as other earmarked development expenditure. Of course it is possible that the PDF fills the gaps that the stringent norms of other programs leave, but there is little evidence of this. It is important therefore that the norms for expenditure of PDF safeguard against duplication.

    b. Details on which Table 2 is based also show that the expenditures are almost entirely in infrastructure with little attention to the "software" component of development.

    c. Finally, the majority of infrastructure projects approved and implemented through the PDF are small both in scope and outlay. On the other hand, the district's critical infrastructure needs require large investments (see for instance, Box 1).

    The PDF could have two windows – a smaller window of funds going directly to GPs, with the GoO putting in a strong component of capacity building funds and a large infrastructure window which could be implemented through a number of alternative mechanisms. One such mechanism could be KIDCO – an excellent local PPP model of benefit-sharing and infrastructure development (Box 2).

5. Implementation capacity and the effective utilization of monies for local development: Table 2 shows also that the overall utilization of funds from the PDF are to the tune of 44 percent. Currently, implementation of infrastructure works is done through government line agencies and small part of it through the PDC itself. Given the large amount of funds already being allocated for the development of the district, implementing agencies are under considerable pressure to deliver results. Consequently, over half the funds in the PDF are unutilized, leading to dissatisfaction both among NGOs and mining companies. In this context, KIDCO emerges as a workable mechanism through which some funds for large infrastructure development could be utilized. The PDC on its part is considering augmenting its staff and implementing capacity. In effect this may result in another parallel state-sponsored mechanism for implementation when in fact another viable model is in place.

6. Clarity on the term "periphery": There seems to be ambiguity about who the beneficiaries from the PDF can be. While the orders and guidelines of the Revenue Department relating to constitution of the PDC and for fund utilization refer to the entire district as the "periphery" entitled to receive the benefit of the activities implemented through the PDC, the Notification issued by the Department of Steel & Mines restricts the spending of the peripheral development funds to a scheduled area within a radius of 50 kms of a project/industry.

7. Clarity on sponsoring department: There is some ambiguity about whether the Department of Revenue or Steels and Mines is the sponsoring department. While the government orders constituting the PDCs and the guidelines for utilization of PDF have been issued by the Revenue Department (which is also the nodal department for R&R)

the notification based on the recommendation of the Cabinet Subcommittee that considered the Samatha judgment has been issued by the Department of Steel & Mines. This has resulted in unclear guidelines for the use of the fund. For instance, the order from the Dept of Steel & Mines specifies that the proceeds of the PDF should be spent on the development of health, education, irrigation and agriculture, while the guidelines of the Revenue Department state that "depending on the size of the industry and its ability to contribute, the focus of development will be on the basic civic amenities like road, schools, electrification, sanitation, development of market places, health centers etc in the places where the industry is established including the places where the rehabilitation of the affected families are done." Greater clarity on and consolidation of guidelines, a single clear sponsoring department with institutional linkages and relationships between the PDC/PDS and the State Government, will ensure accountability and alignment of development priorities.

8. <u>Oversight and governance of the PDF:</u> The PDC under the Revenue Divisional Commissioner is the authority that monitors the functioning of the PDS and the PDF. It comprises of peoples representatives and officials with no representation from the private sector or civil society. Moreover, the RDC is so burdened by his/her normal functions of the revenue division comprising several districts, that it is unrealistic to expect effective oversight from the PDC. Since the PDS is set up as an autonomous society, the state government does not want to play an overly stringent monitoring role either. Consequently, the PDF does not have a clear line of accountability to any higher level of government at the Central or State level or to civil society. This leads to a weak framework for oversight of the Fund. It is also interesting to note that the representatives of the mining companies are not formally represented in the PDC and as such do not have a role in the approval of the projects. Since the PDF is based on contributions of mining companies for the citizens affected by their actions, the level of transparency, accountability and participation would certainly increase if citizens and representatives of contributing companies are included in the oversight framework.

