

TRANSPARENCY AND PUBLIC ACCOUNTABILITY FRAMEWORK FOR DMF



Research direction: **Chandra Bhushan**

Writers: **Srestha Banerjee** and **Siva Karthik Valaparla**

Editor: **Brishti Bandyopadhyay**

Cover: **Ajit Bajaj**

Layout: **Kirpal Singh**

Production: **Rakesh Shrivastava** and **Gundhar Das**



© 2019 Centre for Science and Environment

Material from this publication can be used, but with acknowledgement.

Citation: Chandra Bhushan, Srestha Banerjee and Siva Karthik Valaparla 2019, *Transparency and Public Accountability Framework for DMF*, Centre for Science and Environment, New Delhi

Published by

Centre for Science and Environment

41, Tughlakabad Institutional Area

New Delhi 110062

Phones: 91-11-40616000

Fax: 91-11-29955879

E-mail: sales@cseindia.org

Website: www.cseindia.org

**TRANSPARENCY
AND PUBLIC
ACCOUNTABILITY
FRAMEWORK
FOR DMF**

TRANSPARENCY AND PUBLIC ACCOUNTABILITY FRAMEWORK FOR DMF

The laws and guiding documents concerning District Mineral Foundation (DMF), such as the state DMF Rules, the Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY), and the DMF Trust deed promulgated by the Union Ministry of Mines indicate institutional arrangements that DMFs should follow. These include an administrative set-up as well as instruments of transparency and accountability. However, some of these provisions lack clarity or necessary elaborations and need to be strengthened.

For DMFs to remain transparent and accountable, certain key things need to be ensured. A primary one is representation of mining-affected people in the DMF body to ensure transparent decision-making and building stakeholder confidence in DMF operations. Besides this, other key instruments to ensure transparency and accountability, include having comprehensive audits of DMFs to review financial management as well as performance of the institution, mechanisms of grievance redressal, and disclosure of all information related to DMF in the public domain.

This policy brief discusses how the transparency and accountability mechanisms of DMF may be strengthened to ensure that DMFs function with the principles of good governance.

1. REPRESENTATION OF MINING-AFFECTED PEOPLE IN THE DMF BODY

All state DMF Rules and the PMKKKY guidelines have specified the power and responsibilities of the Gram Sabha in identification of DMF beneficiaries, DMF planning/selection of works and schemes, and reviewing works undertaken using DMF funds. The power given to Gram Sabhas can only be exercised effectively if they also have a representation in the decision-making body, i.e. the Governing Council. However, such representation is missing in DMF Trusts of all states. This also reflects a discord between the law, and the mechanism that have been put in place to implement it.

Engagement of Gram Sabha in DMF decision making has also been underscored in provisions of the Constitution of India and the Panchayats (Extension to Scheduled Areas) Act (PESA), 1996, two other fundamental laws guiding DMF functioning as per Section 9B(4) of the Mines and Minerals (Development and Regulation) Amendment Act (MMDR) 2015.

The Constitution of India under Article 244(1), recognizes the administrative engagement of representatives from Scheduled Tribe (ST) areas for matters pertaining to the 'welfare and advancement' of the STs. Since DMF and PMKKKY are meant for welfare of STs (beside other social categories), such provision thus extends to the DMFs particularly in Fifth Schedule areas, and requires representation of these people in the DMF body. For PESA, Section 4(e) mandates engagement of Gram Sabhas for approval of plans, programmes and projects pertaining to social and economic development, and also for identification of beneficiaries of such programmes. Section 4(m) further specifies the need for empowering Gram Sabhas so that they can exercise control over local plans and resources for such plans, and also over the institution(s)/functionaries that are entrusted with executing them.

Gram Sabha members from directly mining-affected villages/panchayats should have representation in the Governing Council of the DMF Trust to ensure participatory decision-making. Members of Gram Sabha should be represented through the following proportion and composition-

- a) At least 10 per cent of Gram Sabhas from the directly-affected villages shall be represented in the Governing Council. There should be one adult female and one adult male member from each of these Gram Sabhas, as selected through the consensus of the members present in the Gram Sabha deliberation.

