

MINING MATTERS



mm&P *mines, minerals and PEOPLE*

Communities Command Over Natural Resources

MINING MATTERS

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Preface

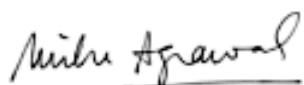
Our country is endowed with huge resources of many metallic and non-metallic minerals. The mining activities are extremely poorly regulated despite the fact that as early as 1948, the founding fathers of the constitution realized this need. Over 80,000 mines operate illegally as against nearly 10,000 legitimate leases. Only a third of the legal mines actually report to the Indian Bureau of Mines, the regulator. It is in this context that a new bill was introduced in the Parliament in December 2011. The bill, currently under the scrutiny of the Parliamentary Standing Committee, will be soon debated in the Parliament.

Oxfam India as a part of its Economic Justice and Natural Resources Management programme has been supporting and actively engaged with the Civil Society Groups in the process of development of this bill lead by the decade old alliance of mining affected communities and support groups, the mines minerals and PEOPLE (mm&P). The group has meticulously followed the developments and constantly engaging with the Government and other institutions including the media.

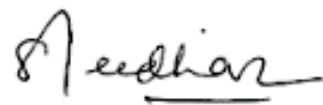
The agreed position as of 3rd June 2010 was that the community would hold 26% of the equity or annuity. In retracting from the agreed position the Empowered Group of Ministers and the State has demonstrated that it weighs profits and corporates higher than the very people it is duty bound to serve. Thus the revised bill falls immensely short of its own learning. It has failed us.

This document provides some of the key changes sought by people. The suggestions have emerged from several consultations across the country among the alliance members and other partners.

We are confident that the members of the house will show wisdom and restore justice in the provisions of law. It will be our continued endeavour to pursue the process and ensure that the communities in the mining areas are not denied of their rights to natural resources, which is fundamental to the existence of many adivasi and dalit communities in the country.



Nisha Agarwal
Chief Executive Officer
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New Delhi, April 2012



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mines minerals and PEOPLE

1. THE CONTEXT

Introduction

Our country is endowed with huge resources of many metallic and non-metallic minerals. Since independence, there has been a pronounced growth in the mineral production both in terms of quantity and value. India produces as many as 87 minerals, which include four fuel, ten metallic, forty-seven non-metallic, three atomic and twenty-three minor minerals (including building and other materials). The total value of mineral production (excluding atomic minerals) during 2010-11 has been estimated at ₹ 2007 billion (₹ 200609.38 crores), an increase of 11.83% over the previous year.

Industrialisation has brought in its wake an ever-increasing demand for mineral resources. These resources are non-replenishable and mostly scarce. Proper control over regulation and development of mines and minerals is therefore, a matter of national concern. (1948)
<http://interstatecouncil.nic.in/CHAPTERXIII.pdf>

Minerals are non-renewable and must be planned for very long term needs, even longer than the current history of mining. Mining must be old as human civilization and in our country, metals, as complex as gold, mercury and lead for refining, were in vogue. Historically, mining and metallurgical activities in India can be traced back for about 6,000 years. Zawar in Udaipur District has remnants of the smelters used in the past. The Adivasis of Bastar have history of using iron and tin. Varahimira in his work Brihat Samhita, wrote about selective absorption of metals by plants and prepared a repertory including exploration for groundwater. Today ground water has been exploited in such a rapid manner in several mining areas that in some circumstances we have mined more valuable water than the revenue from the mineral. The mineral resources of our country need long-term strategies that take in account the consequence of current levels of mineral exploitation, future needs, and breakthroughs in technologies. The mining legislations should have been used to ensure stability, in a long-term economic shift to renewable resources. However, this has not happened.

The mining activities are extremely poorly regulated despite the fact that as early as 1948, the founding fathers of the constitution realized this need. Over 80,000 mines operate illegally as against nearly 10,000 legitimate leases. Only a third of the legal mines actually report to the Indian Bureau of Mines, the regulator. There are no credible estimates about the number of mines operating in the country. Figures vary from source to source and within one source. However, the obvious reality is that illegal mines are plenty. The State has clearly demonstrated its incapacity to manage even existing investments in mining, and the revenue yield per tonne is ever diminishing.

Mining activities have increased exponentially since the beginning of economic liberalization in the early nineties. The National Mineral Policy (NMP) 1993, and reiterated in the NMP 2008 initiated the liberalisation process. Within two decades of liberalised economy, much in contrast with the Constitutional objectives, mining as a sector has come to be associated with scams, conflicts, violence and ecological degradation. The policies initially aided the State and later, the corporates, as promoter of economic growth and private profitability by rapidly abstracting mineral wealth of the country. Various actors have invested into the sector, including national and international companies, banks, equity funds, and even “round-tripping” of illegal funds etc. and it is now predicted to almost doubling its current size within the next 15 years. From 1947 to 2000 year—for long 53 years—326,001,000 metric tonnes of iron ore was produced, whereas only within 11 years, i.e. from 2001 to 2011 a huge quantity of 545,746,323 metric tonnes of iron ore was produced.

Mining of major minerals was a forte of the Public Sector Undertakings until the nineties when the country embarked on the economic policy of privatization and globalization. New ways are being devised for exploitation of the resources and to hand over wealth of the nation for small short-term gains. The rapidity with which the global interests want to usurp these resources is reflected to the stock markets and it is with an exponential rate that mining is devouring lands and livelihoods of many communities. In the case of coal, the private sector was a key player until it was nationalized in the seventies again to be opened up in the last decade and as of today nearly twenty percent of the known coal reserves of the country have been handed over to the private sector. Most mineral

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1. Annexure 1: Indian Mining Scenario
 2. A number of scams involving politicians is linked to such a phenomenon.
 3. Environics Analysis on the basis of Planning Commission Documents
 4. Between 2008-10 concessions given are over 600,000 ha (Source MoM)
 5. mm&P analysis of the Captive Coal Blocks Allotted

resources are co-terminus with Forests and Schedule Areas and mining has become a major source of destruction of the environment and livelihoods of the local communities and has reached alarming proportions. The impacts are widespread and diverse, and have created socio-economic and cultural impacts over different geographies and ecosystems – from the Western Ghats to Stone Quarries of Rajasthan, and from coal mines in Meghalaya to beach sands in Kerala. Even the constitutionally protected Scheduled Areas (Schedule V and VI), where ironically, the mineral wealth of the country rests, have not been spared of this blight.

The Samata Judgment in 1997 provided a semblance of hope for the tribal communities. Mining could no longer remain an economic activity to further the profits of a few. The judgment wanted the States to seek consent of communities, be enabler of better development of the mining regions by making local communities partners in development of mines and allied activities and not to lease it away to companies. But unfortunately, neither State nor the Central Governments have sincerely implemented the guidelines in the past fifteen years. On the contrary, they found ways to encourage corporates by undermining the judgment through a slew of administrative and legal fiats.

A Brief Account on the Evolution of Mining Regulation in India

The first Industrial Policy Resolution adopted in 1948 codified the national policy in respect of mines and minerals. Mining sector also received due attention in the second 'Industrial Policy Statement' issued in 1956. As a follow-up measure to Industrial Policy Resolution of 1956, the MMRD Act 1948 was repealed and MMRD Act 1957 was enacted. Under this Act the Mineral Concession Rules 1960 and the Mineral Conservation and Development Rules 1958 (MCDR) were issued. The new Industrial policy in 1991 oriented towards market liberalisation. The National Mineral Policy 1993 was an exercise to keep the mineral sector tuned to the restructuring measures adopted in the trade and fiscal sectors. The new Mineral Policy declared in March 1993, has made a radical departure from the earlier policies by throwing open the mineral sector to private companies and by allowing equity participation by foreign companies in joint venture in mining promoted by Indian Companies. Further Amendments in MMRD Act, 1957 in 1999 was brought in to reflect the changed emphasis on

1. Samata vs State of A.P and Ors

“development” rather than “regulation” and was amended to MMDR Act. The slow pace of Foreign Direct Investments (FDI) in the mining sector even five years after the liberalization of the investment regime, the lack of enthusiasm for investment in prospecting shown by the domestic private sector, and the lack of resources with public sector agencies meant that the sector was unable to significantly contribute to growth. During the Mid-term Appraisal of the 10th Plan in the Planning Commission, it was observed that the 1993 policy had not been able to achieve the aim of encouraging the flow of private investment and introduction of high end technology for exploration and mining because of procedural delays, etc. A need for review of NMP, 1993 with a High Level Committee on National Mineral to review the situation led to the National Mineral Policy (NMP), 2008, which confers lot more concessions to investors while also expressing the need for environmental and social safeguards.