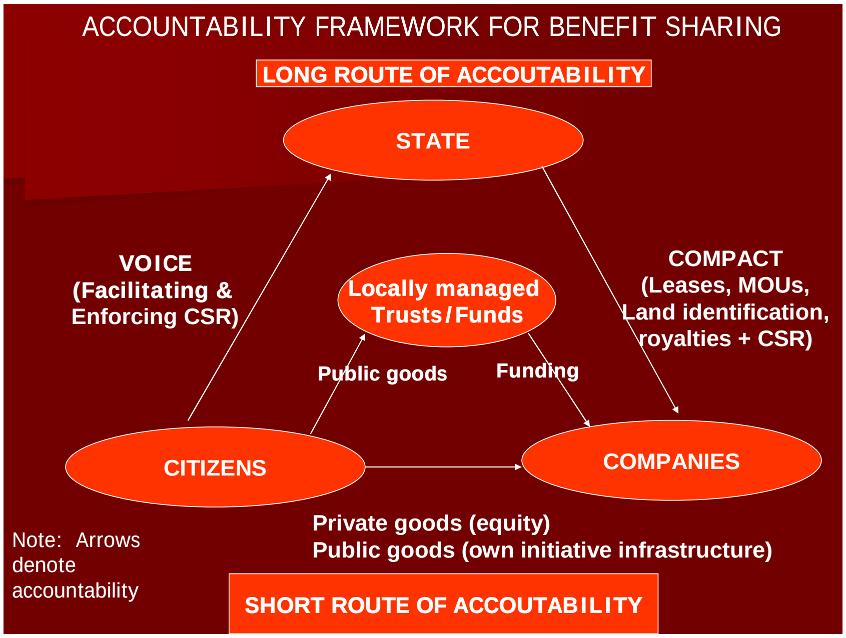
9. <u>Overarching framework for the state and corporate social responsibility</u>: This note has highlighted various instruments in addition to the PDF that the GoO has put in place to further the interests of citizens. The state's framework for benefit sharing would reach its logical conclusion if the ambit of all these initiatives was consolidated and an overarching framework was articulated. This would bring greater clarity to the existing initiatives and send clear messages to both citizens and companies. Moreover, while recognizing the special needs and vulnerabilities of STs, such a framework would extend the scope of the initiatives to all areas where new investments are coming up. Already the notification of the Dept of Steel and Mines indicates that "transfer of land for developmental activities, e*stablishment of industries and operation of mining leases* in scheduled areas should bring about encouraging socio-economic development of the tribal population". The R&R Policy similarly refers to all rehabilitation due to industrial growth and mining. While the Samatha judgment does refer to Scheduled Areas, if the term "periphery" is taken to mean the entire district, then there may be non-Scheduled Areas included as well. Therefore, the final recommendation of this section is to have an overarching framework for benefit sharing that would include both mineral and non-mineral based companies, with the principles of benefit sharing and respective roles of state, citizens and companies clearly laid out.

<u>Summary: Specific recommendations for the PDF</u>

- Options for a stronger legal foundation for the PDF
- Clarity on the term "periphery"
- Clearer orders for the basis for calculation of the contributions
- Clarity on sponsoring department – whether Steel and Moines or Revenue
- Rules on selection of schemes (for instance, so that the PDF is used as a piece of additional funding for communities who located near mines; and priority given to local needs that cannot be covered by other schemes due to stringency of norms)
- Emphasis on using a share of investments for activities like skill development, market linkages, delivery of services (rather than just infrastructure)
- Rules requirements for community consultation
- Changed monitoring framework based on public disclosure and information to communities about use of funds

SECTION 4: DISCUSSION AND CONCLUSION

Framework of Accountability: There are three entities in a triangle of benefit sharing – the citizens, the state and companies – bound in a relationship of accountability. The effective functioning of a system of social responsibility hinges on the accountability of both companies and the state to citizens. We use a framework of accountability from the World Development Report 2004 developed for the delivery of services, adapted here for the relationship between the state, citizens and companies. The ***long-route*** of accountability has the state as the honest broker and the conduit through which companies are held accountable to citizens. In holding the state accountable, citizens ensure that companies pay their share of benefits that are agreed upon. There could also be a ***short route*** of accountability by which citizens directly hold the companies accountable through "client power" for benefits directly negotiated. Thus, KIDCO is an example of the short route and the R&R Policy is an example of the long route. Within this triangle, there could be trusts and funds such as the PDF formed and managed at the local level but also accountable to the citizens. They exist under the broad umbrella policy established by the state but have local leverage to function effectively. The relationship between the state and companies is that of a "compact" by which the state facilitates such items as land identification, grating of mining leases etc. If the citizens lack the capacity to hold the other two entities accountable – or have limited ways of asserting "voice", reform options are to simultaneously build that capacity. And the role of policy in this movement is central as it tries simultaneously to ensure economic growth and social justice.