For directly-affected areas that include municipalities, members of equivalent standing of the wards or municipalities shall be represented in the Governing Council.

- b) The quorum of the Gram Sabha shall be as per the State Panchayat Raj Rules.
- c) There shall be at least one Gram Sabha representation from every directly-affected Panchayat.
- d) For Scheduled areas, it must be ensured that at least 50 per cent of the Gram Sabha members represented in the Governing Council shall be from ST category.
- e) For indirectly affected areas, there should be two representatives from the block-level, one female and one male, as selected by the Panchayat Samiti.
- f) At least 51 per cent of the Governing Council members shall constitute of representatives of Gram Sabhas from directly affected villages. The proportion of representative members from directly and indirectly affected areas should be as per the specification of Section 1(d) and 1(e).
- g) The Gram Sabha and block-level representatives in the Governing Council shall be rotated every two years.

2. DMF AUDIT

DMF Trusts in all mining districts are required to undergo an annual audit. The PMKKKY and the model DMF Trust deed require that the accounts and audit reports of the DMF Trust should be placed before the DMF committee for review. Besides this, they should be sent to the government to be placed before the State Legislature, and all information placed in the public domain through the website of the DMF Trust for public review and scrutiny.

Currently, various state DMF Rules have differing positions on the mechanism of audit, particularly financial audit. For example, states such as Odisha, Jharkhand, Chhattisgarh, Andhra Pradesh, Rajasthan, Maharashtra, Karnataka, Tamil Nadu, Gujarat and Goa, outline a system where the Managing Committee or the Governing Council, appoints auditors, ratifies reports and places them in the public domain. Chhattisgarh, Tamil Nadu and Telangana specifically require that the auditors have to be drawn from a list of Chartered Accountants empanelled by the Comptroller and Auditor General (CAG) of India.

Regarding a performance review, none of the states mention it. Only a few states, such as Chhattisgarh, Gujarat and Maharashtra, mention conducting social audits of the development schemes executed from the DMF fund; however, the Rules do not outline the means to conduct such an audit.

Given the varied specifications by states on audit mechanisms, it becomes imperative to have a few standardized principles outlined for DMF audit to ensure utmost accountability and effective operations of the institution. The audit mechanism for DMFs in all states should consider the following:

- a) All DMF Trusts should undergo both financial and performance audit annually, in a manner as prescribed by the Government in consultation with the Accountant General of the state. It is important for DMFs to undergo both financial and performance audits as it is a public Trust and operating in line with the PMKKKY— a scheme for public (mining-affected people) benefit.

As per the elaborations of the International Standards of Supreme Audit Institutions (ISSAI)¹ and the Comptroller and Auditor General (CAG) of India, financial audit provides assurance that the financial statements properly present the financial situation. Performance audit, on the other hand, is an assessment of the extent to which an organization, programme or scheme operates economically, efficiently, and effectively².

- b) The auditors for financial and performance audit of the Trust shall be ratified and appointed by the Governing Council from the list of qualified Chartered Accountants empanelled by CAG. Such an approach ensures a greater degree of independence of the auditing accountants.
- c) DMF Trusts should also undergo an independent social audit. Social audits provide an opportunity to the ultimate users or beneficiaries to scrutinize development initiatives³. For DMF, undertaking social audit will help to facilitate a ‘concurrent audit’ of schemes and works undertaken by DMF funds, by involving concerned stakeholders and intended beneficiaries. It will also promote a sense of public ownership and engagement.
- d) The social audit process shall-
 - i. be coordinated by the DMF office along with the Governing Council and the State-level coordination and monitoring committee.
 - ii. be rotated every year, with at least 50 per cent of all directly mining-affected villages/ panchayats/municipal wards audited in a year.
 - iii. include review of mining-affected people and families covered/ receiving benefits, timeliness of developmental schemes/works undertaken, work completion rates, effectiveness of works/schemes in addressing the needs and priority issues of mining-affected people and areas, and any such related issue.
- e) The financial, performance and social audit reports of the DMF Trust shall be forwarded annually to the State Government by the Governing Council. The Government shall place the reports before the State Legislature.
- f) All audit reports must also be shared in the public domain through the DMF website as well as panchayat-level platforms (blocks and Gram Panchayats).