The Mines Minerals (Development and Regulation) Bill 2011 was introduced in Parliament silently, during the tumultuous winter session in December 2011. The Bill will significantly impact the mining industry and communities in the mining regions. As such, it calls for larger participation and discussions before it is passed in its current form. The bill, currently under the scrutiny of the Parliamentary Standing Committee will be soon debated in the Parliament.

Highlights

The Bill

- Recognises the adverse impacts on people and environment by mining operations;
- Pays way for Benefit sharing and Environmental and Social Oversight;
- Has specific provisions for Tribal Cooperatives;
- Makes it mandatory to consult the Gramsabhas and Local Elected Bodies;
- Seeks to make auctioning the prime mechanism for grant of concessions;
- Provides for very high increase in size of a single lease (100 sq km);
- Provides for new Regulatory and Judicial mechanisms and
- Calls for greater disclosure of information about the mine and its impacts.

The Purpose of this Document

Mining legislations have evolved with the time and the formulation of this bill itself was seen as a process enabling articulation of marginalised voices. A number of progressive steps were taken in the formulation of the draft. The Group of Ministers has substantially diluted the progressive provisions of the bill and has made it unacceptable to the communities. The minutes of the meeting of the Group of Ministers indicate that without attributing or explaining specific reasons for the dilution have done it as a *fait accompli* for the corporates.

This document follows this introductory overview with a brief on the perspectives of the mm&P alliance and elaborates upon the structure of the bill and the specific clauses that need to be amended.

S. No.	State	No of Leases	Percentage	Area (ha)	Percentage	Illegal Mines 2009	Proportion of Illegal Mines 2009 Actual %
1	Andhra Pradesh	1948	18.57	71072.74	14.01	11591	595.02
2	Chhattisgarh	314	2.99	20143.54	3.97	1078	343.31
3	Goa	337	3.21	24445.88	4.82	9	2.67
4	Gujarat	1125	10.73	30817.62	6.07	5416	481.42
5	Haryana	110	1.05	11638.53	2.29	1372	1247.27
6	Himachal Pradesh	54	0.51	2665.09	0.53	1114	2062.96
7	Jharkhand	330	3.15	37059.58	7.3	15	4.55
8	Karnataka	615	5.86	46784.85	9.22	1687	274.31
9	Kerala	85	0.81	2943.33	0.58	1321	1554.12
10	Madhya Pradesh	963	9.18	28524.2	5.62	3868	401.66
11	Maharashtra	254	2.42	16312.35	3.21	8270	3255.91
12	Orissa	528	5.04	76356.67	15.05	758	143.56
13	Rajasthan	2587	24.67	106479.18	20.99	73	2.82
14	Tamil Nadu	925	8.82	11180.67	2.2	4711	509.30
		10175	97.01	486424.23	95.86	41283	405.73

Source: Mines Ministry and Answers in Lok Sabha

2. Structure and Key Aspects of the MMDR 2011

The object of the bill is *“to consolidate and amend the law relating to the scientific development and regulation of mines and minerals under the control of the Union.”*

The bill is arranged in 16 chapters and 139 clauses. The chapter on Non-Exclusive Reconnaissance License (III) is the shortest with two sections and the chapter on Mining Tribunals (XII) the longest with twenty-six sections.

Chapter I, the preliminary chapter as 3 clauses pertaining to the title, extent and date of commencement and defines the different terms used in the bill. A set of 34 terms used in the bill is defined. Completely new terms such as HTREL (High Technology Reconnaissance cum Exploration License), Sustainable Development Framework (SDF), Regulatory Authority and Mining Tribunal have been introduced for the first time in mining legislation.

Chapter II, titled “General Restrictions on Mineral Concessions”, stipulates that no concession can be operated without license under the process prescribed in this Act. This elaborate chapter with 15 clauses particularly deals with broad three stages of reconnaissance, prospecting and mining concessions alongwith eligibility, size, time limit, transfer of lease etc. Agencies of the government Geological Survey of India, the Atomic Minerals Directorate, the Mineral Exploration Corporation Limited, the Singareni Collieries Limited, the Neyveli Lignite Corporation Limited and the Central Mine Planning and Design Institute Limited being Government companies within the meaning of section 617 of the Companies Act, 1956 or the Directorate of Mining and Geology (by whatever name called) of any State Government and such other Government agencies as may be notified by the Central Government from time to time in respect of any land where rights on minerals vest in the State Government are exempt from seeking licenses for reconnaissance and prospecting activities.

The clause 6 (1) of the chapter relates to the size restriction of the concessions and states *“The maximum area which can be held under*

mineral concession at any time by a person in respect of any mineral or prescribed group of associated minerals in a State shall be—

- (a) ten thousand square kilometres in respect of non-exclusive reconnaissance licences;*
- (b) five thousand square kilometres in respect of high technology reconnaissance-cum-exploration licences;*
- (c) five hundred square kilometres in respect of prospecting licences; and*
- (d) one hundred square kilometres in respect of mining leases.*

This clause under section (6) seeks for allocation in such a manner that “No mining lease shall be granted in respect of any area which is not compact and contiguous or otherwise not suitable to scientific development.”

The section 7, seeks to grant concessions to cooperatives in tribal areas “In case of the Scheduled area specified in the Fifth Schedule to the Constitution and the tribal area specified in the Sixth Schedule to the Constitution, the State Government may, by notification, give preference as may be specified in the notification in grant of mineral concessions on an area referred to in sub-section (6) to a Co-operative of the Scheduled Tribes.

This chapter also calls for competitive bidding and auction of concessions with some caveats such as

8 (6) A non-exclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence, prospecting licence or mining lease for coal minerals shall be granted by the State Government to a company approved by the Central Government on such terms and conditions as may be prescribed by it and such licence or lease be granted through competitive bidding and auction in such manner as may be prescribed by it:

Provided that the provisions of this sub-section shall not be applicable for grant of mineral concession,—

- (a) to a Government company or corporation for mining or such other specified end use;*
- (b) to a company or corporation which has been awarded a power project*

(including Ultra Mega Power Project) on the basis of competitive bids for tariff.

and

(8) Where the mining lease is in respect of land where the minerals vest in a private person, no transfer shall be permitted except in accordance with the terms and conditions of the mineral concession agreement in regard to the consent of such person.

Chapters III is a short chapter of two sections (19 and 20), which deals with Reconnaissance License that is non-exclusive, and therefore multiple players may be able to reconnoiter and increase the chance of discovery of minerals.

Chapter IV (section 21-23) deals with the new kind of license, High Technology Reconnaissance – cum – Exploration License, where a Reconnaissance license can seamlessly become an exploration license for a part of the area assigned. The chapter also allows for certain areas to be notified for exploration by State agencies.

The chapter under section 21, for the first time introduces the environmental aspects in the exploration stage and mandates the exploration plan to include

(iv) appropriate baseline information of prevailing environmental conditions before the beginning of reconnaissance or prospecting operations;

(v) steps proposed to be taken for protection of environment which shall include prevention and control of air and water pollution, progressive reclamation and rehabilitation of the land disturbed by the prospecting operations, a scheme for the plantation of trees, restoration of local flora and water regimes and such other measures, as may be directed from time to time by the Indian Bureau of Mines or the State Directorate as the case may be for minimizing the adverse effect of prospecting operations on the environment.

This chapter also mandates payment of compensation to the surface right holder for damages caused during exploration.

Another important element is of disclosure, under section 22 (8)

Grant of every high technology reconnaissance cum exploration licence or a prospecting licence shall be notified in the Official Gazette and in the official website of the State Government.

Chapter V deals with Mining Lease. It prescribes that every mining lease to be operated under a pre-approved mining plan for major mineral and for minor minerals (as notified by State or IBM) it stipulates a framework plan.

The mining leases on government lands can be obtained only by competitive bidding under the HTREL or when the mineralization is known, directly put to bid as prescribed in

25. (1) The mining lease in respect of land in which minerals vest in the Government shall, except in case where a mining lease is granted in accordance with the provisions of sub-section (5) of section 13, be granted only on application made by a person who has held a high technology reconnaissance-cum-exploration licence or a prospecting license for the area and no other applications shall be entertained in this regard.

The relevant subsection being

(5) In such areas where prospecting has been conducted and sufficient evidence of enhanced mineralisation has been established through a prospecting report and feasibility study, and where no application for a mining lease is pending, the State Government shall by notification invite applications in the form of competitive bids for any minerals excepting coal minerals, for grant of mining lease, to the bidder who in accordance with the provisions of sub-section (6) quotes the best financial bid including the bid for the prospecting report and feasibility study for the area so notified.