Each entity in the triangle has its own discourse in Orissa and the development of a comprehensive benefit sharing model needs to take into account the terms of these three sets of discourses.

<u>The state</u>: The state government is engaged in a balancing act between the needs of economic growth and social justice. The tension between economic growth and social justice is neither new nor specific to Orissa. What is new perhaps in Orissa is that citizens are for the first time seeing the prospects of dramatic growth and reactions to this are varied. On the economic growth side, Orissa has historically been left out of the national growth process and there is a state-wide consensus (that includes both state and civil society) that Orissa must be at the forefront of this new growth spurt. Thus, the government discourse is focused on achieving the best deals for Orissa from potential investors as well as from the central government. There is the widespread perception that Orissa functioned very much as the "periphery" to New Delhi's "core" - the hinterland in terms of producing raw materials for industries historically located outside the state. The state's debate with the central government on issues such as mining royalties, resources for maintenance and building of national highways and railways are part of this governmental discourse. The benefit sharing language therefore takes on an new meaning in Orissa – with the state insisting the benefits from central government revenues be shared more equitably. In order to influence this macro level dialogue, Orissa is at the forefront of the discussion on the new national mining policy.

On the side of social justice, the state is viewed as the guardian of public interest. It is in public interest that the state has taken various proactive steps anticipating the new growth. In addition, the state functions as an honest broker between the citizens and large companies. So , it balances the needs to attract large investment in an environmentally and socially responsible manner. We call this role of the state – *State Social Responsibility or SSR* (drawing from the term Corporate Social Responsibility).

<u>The Citizens</u>: There is no single coherent citizens' discourse in Orissa and such issues as do arise are either local or play out through the press. There are also isolated instances of citizen protest

against local developments. NGOs and civil society in Orissa while active, are perhaps not as influential as they are for instance in other states like Rajasthan or Madhya Pradesh. Networks of civil society activists are strengthening beyond state borders and represent the response of a democratic regime against what it perceives as uneven development at the expense of the state and its people. Civil society in Orissa frames its discourse around the following broad set of issues where growth of mineral based industries is concerned:

- Need for increased transparency and sharing of information
- Need for analysis that details for instance the quantum of mineral resources, future needs, optimum rate of extraction and the source of greatest value addition to Orissa
- Need for formal spaces for the voice of citizens to be expressed
- Need for a transparent framework that regulates the activities of mining companies in terms of the environmental and social impacts.

Local institutions that would hold the state and companies accountable are weak in Orissa. While several acts and policies set great store by the Gram Sabha (for example see the R&R Policy and PESA), in practice these are weak and citizens see little value in attending them. Elsewhere we argue for an intense program of capacity building that will enhance the ability of the gram sabhas to be the forums that will assert voice.

<u>The Mining Companies</u>: Mining companies also appear cognizant of balancing mineral-led economic growth with environment and social and environmental responsibilities[8]. Based on interaction with a cross-section of large and medium-sized mining companies in Orissa, it is evident that companies are aware and appreciative of their responsibilities in balancing growth with environment and social responsibilities. While it is difficult to gauge the current level and quality of implementation of CSR by the private sector, it was found that there was broad commitment from the private sector to being 'partners in development' as a part of their CSR activities. The efforts of corporates in balancing these responsibilities and costs and benefits arising from their business activity to both internal (for example, workers, shareholders, investors) and external (institutions of public governance, community members, civil society groups, other enterprises) stakeholders is at the heart of CSR. Setting the boundaries for how those costs and benefits are managed is partly a question of business policy and strategy and partly a question of public governance.

In this context, it is important to examine the 'enabling' role of the state in CSR. The state government has made some beginnings towards developing an enabling environment. For example the Industrial Policy Resolution, 2007 emphasizes sound environment management practices[9], improving the regulatory and institutional arrangements for better enforcement of environment laws and the role of the Rehabilitation & Resettlement Policy to make the current industrialization process sustainable. However, the time may be right to develop a

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8 One of the tools used by companies in measuring and reporting performance along these three spheres (economic, environmental and social) is the 'triple-bottom line framework' which covers the performance. The triple-bottom line framework requires definition of strategies that will enable companies to achieve these goals, to evaluate their performance over time and to report coherently and comprehensively the results to their different stakeholders, both within and external to the firm, at the local, national and international level.