A process for conducting social audits may be formulated in accordance with the framework as provided in **Annexure I** of this document. The social audit process and tools as used by the Government of India may also be considered⁴.

3. GRIEVANCE REDRESSAL

There is currently no mechanism for grievance redressal or appeal, specified under any state DMF Rules. This, in spite of the fact that the DMF has defined a set of beneficiaries, who are entitled to benefit through works and projects undertaken by DMF funds. The need of an effective public grievance redressal mechanism is, however, well recognized by the government. The Department of Administrative Reforms and Public Grievances of the Government of India, underscores that ‘the grievance redress mechanism of an organization is the gauge to measure its efficiency and effectiveness as it provides important feedback on the working of the administration⁵. The National Human Rights Commission (NHRC) also emphasizes on its importance for ensuring a responsive implementation process of human development schemes⁶.

Good practice around grievance-redressal requires that the mechanism suits the needs of the people and ensures access to justice for local people. For DMFs, mechanism of grievance redressal, therefore, can be put in place at two levels-

- a) Having a grievance cell in the DMF office.
- b) An independent Ombudsman system to facilitate access to justice and resolution.

a) Grievance Cell: The DMF office should have dedicated personnel or a grievance cell, for addressing grievances related to the functioning of the DMF Trust. The cell should accept both written and oral complaints about the implementation of DMF.

A web-based grievance or complaint registration system should be developed for the purpose for public transparency and accountability on grievances and responses.

b) Ombudsman: The Government may additionally appoint an independent Ombudsman for addressing grievances related to the Trust. Any person, who has a grievance against any member, or the functioning of the Trust, or is aggrieved by any decision of the Trust, may, in person or through a representative, file a complaint to the Ombudsman, in accordance with the guidelines as provided in **Annexure II** of this document.

4. PUBLIC CONSULTATION FOR PROJECTS OVER RS 10 CRORE

A public consultation process should be mandated and outlined for all DMFs before sanctioning works/schemes that are worth Rs 10 crore or more. The objective of such public consultation is primarily to improve public understanding of the proposed activity and build stakeholder confidence.

The Managing Committee of the DMF can facilitate the public hearing process. For the process to be adequately transparent and have the maximum participation of stakeholders, the following should be ensured:

- a) The public consultation must be held in the affected area(s)/ village(s), or municipality(s), where the work or scheme is proposed.

- b) Notices/announcements of public hearing— including date, time and venue— should be spread over and communicated over a period of 21 days through various public platforms including local newspapers, radio announcements, DMF websites, Panchayat office(s) within whose jurisdiction the project is located, office of the concerned Zila Parishad, ward office(s) and the office of the District Magistrate/ District Commissioner/ District Collector. All announcements should be in the local language.
- c) A briefing of the project and proceedings of the public hearing should also be made available in the public domain through the above-mentioned platforms.
- d) No postponement of the date, time, venue of the public hearing shall be undertaken, unless an emergency occurs and only on the recommendation of the concerned DMF Committee, can it be done. In cases when postponement or change in venue happen, the changes shall be announced and communicated to the public through the same platforms.
- e) If two or more projects of Rs10 crore plus investments are proposed in an area, public hearings for them should be held separately with at least a week's time gap.

5. DISCLOSURE OF INFORMATION IN THE PUBLIC DOMAIN

DMF Rules and the PMKKKY require that various information related to DMF be displayed in the public domain, such as a district-specific DMF website.