It also prescribes that the lease operation would be subject to environmental restoration under section 24

(l) the lessee shall carry on his operations in accordance with the approved mining plan and take immediate measures in such manner as may be prescribed by the Central Government to restore, as far as possible and at least to the extent given in the mining plan, the areas in which mining operations have been conducted, including replacement of soil cover, removal of contaminants and pollutants introduced during mining operations, restoration of local flora, and water regimes in such manner as may be prescribed by the Central Government.

It also mandates the establishment of grievance redressal mechanism under the following clause of section 24

(o) the lessee shall set up a grievance redressal mechanism in such manner as may be prescribed by the Central Government, to address concerns of persons affected by mining operations in accordance with the requirements of the Sustainable Development Framework in terms of section 46;

The bill also mandates the drawing up of a Corporate Social Responsibility document and also to disclose annually the activities and expenditures incurred under

26 (3) Without prejudice to the generality of the provisions of the mining plan, there shall be attached to the mining plan in respect of all major minerals, a corporate social responsibility document, comprising of a scheme for annual expenditure by the lessee on socio-economic activities in and around the mine area for the benefit of the host population in the panchayats adjoining the lease area and for enabling and facilitating self employment opportunities, for such population, and the lease holder shall, at the end of each financial year, publish in his annual report and display on the website, the activities undertaken during the year and the expenditure incurred thereon.

Mine closure is one of the most important areas neglected in the past and has been brought into the framework of law and is addressed in two elaborate sections (32 and 33)

32. (1) Every mining lease shall have a Mine Closure Plan prepared in terms of a Sustainable Development Framework, which shall consist of—

(i) a progressive mine closure plan for each mine; and

(ii) a final mine closure plan.

(2) Every Mine Closure Plan shall be available for inspection by the public in the office of the authority competent to approve such a Plan, and also in the office of the Panchayat having jurisdiction and such other places as may be notified.

(3) A Progressive Mine Closure Plan shall be prepared for each mine for a period of five years at a time commencing with the period of the lease, and for every period of five years thereafter, in such manner as may be prescribed by the Central Government:

Provided that the Progressive Mine Closure Plan shall include details of closure, rehabilitation and restoration activities proposed to be carried out in the five years period and the projected investments in this respect, and except in the case of the first progressive mine closure plan, the details of activities actually carried out and the expenditure incurred in each of the preceding progressive closure plans.

The law also provides for consultation of the Panchayats in the formulation of the final mine closure plan under section 32

(8) Without prejudice to the generality of this section, the Final Mine Closure Plan shall be based on the land use planned for the lease area after its closure, and shall include measures to reduce hazards, improve productivity and ensure that it supports the needs of the host population:

Provided that the land use planned for the mining lease area after the closure of mine shall be decided in consultation with the Panchayats having jurisdiction, in such manner as may be prescribed by the Central Government.

(9) The Final Mine Closure Plan shall be revised for every five years having regard to the progress of mining operations and be submitted along with every Progressive Mine Closure Plan.

(10) The Final Mine Closure Plan for the last five years period of the lease

shall be approved with such modification as may be specified by the authority approving the Progressive Mine Closure Plan after consultation with the Panchayat concerned, within a period of one year.

Chapter VI is short dealing with “Mineral Concessions in Cases where minerals do not vest exclusively with Government” where it calls for application to be made to the person and the concession will be in the form of a registered deed executed before the commencement of operations.

34. Applications for mineral concessions in respect of any mineral which vest exclusively in a person other than the Government shall be made to such person and all mineral concessions be granted subject to the provisions of this Act and the rules made thereunder

Chapter VII focuses on reservation of minerals with the objective of conservation of minerals and stipulates a minimum period of ten years for such reservations.

Chapter VIII deals with Royalties, Compensation and cess and one of the most critical chapters concerning local communities. The first two deal with Royalties and dead rents and the third section of this chapter lays down the compensation. The central government will notify rates of royalty for major minerals and state governments for minor minerals and all lease holders have to pay the royalty. However in order to encourage value addition at the mine-site, concession on royalty can be given to the lessee if he beneficiates mineral at the ore stage.

Concessions on dead rent for cluster mining is also provided for in Clause 5 of Section 42 *“In order to encourage mining of small deposits in cluster, dead rent for the area shall be determined having regard to the actual area required for mining operations”* Revision of royalty is restricted for once in three-year period.

Section 43 is critical as it lays down clauses for payment of compensation to the owner of surface, usufruct and traditional rights, damages etc. There are several streams of compensation being prescribed i.e. Before commencing operations, while the operations are ongoing, after the

termination of concession. These benefits shall be over and above than other prevailing benefits entitled under the R&R policy of state. In case of a dispute as to who is the rightful owner of rights, Gram Sabha / Panchayat has to be consulted. All these benefits are for mining related operations.

43. (1) In respect of land in which minerals vest in the Government, the holder of a non-exclusive reconnaissance licence, high technology reconnaissance cum exploration licence or prospecting licence shall be liable to pay, to every person or family holding occupation or usufruct or traditional rights of the surface of the land over which the license has been granted, such reasonable annual compensation as may be mutually agreed between the holder of such licence and such persons or in the absence of such agreement, which may be determined by an officer appointed, by notification, by the State Government in this behalf in such manner as may be prescribed by the State Government

Provided that such amount shall be determined before commencement of operations and paid in advance each year, in such manner as may be prescribed by the State Government.

(2) The holder of a mining lease shall pay annually to the District Mineral Foundation, as referred to in section 56,—

(a) in case of major minerals (except coal and lignite) an amount equivalent to the royalty paid during the financial year;

(b) in case of coal and lignite, an amount equal to twenty-six per cent of the profit to be called as profit sharing percentage (after deduction of tax paid) of the immediately preceding financial year from mining related operations in respect of the lease; and

(c) in case of minor minerals, such amount as may be prescribed by the State Government with the concurrence of the National Mining Regulatory Authority referred to in section 58, within such time and in such manner as may be prescribed by the State Government for the benefit of persons or families affected by mining related operations:

Provided that in respect of coal minerals the Central Government may, after taking into consideration the report and recommendations of the National Mining Regulatory Authority, by notification, revise the profit sharing percentage, or specify such other method as may be prescribed for calculation of amount to be paid to the District Mineral Foundation:

Provided further that in case where the holder of a mining lease for major minerals has commenced mining related operations but has not commenced production, the holder of a mining lease shall pay into the District Mineral Foundation, an amount equal to the royalty payable on the production estimated in the first twelve months of the year as per the approved mining plan:

Provided also that in case the holder of a mining lease for major minerals,—

(a) was not in production for a part of a particular year, he shall be liable to pay the amount in the second proviso on pro-rata basis for the period during which he had not commenced any such operations;

(b) discontinues production for a part of a particular year, he shall be liable to pay the amount equal to the royalty on actual production of the corresponding period of the previous financial year.

(3) Notwithstanding anything in sub-section (2), and the Companies Act, 1956, or any other law for the time being in force, where the holder of mining lease is a company, it shall also allot at least one share at par for consideration other than cash to each person of the family affected by mining related operations of the company and such shares shall be non transferable.

(4) The articles of association of the company, referred to in sub-section (3) shall contain provisions enabling the company to allot shares in accordance with the provisions of sub-section (3).

(5) Notwithstanding anything in sub-section (2) and sub-section (3), the holder of a mining lease shall, in respect of any person or family holding occupation or usufruct or traditional rights of the surface of the land over which the lease has been granted, be liable to provide employment or other assistance in accordance with the rehabilitation and resettlement policy of the State Government concerned.

(6) The amount payable under this section shall be in addition to any other amount or compensation payable to the person or family holding occupation or usufruct or traditional rights of the surface of the land under any other law for the time being in force.

(7) After the termination of a non-exclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence, prospecting licence or a mining lease, the State Government shall after giving the person or family holding occupation or usufruct or traditional rights of the surface of

the land an opportunity of being heard, assess the damage, if any, done to the land by the reconnaissance or prospecting or mining related operations and determine the amount of compensation payable by the licensee or the lessee, as the case may be, to the person or family holding occupation or usufruct or traditional rights of the surface of the land in such manner as may be prescribed by the State Government:

Provided that in case the licensee or lessee and the person or family holding occupation or usufruct or traditional rights mutually agree on the compensation, and communicate the same to an officer appointed by the State Government in this behalf, the State Government may, accordingly, determine the compensation.

(8) In case, —

(a) the licensee fails to make payment to the persons holding occupation or usufruct or traditional rights in terms of sub-section (1), the State Government may forfeit the security deposit and make payment therefrom, and may recover any balance amount as provided in section 118 of this Act, and may also declare the licensee or lessee ineligible for the purposes of any mineral concessions under this Act;

(b) the lessee fails to make payment to the District Mineral Foundation in terms of sub-section (2), the State Government may initiate necessary proceedings to recover the arrears and may also take action against the lessee for non compliance of conditions of the lease in accordance with the provisions of sub-section (4) of section 24;

(c) the lessee or the licensee, as the case may be, fails to pay the compensation within three months of its determination under section 30, the State Government may on an application made to it by the aggrieved person, either forfeit the security deposit and make payment therefrom, or may recover the amount as provided in section 118 of this Act, and may also declare the licensee or lessee ineligible for the purposes of any mineral concessions under this Act.