9 For example, the State Government among other things is actively promoting investments in new cement plants based on blast furnace slag and fly ash, which would be available in abundance due to the large number of steel and power plants coming up in the state.

comprehensive strategy on mandating, facilitating and supporting the CSR agenda by involving all the concerned stakeholders. This would help in clearly defining *'expectations'* and setting a '*framework for measuring performance'* of each of the three parties to the 'triangle' described above- i.e. the state, citizens and the companies.

As pointed out at several places in this note, the initiatives of the GoO present a robust basis for enhancing the role of the state as a facilitator of corporate social responsibility on the one hand and of delivering a model of state social responsibility on the other. In conclusion, this note argues for greater attention to improve both compact and voice.

- Strengthening Compact: Clear and overarching policies that set out the government's commitment to benefit sharing and social justice will lead to predictability and a common set of rules. This includes laying out the government's commitment to negotiating, defining an 'enabling' and enforcing framework for CSR. If this is buttressed by proactive systems of public disclosure and regular flow of information, the impact on both compact and voice is likely to be significant.

  By "enabling environment" we mean a policy environment that encourages (or mandates) business activity that minimizes environmental and/or social costs and impacts while at the same time maintaining or maximizing economic gains. Four principal public sector roles reflect the overall range of initiatives that have been identified in the literature: mandating, facilitating, partnering, and endorsing. In fact, from a Corporate Social Responsibility lens, the role of the state can be usefully depicted by mapping the activities that the state can engage in to promote various CSR themes:

CSR Theme/Public Sector Role[10]	**Mandating**	**Facilitating**	**Partnering**	**Endorsing**
Community Development/ Philanthropy	Mandating corporate contributions	Providing incentives	Public Private Partnerships	Publicizing leading contributors
Stakeholder engagement and representation		Supporting CSO engagement	Facilitating dialogue and multi-stakeholder processes	Associate with particular multi-stakeholder processes
Pro-CSR reporting and transparency	Mandatory Reporting	Guidelines for voluntary reporting	Engaging multi-stakeholder dialogue on guidelines, engaging with media	Supporting instruments for peer pressure, commending reporters

  As part of the CSR initiatives in the context of PDF, the private sector could work in partnership with the state and external agencies to develop a 'linkage program' for the communities living near their operations. One option for development of this initiative could be the larger infrastructure window of the PDF and could cover setting up of an 'enterprise center' which would include supplier development, general SME capacity building, vocational training to improve employability of local population and industrial area planning and development (roads, common infrastructure for the industrial area etc)

[10] See Fox, Ward, Howard, 2002. *Public Sector Roles in Corporate Social Responsibility: A Baseline Study.* The World Bank for a complete range of CSR themes

- Strengthening Voice: An effective framework for accountability entails a substantive role for citizens, including formal spaces for their participation. For instance, one possibility in the context of the PDF is that a share of funds could go down to GPs as an untied fund accompanied by an intense program of building the capacity of both GPs and Gram Sabhas. Thus, the PDF could be used for two purposes – strengthening local institutions and direct benefit sharing. Involvement of companies in this pilot would enhance the role of the state as a facilitator of dialogue between companies and citizens and allow transparent at both ends – allow citizens to see the source of funds and allow companies to see how their funds are being used. One possibility is for the PDF to have two windows – a smaller window for untied funds to be transferred to GPs initially around the mining areas. If accepted, this would have to be accompanied by a strong capacity-building component – one that focuses not merely on training of GPs, but hand holding through the process of utilization of funds and building the strength of gram sabhas trough facilitation. In Scheduled Areas this would be strengthen the existing statutory structure established through PESA and allow gram sabhas to take the lead to assert "voice" and "client power". A second window for larger investments could also be envisaged by handing funds over to entities like KIDCO.

Next steps – Sequenced activities: Next steps in the movement towards a comprehensive framework for benefit sharing would include a sequenced sets of activities – first a set that focuses on streamlining the PDF and providing spaces for greater transparency and accountability and second, policy movement towards extending the PDF framework to other industries, and areas. Third in the sequence would come a consultation within government and with the other “corners of the triangle” to develop a framework for benefit sharing.

Acronyms

PDC	Periphery Development Committee
PDS	Periphery Development Society
PDF	Periphery Development Fund
R&R	Resettlement and Rehabilitation
GoO	Government of Orissa
GP	Gram Panchayat
CSR	corporate social responsibility
KIDCO	Keonjhar Infrastructure Development Company LTD