Given the paucity of resources at the district level, the state government may consider a centralized approach to create a DMF website at the state level, which must include district-specific information. The website should provide the following information for each mining district:

- i. Composition of the administrative bodies — Governing Council and Managing Committee — and any other as provided under respective state DMF Rules
- ii. DMF fund accruals
- iii. List of areas affected by mining
- iv. List of beneficiaries
- v. Minutes of meetings
- vi. Annual plans and budgets
- vii. Details of the projects and works undertaken
- viii. Status of ongoing projects/works
- ix. Annual reports, including records of accounts etc.
- x. Audit reports

Besides a website, processes should be adopted for displaying DMF related information in district and panchayat-level offices. Dissemination of information through public meetings and advertisements is also an alternative.

ANNEXURE I: SOCIAL AUDIT

1. Instituting Social Audit

- (1) The state government shall facilitate the conduct of a social audit of works and schemes undertaken by DMF Trust funds to review their performance and to ensure compliance with provisions of the MMDR Amendment Act (2015), the state DMF Rules framed under the Act, and the PMKKKY.
- (2) The state government shall formulate and promulgate the guidelines to conduct the social audit and public hearings, which shall be adhered to by the implementing agencies and stakeholders at the district and Gram Sabha levels.
- (3) The social audit report should be shared in the public domain through the DMF website, as well as be placed before the independent auditing authority entrusted with auditing DMFs.
- (4) The Managing Committee of the DMF Trust should also convene at least one block-level and one district-level public hearing every year (preferably during the fourth financial quarter) to discuss the social audit findings. The hearing shall be open to all members of the public to participate. The minutes of the public hearings should be shared in the DMF website.

2. Implementing Bodies and Composition

- (1) The state government shall identify or establish an independent unit (independent of implementing authorities and line departments concerning DMF) referred to as the Social Audit Unit (SAU), to facilitate the conduct of social audit by Gram Sabhas in each district. This should be done in consultation with state-level SAUs that are already in place as nodal authorities for facilitating social audit of various social welfare schemes.
- (2) The district level SAU shall consist of the following members to be appointed by the State Government:
 - (a) Five members of the Governing Council, excluding line department officials and members from the Gram Panchayats, who are to be social-audited in that year.
 - (b) Three independent members from mining-affected panchayats/wards.
 - (c) Fifty per cent of the members should be women and belong to the Scheduled category. For districts with 50 per cent or more ST population, at least 50 per cent of the members should be ST.
- (3) At the village and locality level, the social audit will be facilitated by Social Audit Facilitators (SAF), comprising members of reputed Non-Governmental Organisations (NGOs), Self Help Groups (SHGs), front line workers, and social volunteers. The size and composition of the SAF should be commensurate to the representative population of the concerned area. At least two members shall be women.

3. Roles and Responsibilities

- (1) The functions of the SAU shall be:
 - (i) to finalize and approve block-wise social audit calendar and public hearings;
 - (ii) to select and empanel reputed and experienced NGOs and SHGs for facilitating social audit at the village or locality level;
 - (iii) to review, coordinate, supervise, and monitor the social audits to be taken up at the block level;
 - (iv) to conduct the public hearings of social audit at the block level;

- (v) to ensure time-bound redress of grievances raised during the social audit and public hearings;
 - (vi) to submit the reports and findings of social audit to the DMF Governing Council and Managing Committee;
- (2) The functions of the SAF shall be:
- (i) to generate awareness amongst the people about DMF and PMKKKY, and the work and schemes undertaken through it;
 - (ii) to review whether beneficiaries have been appropriately selected;
 - (iii) to interact with the beneficiaries and stakeholders for gathering information pertaining to the implementation of schemes and programmes;
 - (iv) to conduct public hearings of social audit at the Panchayat and village levels;
 - (v) to ensure that the feedback and suggestions received during the social audit process are brought up during the public hearings for discussion;
 - (vi) to ensure time-bound redress of the grievances raised during the social audit and public hearings; and,
 - (vii) to submit the reports and findings of social audit to the district-level SAU.

4. Periodicity

- (1) There should be at least one social audit done at the beginning of the fourth quarter of the financial year.
- (2) At least 50 per cent of all mining-affected Panchayats should be audited in a year.
- (3) There should be a time-bound followup and feedback on the grievances as identified during the social audit process. An action taken report on grievances raised should be submitted before the Governing Council within a month from conducting the social audit.