(9) Where there is a dispute as to whether a person or family holds occupation or usufruct or traditional rights, the Collector of the District may after consulting the Gram Sabha, or the Gram Panchayat or District Council, as the case may be, make a determination which shall be binding for the purposes of this Act.

(10) (a) The State Government shall cause identification of the person or families affected by mining related operations in such manner as may be prescribed by the State Government.

(b) The amount of monetary benefit may be determined by the State Government for each district where mining operations are being undertaken, having regard to the nature and extent to which such person or family is affected by mining related operations and for improving the quality of life of the affected person or family, and such amount of monetary benefit shall not be less than the amount a family may be entitled under the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 :

Provided that till the amount of monetary benefit is determined by the State Government, the amount of monetary benefit shall be equal to an amount that such as a family may be entitled under the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005.

(c) The State Government shall ensure that monetary benefits under this Act are distributed to the persons or families in areas affected by mining related operations through a mechanism prescribed by the State Government:

Provided that in case of a family not headed by a woman, the State Government shall ensure that half the amount of monetary benefits distributed to families in areas affected by mining operations shall accrue to the eldest women member of the family.

*(11) For the purposes of this section, in case of a mining lease already granted on or before the date of commencement of this Act, the date for identification of person or families affected by mining related operations shall be reckoned as first January **Nineteen Hundred and Ninety Seven**.*

Chapter IX on Powers to Issue Directions lists, technical knowledge, disclosure of information, consultations at each stage of mining life cycle, restoration & reclamation etc. The significant among these as contemplated in the NMP 2008, is the section 46 (2) on Sustainable Development Framework to ensure the protection of the environment and prevention and control of pollution from prospecting and mining related

operations. It shall contain guidelines enabling formulation of project level practices for sustainable mining.

(2) The Central Government in order to facilitate the scientific development and exploration of mineral resources and to ensure the protection of the environment and prevention and control of pollution from prospecting and mining related operations, shall cause to be developed a National Sustainable Development Framework in consultation with the State Governments.

(3) The State Government may with the previous approval of the Central Government frame a State Sustainable Development Framework not inconsistent with the National Sustainable Development Framework.

(4) The National Sustainable Development Framework shall contain guidelines enabling formulation of project-level practices for sustainable mining, and include the following, namely:—

(i) specification of factors and parameters influencing sustainable and scientific mining;

(ii) broad criteria beyond which mining may not be deemed sufficiently sustainable or scientifically manageable;

(iii) systemic measures needed to be taken or built-in to increase sustainability of mining operations considering its entire life cycle, inter alia,—

(a) ensuring minimal adverse impact on quality of life of the local communities;

(b) protecting interests of affected persons including host population;

(c) creating new opportunities for socio-economic development including for sustainable livelihood;

(d) mineral conservation both in terms of mining technologies or practices and mineral beneficiation;

(e) reduction in waste generation and related waste management practices and promotion of recycling of materials;

(f) minimising and mitigating adverse environmental impacts particularly in respect of ground water air, ambient noise and land;

(g) ensuing minimal ecological disturbance, in terms of bio-diversity, flora, fauna and habitat;

(h) promoting restoration and reclamation activities so as to make optimal use of mined out land for the benefit of the local communities;

- (i) measurable indicators of sustainable development;*
 - (j) consultative mechanisms with stakeholder groups right from pre-mining stages through the life cycle and up to post-closure stages to ensure stakeholder groups involvement and participation in identifying and addressing the sustainability issues; and*
 - (k) system of public disclosure of mining related activities and environmental parameters including indicators and mechanisms to facilitate formal and informal sustainability audits.*
- (5) The Central Government may, from time to time specify the guidelines for scientific mining and mineral conservation within a Sustainable Development Framework and the State Directorate shall be responsible for implementation of the Sustainable Development Framework in the State:*

Provided that the State Government may, with the previous approval of the Central Government, confer all or any of the functions of the State Directorate on any other specialised agency for the purpose of better implementing the Sustainable Development Framework.

Chapter X on the National, State Mineral Fund and District Mineral Foundation is an important chapter and must be read with section 43 and section 46 (2) since section 56 of this chapter lays down the process of devolution of compensation to the affected communities and financing the implementation of the Sustainable Development Framework.

56. (1) The State Government shall, by notification, establish a trust to be called the District Mineral Foundation, a non-profit body, in each district in the State where a mining lease has been granted or is in operation, in the manner as may be prescribed by the State Government.

(2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons or families affected by mining related operations in the district.

(3) The Governing Council of the District Mineral Foundation shall be responsible for,—

(a) distribution of monetary benefit to persons or families affected by mining

related operations in the district; and

(b) undertaking such other activities as are in furtherance of the object of

the Foundation, including creation, management and maintenance of such local infrastructure for socio-economic purposes in areas affected by mining related operations and facilitating the implementation of the Sustainable Development Framework.

(4) The State Government may give financial assistance to any District Mineral Foundation by way of loan, capital grants or other payments.

(5) The State Government shall maintain a register, which shall be open to the members of the public for inspection at any reasonable time, containing the following in relation to each District Mineral Foundation,—

(a) a copy of the current constitution;

(b) a copy of the latest annual accounts and of any report of the auditor of the accounts of the District Mineral Foundation; and

(c) a copy of the latest annual report of the District Mineral Foundation.

(6) The amount standing to the credit of the District Mineral Foundation shall be utilised, in the following order of priority, namely:—

(i) payment of monetary benefits payable monthly or quarterly to members of the family of the person holding occupation or usufruct or traditional rights in areas affected by mining related operations:

Provided that the State Government may make a scheme to systematically regulate the amount of payment of monetary benefits to different categories based on the nature and extent to which they are affected by the mining related operation;

(ii) such other expenditure as may be prescribed by the Central Government subservient to the objects of the Foundation;

(iii) payment of administrative expenses necessary for working of the District Mineral Foundation, not exceeding five per cent. of the total annual payment received by it in a financial year.

57. (1) The District Mineral Foundation shall be managed by a Governing Council which consists of,—

(a) District Magistrate—Chairperson;

(b) Chairperson of the District Panchayat or District Council, as the case may be—Member;

(c) all holders of mining lease in the district—Members;

(d) head of local offices of Departments concerned of the State Government—Members;

(e) at least three representatives nominated by the District Magistrate in consultation with the Chairperson of the District Panchayat or District

Council, as the case may be, from amongst the affected persons or families in the areas affected by mining operations, in the manner as may be prescribed by the State Government—Members;

(f) representative of the Indian Bureau of Mines— Member;

(g) District Mining Officer— Secretary:

Provided that in the areas specified in the Fifth Schedule of the Constitution, where there is no District Panchayat, the Chairperson of each of the Panchayats at intermediate level, and where there is no Panchayat at intermediate level, the Chairperson of the Village Panchayats within whose jurisdiction the mining operations are undertaken shall be included as a member.

(2) The Governing Council for the District Mineral Foundation shall be responsible for,—

(a) drawing-up the annual budget for utilisation of the fund available with the Foundation;

(b) approving the disbursal of the amounts to the entitled persons or families affected by mining related operations; and

(c) approving such other expenditure, in furtherance of the objects of the Foundation, from the Fund available with the District Mineral Foundation in such manner as may be prescribed by the Central Government.

(3) The District Mineral Foundation shall, at the end of each year, prepare an Annual Report in respect of the activities undertaken under the fund available with the District Mineral Foundation, and shall forward it to the State Government, which shall forthwith cause the Report to be published on the Government website.

(4) The District Mineral Foundation shall maintain a register giving details of,—

(a) the list of lease holders in the district and the annual payments made by them to the District Mineral Foundation; and

(b) the disbursal of benefits to the affected persons;

(c) annual audited accounts of the District Mineral Foundation, and the same shall be available on the website of the Foundation and for inspection by members of the public.

(5) For the purposes of the Right to Information Act, 2005, the District Mineral Foundation is deemed to be a public authority.

(6) The District Mineral Foundation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts,

including the profit and loss account and the balance-sheet in respect of the fund available with the District Mineral Foundation in such manner, as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(7) The accounts of the District Mineral Foundation shall be audited at such intervals and in such manner as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(8) The accounts of the District Mineral Foundation, as certified by the District Magistrate, together with the audit report thereon shall be forwarded annually to the State Government by the District Mineral Foundation and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.