ANNEXURE II: OMBUDSMAN

1. Appointment, Tenure and Removal

- (1) The Government shall appoint an Ombudsman for the Trust. Depending on the scale of mining/mining-related operations, the Government shall appoint one person as Ombudsman for one or more districts:
 - (a) There shall be a separate Ombudsman for each district, where royalty collected on an average is equal or more than Rs 50 crore per year for the past three consecutive years.
 - (b) The Government may appoint, as it deems appropriate, one Ombudsman for more than one district in cases where the royalty for each such district is less than Rs 50 crore per year for the last three consecutive years, provided that the Government shall review such appointments every five years.
- (2) Appointment shall be based on the recommendations of the Selection Committee consisting of the following three persons:
 - (a) Chief Minister of the State—Member;
 - (b) Leader of Opposition of the State—Member;
 - (c) Chairperson of the State Public Service Commission— Member; The appointment of the Ombudsman should be based on consensus of the Committee members.
- (3) The Ombudsman so appointed will be from among persons of eminent standing and impeccable integrity.
- (4) The Ombudsman shall be appointed for a tenure of three years extendable by two years based on performance appraisal, or till the incumbent attains the age of 65 years, whichever is earlier. There shall be no re-appointment. An annual performance appraisal shall be made by the Governing Council.
- (5) Upon unsatisfactory performance, the Ombudsman may be removed by the Government on the recommendation of the Governing Council.

2. Salary and Allowance

- (1) The salary and allowances allocated to the Ombudsman shall be determined by the Governing Council, but not less than that paid to an officer of the rank of first class Judicial Magistrate.
- (2) In case where one Ombudsman is appointed for a number of districts, the salary shall be as determined by the Government in consultation with concerned Governing Councils. Contributions of various Trusts shall be proportionate to their annual royalties.

3. Jurisdiction

The jurisdiction of the Ombudsman shall include all issues concerning the Trust.

4. Location of Office

The office of the Ombudsman shall be located in the district headquarters. In case where there is one Ombudsman for more than one district, he will be based in one of the districts.

5. Office Support

The Ombudsman may employ or keep on retainer the following, subject to approval by the Governing Council:

- (1) Legal officers with at least five years experience as advocates;
- (2) Administrative staff to support the office;
- (3) Technical staff.

6. Powers and Duties

- (1) Receive complaints against the functionaries of the Trust on any matters specified in Section 7 of this Schedule.
- (2) Determine if such complaints are frivolous.
- (3) In cases of non-frivolous complaints, initiate and pursue the matter in the courts and follow it to its logical conclusion. The Ombudsman shall represent the case of the complainant before the Court, and shall present herself/ himself before the court as required.
- (4) Present the facts, witnesses and evidence before the Court to enable the Court to make a fair decision.
- (5) Prepare affidavits, and other documents as required in pursuance of the complaint.
- (6) Requisition of any public record or document or copies thereof from any Court or office.
- (7) To maintain confidentiality of any information or document coming into his knowledge or possession in the course of discharging his duties and not disclose such information or document to any person except with the consent of the person furnishing such information or document; provide that nothing in this clause shall prevent the Ombudsman from disclosing information or documents furnished by a party in a complaint to the other party or parties, to the extent considered by him/her to be reasonably required to comply with the principles of natural justice and fair play in the proceedings.
- (8) To furnish a report every year containing a general review of activities of the office of the Ombudsman during the preceding financial year to the Governing Council along with such other information that may be considered necessary. In the annual report, the Ombudsman, on the basis of grievances handled by him/her, will review the quality of the working of the Trust members/authorities/committees and make recommendations to improve functioning of the Trust and Trust Fund. The report shall be put on the website of the Government.

7. Grounds on which the Complaint can be Filed

A complaint pertaining to any one or more of the following subjects, alleging deficiency in the implementation of the Trust, can be filed with the Ombudsman:

- (1) Gram Sabha functioning related to the Trust;
- (2) Discrimination on the basis of caste, religion, gender in relation to utilization of Trust Fund;
- (3) Quality of work of the Trust, its members or Committees;
- (4) Engagement of contractors;
- (5) Operation of accounts in the bank or post offices;

- (6) Registration and disposal of complaints;
- (7) Inspection of documents;
- (8) Use of funds;
- (9) Release of funds;
- (10) Annual audits of the Trust;
- (11) Social audit;
- (12) Maintenance of records.

8. Procedure for Filing Complaint and Disposal Thereof

- (1) Any person, who has a grievance against the Trust authorities or member(s), may, in person or through an authorized representative, make a complaint in writing to the Ombudsman.
- (2) The complaint shall be duly signed by the complainant and his authorized representative, if any, and shall state clearly the name and address of the complainant, the name of the office, and official of the Trust against whom the complaint is made, the facts giving rise to the complaint supported by documents, if any, relied on by the complainant, and the relief sought.
- (3) A complaint made through electronic means shall also be accepted by the Ombudsman and a printout of such a complaint shall be accepted in the record of the Ombudsman. A printout of the complaint made through electronic means shall be signed by the complainant at the earliest possible opportunity before the Ombudsman takes steps for disposal. The signed printout shall be deemed to be the complaint and it shall relate back to the date on which the complaint was made through electronic means.
- (4) Disposal of such complaint by the Ombudsman shall be made at the earliest after considering all facts and evidences.
- (5) No complaint to the Ombudsman shall lie unattended, unless—
 - (a) It pertains to subjects or persons outside the purview of the Trust defined in these Rules.
 - (b) The complaint is not in respect of the same subject matter, which was disposed by the Office of the Ombudsman in any previous proceedings whether or not received from the same complainant or along with any one or more complainants, or any one or more of the parties concerned with the subject matter.
 - (c) It is an issue that has been or is the subject matter of any proceeding in an appeal, revision, reference, or writ before any Tribunal or Court.

9. Register of Complaints and Annual Report

- (1) The Ombudsman shall maintain a register of complaints with details of related facts and evidences.
- (2) The Ombudsman shall prepare an annual report of its activities, including number of complaints, relevant details thereof, and the action taken in a financial year. The report shall also include the amount received from the Trust fund, and details of expenditure incurred during the financial year.
- (3) The Ombudsman shall submit the annual report to the Governing Council.
- (4) The register and annual report so prepared shall be put in public domain by the Ombudsman.

BIBLIOGRAPHY

1. The International Standards of Supreme Audit Institutions (ISSAI 100), Fundamental Principles of Public-Sector Auditing, as available from <http://psc-intosai.org/data/files/FF/F5/A8/94/4F327510C0EA0E65CA5818A8/100913Agenda-item-41-ISSAI-100-English-FINAL.pdf>, accessed on August, 2018
2. Comptroller and Auditor General of India, 2014, Performance Audit Guidelines, Government of India, as available from http://www.cag.gov.in/sites/default/files/guidelines/PA_Guidelines2014.pdf, accessed on August 2018
3. Planning Commission, Government of India, Social Audit Gram Sabha and Panchayati Raj, Final Report, as available from http://planningcommission.gov.in/reports/sereport/ser/stry_sagspr.pdf, accessed on November, 2018
4. Ministry of Panchayati Raj, Government of India, Social Audit- Local Governance Accountability, as available from <http://www.socialaudit.gov.in/>, accessed on November 2018
5. Department of Administrative Reforms and Public Grievances, Government of India, as available from <https://pgportal.gov.in/pgp5/grm.aspx>, accessed on October, 2018
6. National Human Rights Commission, India, Schemes and Programmes of Government of India on Human Rights Related Issues, as available from http://nhrc.nic.in/Documents/Publications/Schemes_and_Programmes_of_Government_of_India_on_Human_Rights_Related_Issues_03_02_2016.pdf, accessed October, 2018





Centre for Science and Environment

41, Tughlakabad Institutional Area, New Delhi 110 062

Phones: 91-11-29955124, 29955125, 29953394

Fax: 91-11-29955879 E-mail: cse@cseindia.org

Website: www.cseindia.org