Chapter XI on National and State Mining Regulatory Authorities are body corporates to be set up under the act. These are new authorities and have been vested with significant powers several of which were being performed by the IBM itself. The powers of the authority extend to the following as mentioned in section (68).

68. *(1) Subject to the provisions of this Act, the National Authority shall discharge and exercise the following functions and powers in respect of major minerals, namely*

(a) lay down the standards of quality of technical regulation to be followed by the State Governments and the Indian Bureau of Mines;

(b) lay down the standards of quality of reports and information provided in the public domain by the State Governments, Indian Bureau of Mines and Geological Survey of India to the investors in the mining sector;

(c) mediate on the issue of jurisdiction in matters of inspection of mining areas amongst the State Governments and the Indian Bureau of Mines;

(d) advise on mineral-wise conservation strategies keeping in view of the national interest;

(e) advise on matters relating to the framework for sustainable development of the mining sector, including implementation and monitoring thereof;

Provided that notwithstanding anything contained in this Act, the National Authority may, on the request of the Central Government or any State Government, render advice on sustainable development framework for minor minerals;

(f) advise the Central Government and any State Government, on a reference from them, on issues pertaining to measures to increase transparency in the grant of mineral concessions and efficiency in models for competitive bidding of minerals;

(g) review of the existing rates of royalty on minerals (other than coal, lignite and sand for stowing) specified in the Second Schedule for major minerals in terms of sub-section (2) of section 41 and the profit sharing percentage payable under subsection (2) of section 43 and recommend revision of rates of royalty and profit sharing percentage to be paid by the mining lease holder from time to time;

(h) review of the existing rates of dead rent on minerals (other than coal, lignite and sand for stowing) specified in the Third Schedule for major minerals in terms of sub-section (3) of section 42 and recommend revision of rates of royalty from time to time;

(i) recommend suitable mechanisms to moderate royalty and profit sharing percentage to support investment in remote areas or for induction of special technology or for promoting mineral beneficiation or to produce downstream products of strategic value or to create infrastructure:

Provided that the recommendations of the National Authority under this subsection shall be made in consultation with the State Governments and the mining industry and shall be in the form of a report submitted to the Central Government:

Provided further that the National Authority shall not recommend increase in royalty rates or profit sharing percentage for any mineral or fees or other charges more than once in three years.

(j) recommend strategies and institutional mechanisms to the Central Government for attracting long-term investments in the mining sector;

(k) recommend mechanisms to protect the interests of the end-use industries in the country for assured long-term supply of minerals.

Chapter XII on National and State Mining Tribunals will have powers as vested in civil courts with a composition of fifteen members comprising the Chairperson, seven judicial and seven expert members. It can have benches as notified by the Central government and each bench would have three members (Chairperson, Expert Member, Judicial Member). Any person aggrieved by an order of the Central or State government or an authority of the state government may make an application to the NMT with a prescribed fee within a period of 90 days from the date on which the aggrieved person receives a copy of such order. The State mining tribunal will accept application against an order of the state Government or an Authority of the State. These powers are state in section (85) and section (99) of the Bill,

85. (1) Subject to the provisions of this Act, the National Mining Tribunal shall have the powers with respect to major minerals—

(a) to adjudicate on applications seeking directions to the Central Government or the State Governments or an Authority of the State Government to dispose of an application made to it, including an application for grant or transfer of mineral concession under this Act, with respect to any major mineral within such time as the National Mining Tribunal may stipulate, in cases where the Central Government or the State Government or an Authority of the State Government, as the case may be, has failed to dispose of the application within the time specified under this Act.

(b) to hear applications from any affected person in relation to orders and directions issued under this Act relating to preparation, approval and implementation of Mining Plans, Mine Closure Plans and Sustainable Development Framework;

and

99. (1) Subject to the provisions of this Act, the State Mining Tribunal shall have the powers with respect to minor minerals—

(a) to adjudicate on applications seeking directions to the State Government or an authority of the State Government, as the case may be, to dispose off an application made to it, including an application for grant of mineral concession under this Act, with respect to any minor mineral within such time as the State Mining Tribunal may stipulate, in cases where

the State Government has failed to dispose off the application within the time specified in the Act.

(b) to hear applications from any affected person in relation to orders or directions issued under this Act relating to preparation, approval and implementation of Mining Plans, mining frameworks and Mine Closure Plans and Sustainable Development Framework;

(c) to hear applications made to it in the nature of revisions from the affected persons and confirm or set aside any order passed by the Central Government or the State Government or an Authority of the State Government, as the case may be, under this Act or the rules made thereunder as it may deem just and proper.

(2) Subject to the provisions of this Act and the rules made thereunder, the State Mining Tribunal shall have the power to regulate its own procedure and the procedure in all matters arising out of the exercise of its powers or of the discharge of its functions.

(3) Subject to other provisions of this Act, the State Mining Tribunal may call for the records of the case and pass such order or direction in respect of the matter specified in sub-section (1), as it may deem fit:

Provided that the State Mining Tribunal shall, before passing any order or direction, under this sub-section issue notice to the State Government or an Authority of the State Government, as the case may be, and give a reasonable opportunity to the affected persons and if necessary any other authority, as the case may be, of being heard:

Provided further that the State Mining Tribunal shall dispose of the case within a period of six months from the date of filing of the application unless for reasons to be recorded, the Tribunal extends the time period for such disposal.

Chapter XIII enables the central and state governments to establish Coordination Committees to enable tracking and improving the processes. The other important aspect of this chapter is the idea of a National Drill Core Repository. The role is primarily of coordination, review and monitoring at both central and State levels. The committees will comprise of representatives of state departments and other representatives of central authorities like railways etc.

Chapter XIV provides for the creation of Special Courts to provide speedy trial of offences like punishment for concession without licence or lease; penalty for non-implementation of final mine closure plan and disobeying directions of state government and other penalties, the state may constitute these courts. This court shall have all the powers of a Court of Session.

Chapter XV determines punishments if the provisions of the act are contravened. The highest punishment is cancellation of concession, financial payments and imprisonment. The act has provisions for all stages of mining, from exploration to closure.

110. (1) Whoever contravenes any of the provisions of section 4, shall be punished with imprisonment for a term which may extend to,—

(i) in cases of exploration without licence, two years, or with fine which may extend to twenty-five thousand rupees per hectare or part thereof subject to a maximum of fifteen lakh rupees in the case of prospecting, or with both;

(ii) in cases of mining without a lease, three years, or with fine which may extend to ten times the value of the mineral mined, or with both.

111. A lessee, who fails to implement a Final Mine Closure Plan in accordance with the provisions of this Act, or, abandons the mine or any portion of the mining lease area, which is likely to be a danger to the health and safety of the inhabitants of the area, shall be liable to a penalty which may extend to one thousand rupees per day per hectare for the period of such default.

Chapter XVI, the final chapter contains sections relating to miscellaneous aspects and is largely comprised of enabling provisions for the implementation of the law.

3. SPECIFIC CHANGES SOUGHT IN MMDR 2011

The specific changes sought by the alliance have been articulated from a stand point of seeming priority, but each of these changes are necessary to achieve the objectives of arriving at a path for sustainable development.

1. OWNERSHIP SHOULD BE AN IMPERATIVE

Trickle-down models have failed in India's mining regions, and it is necessary to develop partnership models for economic transition of the poor. This can only be achieved by a substantial benefit sharing arrangement. The current model proposed is more like a dole from the revenues. The most viable model to enable affected communities to regain faith in the State and the economic system is to give them a share of ownership in the mining project. While many conservationists fear that this may lead to more mining, embedding ownership of communities in the law would provide a legal basis enabling them to intervene in cases of illegal mines and receive their share of benefits, since they directly lose in the process.

Therefore the sec. 43(2), which reads:

"The holder of a mining lease shall pay annually to the District Mineral Foundation, as referred to in section 56,

- (a) In case of major minerals (except coal and lignite) an amount equivalent to royalty paid during the financial year;*
- (b) In case of coal and lignite, an amount equal to twenty-six percent of the profit to be called as profit sharing percentage (After deduction of tax paid) of the immediately preceding financial year from mining related operations in respect of the lease"*

must be reviewed, and the provision in the June 2010 draft (sec. 42) should be restored in the final Act

- i) allot free shares equal to twenty-six per cent through the promoter's quota in case the holder of lease is a company, or, an annuity equal to twenty-six per cent of the profit (after deduction of tax paid) in case holder of lease is a person, on account of annual compensation, and,*

(ii) provide employment and or other assistance in accordance with the Rehabilitation and Resettlement Policy of the State Government concerned;

In case of a individual lease holder or as an alternative for companies,

The holder of a mining lease shall share 26% of the produce with the affected community whose revenues will be distributed among the affected communities through appropriate mechanisms.

Becoming stakeholders in the mining life cycle, communities would give for communities a fair opportunity to be a part of the framework for development, regulation, monitoring and enabling proposed in the new Bill. This would give meaning to the much-used term 'responsible mining'. The local communities would be able to weigh the risks and benefits more intimately and contribute to the better management of the process.

2. SUSTAINABLE DEVELOPMENT FRAMEWORK

Sec. 46(4) states that the National Sustainable Development Framework (SDF) shall contain guidelines enabling formulation of project level practices for sustainable mining. Considering the diverse skills, conflict of interest and neutrality of the agency, proper mechanisms for participation have to be in place before granting accreditation to agencies undertaking this task. This will help in setting right the intentions behind the promotion of such a framework, which might bring ethics, and norms of operation. The framework needs measurable indices and baseline criteria. It cannot remain a conceptual document enumerating principles or policies. Certain extreme violations should be punished with withdrawal of lease.

Some practical issues such as the following need to be looked into while defining and drawing out the guidelines:

- Is prevention and control, or precaution the primary principle of this SDF?
- Can consent be the foremost criteria with FPIC?
- Will there be a process of evaluating environmental and developmental risks and benefits in developing the framework?
- How will the levies, net present value for forests and other lands, NPVs, water tax or the rent for the mining site be proportionate to

value of the natural resource, instead of being subsidized or kept abysmally low?

- Can strict liability be ensured? A further question that needs to be raised is whether penalization and payment of penal amount allows the board to allow the activity to continue.
- What are the mechanisms for monitoring the mining life cycle? The SDF proposes consultation with the community at every stage of the life cycle.
- Who would be responsible for ensuring that the SDF is implemented and that no mining takes place unless the guidelines are framed beforehand.

3. CLEAR DEFINITION OF AFFECTED PERSONS TO AVOID DISCRIMINATION

Under clause 43(1) gives no defined criteria for determining the amount to be paid as compensation to persons having usufruct, occupational and traditional rights. The term reasonable compensation gives state level authorities the freedom to decide. There must be at least a floor amount and should be pegged to a dynamic index like the Consumer Price Index (CPI).

43. (1) In respect of land in which minerals vest in the Government, the holder of a non-exclusive reconnaissance license, high technology reconnaissance cum exploration license or prospecting license shall be liable to pay, to every person or family holding occupation or usufruct or traditional rights of the surface of the land over which the license has been granted, such reasonable annual compensation as may be mutually agreed between the holder of such license and such persons or in the absence of such agreement, which may be determined by an officer appointed, by notification, by the State Government in this behalf in such manner as may be prescribed by the State Government:

Provided that such amount shall be determined before commencement of operations and paid in advance each year, in such manner as may be prescribed by the State Government.

In Clause 10 of sec. 43, the nature and extent to which the person or family is affected should be more specific, in order to help determine the amount of monetary benefits. Unless a clear process of enumerating the

social, cultural and environmental impacts is in place, this could lead to more confusion and conflict.

This also calls for concurrence under provisions of related laws on Panchayats, Forest Rights and Environment. Benchmarking the least minimum to the entitlements under MNERGA is uncalled for, as the tendency will be to set a low base.

Therefore the clause in Sec 43 needs to incorporate mechanisms for the identification of affected communities.

(10) (a) The State Government shall identify the person or families affected by mining related operations, in such a manner as may be prescribed by the State Government (through a participatory process of SIA and EIA).

4. RESTRAINT NEEDED IN THE SIZE OF A MINING CONCESSION

As per the new bill, a single mining lease can cover 10,000 hectares or 100 sq kms. This area is too large and can cut across commons of several communities.

The implications of allowing a single lease to be as large as 100 square kilometers will be impossible to manage. Comparing the total increase in lease area between 2008 – 2010, i.e. 274 sq. kms but gives an idea of the challenges that would arise if single leases of 100 km² were given in the future. Three leases would account for more than the entire area that has been leased during the last two year.

The following figure gives an indication of the number of mines for each size-category.

Area Category-wise Number of Leases				
Category	Number (2008)	Area 2008	Number (2010)	Area 2010
< 0.5 Sq. Km	7092	740	8689	841.33
0.5 - 1 Sq. Km	799	590	891	663
1 - 2 Sq. Km	426	590	430	602
2 - 5 Sq. Km	263	820	280	862
>5 Sq. Km	188	2060	198	2105
TOTAL	8768	4800	10488	5074
Additional Area between 2008 and 2010 is 274 Sq km				
Source: IBM, MLPL Bulletin, 2010; Area in Sq Km				

Therefore, the clause 6 (1) needs serious reconsideration and rationalization.

6. (1) The maximum area which can be held under mineral concession at any time by a person in respect of any mineral or prescribed group of associated minerals in a State shall be, —

(a) ten thousand square kilometres in respect of non-exclusive reconnaissance licences;

(b) five thousand square kilometres in respect of high technology reconnaissance-cum-exploration licences;

(c) five hundred square kilometres in respect of prospecting licences; and

(d) one hundred square kilometres in respect of mining leases:

Provided that a high technology reconnaissance-cum-exploration licence shall be granted for such group of associated minerals (other than iron ore, bauxite, limestone, coal minerals or other bulk minerals) as may be prescribed by the Central Government, and subject to such general conditions regarding use of advanced technologies and methodologies as may be notified from time to time by the Central Government:

Provided further that in case of coal minerals, if the Central Government is of the opinion that in the interest of development of coal minerals, it is necessary so to do, it may, for reasons to be recorded in writing, permit any person to acquire one or more prospecting licence or mining lease covering an area in excess of the maximum area specified in sub-section (1).

We recommend that the maximum size of a single lease be pegged at 10 square kilometers (1000 ha). This would enable far greater oversight and corrective actions.

Another section which calls for cluster mines, should also be cautious and the section

(6) No mining lease shall be granted for areas that are not compact and contiguous, or otherwise not suitable to scientific development. However, in respect of small deposits not suitable to scientific mining in isolated patches, a mining lease may be granted for a cluster of such deposits within a defined area of no less than the area specified in sub-section (2) or sub-section (3), as the case may be, in accordance with

such procedure and subject to such conditions as may be prescribed by the Central Government.

The following section should be added to the section: Provided that the 'compact and contiguous areas' shall not comprise non-mineralised areas larger than the mineralized zones.

5. ENABLING TRIBAL COOPERATIVES IN TRUE SPIRIT

Judgment of the Supreme Court in *Samata Vs State of Andhra Pradesh* [1997 (8) SCC 191] stated "*Mining leases can only be granted to cooperative societies comprising local tribal gram sabhas who are directly or indirectly affected by the proposed mining operation. The said cooperative societies shall operate without any direct or indirect transfer/ subleasing to any private entity. The State Agencies shall act as a trustee and should assist these cooperatives through technical, human and financial support to the tribal cooperatives*".

In section (6) the bill provides for cooperatives with a limiting provision.

Sec. 6 (7): ' Provided that for the purposes of mineral concessions for small deposits in any area referred to in sub-section (6) of section 6, a co-operative society registered with the State Government under the law made by it and registered in accordance with the provisions of sub-section (2) shall be eligible for grant of such mineral concession'.

We recommend that the reference to small deposits be removed. Instead **clause 6(7)** should include compulsory provisioning for cooperatives in the Scheduled areas and make enabling provisions for other areas.

6. CONSENT FROM GRAM SABHAS SHOULD BE MANDATORY

Section 13 deals with Notification for grant of mineral concessions but it misses out on informed decision-making. The intent of PESA to facilitate consent of Gram Sabhas. Giving powers at the intermediate or the district level makes it meaningless for the consultation if a mining project is being contemplated at the village level.

13(10) " Notwithstanding anything contained in this section, notification

of an area for inviting applications in respect of public lands in areas covered by the Fifth Schedule or the Sixth Schedule to the Constitution, shall be issued after consultation with the Gram Sabhas or District Councils, as the case may be, and in respect of non-Scheduled areas, after consultation with the District Panchayat."

Therefore in 13(10) **Provided that The District Panchayat shall issue notice and invite objections within 30 days from Gram sabha while making available all necessary documents in its office. Gram sabha to send its opinion before a final decision is taken.**

Provided also that the notification with regard to public lands as per section 13 shall be so selected and notified that it does not lead to displacement of people or their livelihoods.

7. TRIBES ADVISORY COUNCIL SHOULD CONSENT BEYOND THE GRAMSABHAS TO ENSURE THAT LOCAL CONSENT IS NOT IN DURESS

The Part B of the Fifth Schedule on Administration and Control Of Scheduled Areas And Scheduled Tribes defines the composition of the Tribes Advisory Council and provides the Governor with unfettered powers on the basis of the consultations with the Tribes Advisory Council

Further on the basis of the consultations with Tribes Advisory Council Governor has the power, "The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. In particular and without prejudice to the generality of the foregoing power, such regulations may- (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area; (b) regulate the allotment of land to members of the Scheduled Tribes in such area; (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area." Further, In making any such regulation as is referred, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

This important **Constitutional safeguard** should not be short-changed as is evident from *section 13(10)*, which ambiguously states "consultation

with Gramsabhas or District Councils”. To make consultation meaningful, and to ensure that the consent is not under duress or pressure, it is for both the States and Centre to support the need for consent from the Tribes Advisory Council after obtaining consent from the Gramsabhas and bring in line the existing legislations in tune with the current objective of the Bill to make the process more transparent, participative and accountable to the People of this country.

8. REDUCING THE DURATION OF CONCESSIONS

As per **(Section 7)**, the time period for Mining lease is proposed to be increased from 20 years to 30 years. This is more than one generation. When we count the years for which one could hold reconnaissance and prospecting licenses, a concessionaire could squat on a deposit for nearly half a century. Further, **Section 28 and 29** provide for eternal ownership of the terrain through extensions. There is also a need to reassess the leases expiring in the near future. Just in the XII Five Year Plan period, nearly 1800 leases would expire with a cumulative area of over one-lakh hectares (Source:IBM). This should be critically evaluated for compliance on mining regulations, the environmental and social performance in order to lay base for Sustainable Development Framework and then consider such leases for extension as a norm. It is in this context that a thorough review needs to be done so that stringent criteria may be laid down and habitual violators do not automatically receive extensions for perpetuity. This will have significance as **Sec. 7(6)** states that a ML can be extendable to ensure full exploitation of the run of the mine in a scientific manner. **We recommend periodic scrutiny through specific periods of concessions not exceeding 10 years.**

9. MINING OF MINOR MINERALS AND PROSPECTING SHOULD REQUIRE ENVIRONMENTAL AND SDF OVERSIGHT

Sec. 7(5) deals with minor minerals and as the largest mined minerals in the country are the minor minerals as they are used mostly locally, the Minor Mineral Concession Rules have to be carefully framed. Similarly the framework of mining operations in respect of minor minerals that do not require a mining plan (**sec. 12(1)(a)**), shall be deemed to be the mining plan. Unless the framework proposes a comprehensive monitoring and compliance framework devised with the participation of communities and conceding bonafide rights to the locals it will be ineffective.

The conditions of a mineral concession (HTREL, PL, ML) are like duties & rights of a lessee towards the surface right owners, environment and operations (**Sec. 19, 21, 24 and also in section 27** of the bill). There has to be a clear mandate that the conditions of the mineral concession be clearly communicated to the persons holding usufruct rights, occupational rights or surface rights over the land in order to make compliance a much better process as it will ensure greater responsibility of the concessionaire to implement the conditions of the concession and the right holders to act as conscious keepers of their environment. Similarly is the case with the mining lease as per **section 25** under the bill. The state shall be duty bound to stop any activity that is likely to cause damage and to restore land and other resources, in an event if it so happens that the mining operation even done in accordance with law is creating pollution problems.

These sections need a revisit and a robust mechanism put in place under the law.

10. MECHANICAL EXTENSION OF EXISTING LEASES UNWARRANTED

Of the total 10175 official leases only 2574 mines are reporting to the IBM. The illegal mines far out-number the legal mines. With such low levels of inspection of mines, how it will compliance be ensured before extension. It is also important to put such mines or lease deeds in public domain and feedback received before renewal.

***Sec. 7(7)** This section reads as follows “For the purposes of sub-section (6), all mining leases granted before the commencement of this Act, and which has not contravened any of the terms and conditions of a reconnaissance permit, prospecting license or a mining lease granted before the commencement of this Act, shall be considered for extension irrespective of the size of the area of such mining lease”.*

11. ALL APPLICATIONS FOR MINERAL CONCESSIONS SHOULD BE IN PUBLIC DOMAIN

The provisions provides for registration of applications (sec 20(2) which shall be open to inspection by the public. It is required that each such application should be moved to the office concerned at the intermediate or taluka level panchayat as powers delegated under PESA or for that matter

to the nearest tier panchayat in non-PESA states to enhance the pro active information availability to the public. IF the state maintains a register and keeps it at state office or district office, access by public from far off places will amount to high costs to obtain information and will discourage Access to Information by the interested people.

Therefore in **section 20 (2)** The State Government shall acknowledge the receipt of the applications and cause them to be registered in such manner as may be prescribed by the Central Government in a register, *that shall be open to inspection by the public*, should be added.

12. MORE STRICT NORMS FOR DISCLOSURE REQUIRED

In an effort to ensure transparency in granting and extension of mining leases, the bill proposes in **Sec. 8(8)** to make available details like data relating to grant, extension, relinquishment, termination and plan of operations in the official website? How the enabling of this information architecture be attuned with the purpose of the bill to bring transparency is important. The facilitation by the Government to streamline this effort at the state level is required so that a similar framework is adopted as there are varying data structures currently being used thereby giving no comprehensive picture of mining at the state level.

As per October 2010 order of the Chief Information Commissioner, the concessionaire has to disclose the mining plan (parts which do not compromise the commercial aspect of the mine) and these should be posted on the websites of state mines and geology departments. IBM too has a status page for mining plans but no details are available online. The provision should be made to make available the mining plans in public domain. CSR, as per the provisions made in **26(3)** has to be attached alongwith mining plan. There is no reason why the CSR document alongwith mining plan cannot be brought into the public domain as it is meant for the public. It is said as a post facto that the activities performed by the company or lease holder be published where as there is nothing prior to selection of activities under CSR. Also the activities so proposed under the CSR plan should be driven by the principle of participation as panchayats are empowered to undertake activities under 73rd CAA and gram sabha be conducted to list out activities to be brought under the CSR activities and not otherwise.

In section 26 (3) Without prejudice to the generality of the provisions of the mining plan, there shall be attached to the mining plan in respect of all major minerals, a corporate social responsibility document, comprising of a scheme for annual expenditure by the lessee on socio-economic activities in and around the mine area for the benefit of the host population in the panchayats adjoining the lease area and for enabling and facilitating self employment opportunities, for such population, and the lease holder shall, at the end of each financial year, *publish in his annual report and display on the website, the activities undertaken during the year and the expenditure incurred thereon*, should be added.

13. EFFECTIVE COMPLIANCE ASSESSMENT NEEDED FOR TESTING ELIGIBILITY

Ineligibility of person to be considered for any mineral concession under section 12(1)(d) does not specify whether the plans will be in public domain. It is important because it would be difficult to point out ineligibility, without a scope of participation of the communities. This will enable greater participation from the ground and should form part of the framework as proposed under the SDF.

14. DURATION FOR GRANT OF CONCESSIONS

The bill is promoting a competitive environment by way of inviting bids once the government as per **section 14** notifies the area.

Section 14(2):

(2) The State Government shall dispose of the applications for grant of mining lease in the following manner and within the time limit specified hereunder, namely:—

(a) a letter of intent or recommendation to the Central Government for giving prior approval if required, shall be issued within a period of four months,—

(i) from the opening of bids in respect of applications received under section 13; or

(ii) from the date of application in respect of application received under section 25; and

(b) the mining lease shall be executed within three months of intimation by means of a written communication by the applicant holding the letter of intent of his having obtained all clearances and approvals specified in the letter of intent.

7. <http://www.ibm.nic.in/cicorderminingplan.pdf>

This is a short duration to do the due-diligence required. In the case of private persons, they will be forced to give consent as sought under section 18 (8) Where the mining lease is in respect of land where the minerals vest in a private person, no transfer shall be permitted except in accordance with the terms and conditions of the mineral concession agreement in regard to the consent of such person.

15. SEAMLESS TRANSFER OF CONCESSION IS PRONE TO SPECULATION

The issue of transferability [Sec. 17(1)] of mineral concession is critical. It can lead to non-serious players seeking concessions for speculation. In case the minerals vest in private persons transfer must be only with explicit consent provided earlier as the new holders antecedents may warrant change.

16. PROSPECTING LICENSES IN CRITICAL ENVIRONMENTAL AREAS

Sec. 19, 20, 21 deal with conditions of high technology reconnaissance and exploration license, non-exclusive reconnaissance licence and prospecting license. Since these licenses are large in nature as they pertain to exploration and prospecting, it need a mention into the provisions that "No prospecting license shall be issued in the areas identified / declared / notified as world heritage sites; protected areas like Tiger Reserves, biosphere and wildlife sanctuaries; tribal reserves (endangered primitive tribal groups), sacred groves, eco sensitive zones, areas notified as critically polluted areas by CPCB from time to time, public landscapes."

A provision needs to be added that anyone in the interest of environment can give information on aspects of compromise of public safety to prematurely terminate the license (**sec. 31**). The government's order upon giving opportunity to the lessee to explain than can be challenged by either of the aggrieved party (lessee or the person interested). Otherwise it looks like an aggrieved person has to wait for the government action to issue an order and than seek remedy from National or State Mining Tribunal. Provisions similar to those in the National Green Tribunal Act where a person with interest can file a petition should be incorporated.

17. OFFENCES AND PENALTY TOO LOW TO DISCOURAGE UNLAWFUL MINING

A company or a person or an investor investing in mining is doing so for profit. The penalties mentioned **u/s 110, 111, 112 and 113** are too low.

As seen from several investigations in the past few years of the nature and extent of illegal mining and loss of the public money this needs to be significantly revised upwards. The penalties to be charged should be based on the environmental and natural resources loss and compounded to discourage unlawful mining or contravention of the provisions of the Act.

18. BETTER PROVISIONING FOR CLOSURE, RESTORATION AND RECLAMATION

The proposed Rs. One lakh per hectare is abysmally low considering the technology and work required for restoration and reclamation and to ensure in case of premature termination of lease, implementation of mine closure. The aspect of final mine closure plan shall be based on the land use planned for the mine after its closure in consultation with the Panchayat having jurisdiction [sec. 32 (8)] need to be included in the mining lease conditions. This should be increase to atleast Rs Five lakhs per hectare. The consultation with Panchayats will be relevant only if explained in an understandable manner in order to facilitate the Panchayat to have an informed participation. A provision must be made to communicate this effectively.

Mine closure is an important component of the mining life cycle or post mining. Considering the huge number of abandoned and orphaned mines in the country, which had the oversight of IBM we recommend that the certification of progressive implementation of the plan must be done by the respective Gramsabhas. The Mine closure plan 32(7) needs to restore the entire lease area and not restrict itself to the mine alone.

19. NATIONAL AND STATE MINING REGULATORY AUTHORITIES

Under **Section 58 & 70**, the Bill provides for these regulatory authorities. While this is a welcome provision, the scope seems to be restricted to the contrasting claims over mining concessions. The limitation of its investigation on contravention or offences on large scale or on organized basis or inter-state, excludes any complaint on social implications like impacts on communities due to mining on the communities and their resources [(**section 69(2)**), similar is the case with the State Mining Regulatory Authority under section 72. This seems to be more an advisory role for the government and the industry as mentioned in provision under section 68(1).

Therefore the Regulatory Agency must be provided with the requisite authority to intervene *suo moto* and on the complaint of affected communities.

20. NATIONAL AND STATE MINING TRIBUNALS

There are already a number of tribunals and this is leading to divided justice. Since environmental, land and social laws are seeking to find solutions through other such tribunals, the affected people may be pushed from one tribunal to the other.

As per **clause 85 (1)(b)**, a person affected can file application in relation to orders and directions issued under this Act relating to preparation, approval and implementation of Mining Plans, Mine Closure Plans and Sustainable Development framework.

It should ensure that the processes to file applications are easier as well as there is no huge fee (**section 86**) on the application in order to approach the Tribunal and the fee should be done away with. It is also not clear whether a person affected or aggrieved as per clause 85(1)(b) can approach the tribunal with the material facts in hand rather than just limiting to file application to the Tribunal on the orders passed by Central and State Governments.

21. INSTITUTIONAL FRAMEWORK PROPOSED IS UNTENABLE AND NEEDS REVISIT

There are overlaps between Central Coordination cum-empowered Committee and the National Mining Regulatory Authority (NMRA) and State Mining Regulatory Authority (SMRA). Such committees could influence the NMRA or SMRA and also have the risk of becoming an extra constitutional power centre to dispense favours. If the functions of these agencies are not clearly demarcated they would function at cross-purpose.

This has to be clearly outlined in the Bill which is proposing to have a large set of National and State level institutions (regulatory, judicial) as it may lead to additional resource burden.

The mechanisms proposed for receipt of the funds and its management is completely untenable. The National, State Funds should have a more

transparent mechanism involving affected communities. In the earlier draft the clause proposed the fund to be utilized for a) funding of Panchayats or Gram Sabhas, District Council (in the case of Scheduled areas or Tribal areas specified in the Fifth Schedule or the Sixth Schedule to the Constitution), for the purposes of; (i) improvement of local infrastructure for socio-economic purposes; (ii) maintenance of community assets and services for local populations in the area; and (iii) human resource development of local populations for creating employment and self-employment capabilities. This needs to be restored.

The **section 56** on the District Mineral Foundation is totally unconvincing with the nature of delivery that governments have been able to achieve. The experience with the Local Area Development Fund and the agencies involved it is clearly that this will be a fraud on people who have been promised ownership in operations. This will be redundant if ownership clause is retained.

4. mines minerals and PEOPLE (mm&P)

Perspectives Emerging from Mining Our Experience

mm&P is an alliance of struggle groups and other institutions working among affected communities in pre-mining, mining and post mining situations. It comprises over 150 small and large groups and institutions.

It has adopted a Constitution through nation-wide discussions among constituents. It analyses the trends in mining and is in the support of struggle groups in the forefront. It strategises collectively on the means to minimise mining and make mining less harmful. It consults other networks and alliances on context specific issues and provides inputs. It enlists all constitutional means to redress the mining situation and the plight of the local people. The alliance seeks a paradigm shift in our approach to development and works towards changing practices. The alliance emphasises the need for articulating the Sustainable Development regime sought by the communities and explores the role of minerals and mining to bring about the right attributes and desired convergences.

mm&P Evolution & Journey

1999	Consultation on need for and Options to set up a network
2000	First National Convention, Tukkuguda, Andhra Pradesh Communities Command Over Resources Assertion of Rights; Mandate to Explore an Alliance
2001	Second National Convention, Anandwan, Maharashtra Our Lands, Our Minerals, Our People - Anandwan Declaration Adopted <i>Message from Baba Amte: Continuously mine your experience</i>
2002	Third National Convention, Anandwan Towards Building an Alliance Need, Process and Functions Assessed
2004	<i>mm&P participated in World Social Forum and hosted MAC</i>
2004	<i>International Women and Mining Conference</i>
2004	<i>Dec First General Assembly, Anandwan, Adoption of Constitution</i>
2008	<i>Second General Assembly, Visakhapatnam, Communities Command Over Resources</i>
2011	<i>Third General Assembly, New Delhi, The New Mining Bill</i>

The Stakeholders Represented by the alliance are:

- *Mining Affected Communities*
- *Women in Mining Areas*
- *Mine Workers*
- *Adivasis*
- *Civil Society Organisations*

Mining in India

The problem of people in mining is manifold. The destruction of the preexisting habitat for the mining industry undermines the possibility to look for alternatives.

The Mining Industry is wide spread and severe adverse impacts are visible from small scale rat hole mining and stone quarrying to large open cast and deep underground mines. The social and political implication of mining assumes far reaching implication when this principal mineral wealth lies in the most forested regions and those homelands traditionally inhabited by dalits and adivasis. The situation has reached a point when governments are unwilling to look at other options and alternatives and is progressively binding themselves to systems that have failed. The alliance believes that for any sovereign government the 'sectors' of the economy have meaning only when its focus is welfare of people instead of pursuing its narrow sectoral goals.

When we consider the overall situation prevailing today in mining areas, we see that the communities are poor and weak, the Governments are oppressive, yet they are legitimate and the corporates are overpowering. Further, the local communities are constrained and bound at multiple levels through various economic, social and cultural instruments and forces. The Mining sector is very complex and today the real beneficiaries are the Investors and Investment Bankers; Promoters, Owners and Managers; Politicians and Contractors; a variety of Consultants and to a marginal extent the State. However the real losers are the Local Communities and informal workers. The local environment is suffering the greatest damage and some ecosystems are in peril.

mm&P alliance provides its members confronting this reality at the ground

level where people all over have been misled by false information from the industry and promoting governments. Communities have been confronting this and have been significantly empowered by the RTI Act 2005. Communities need to participate in the process to acquire and assimilate information and contribute to the decision making process and obtain assurances. However, Industry wants to talk on general issues and desists from any commitments on mining specific issues. Governments and civil society should atleast reach right information to the communities and enable them seek justice within the framework of the Indian constitution.

We need a critical assessment of all minerals Aluminium to Zircon for the critical need and its potential avoidance. For several uses there and could be more organic alternatives. Mineral Conservation is more important than Conservation of Vegetation as the minerals are non-renewable and will never be 'compensatorily deposited'.

Finally as a paradigm shift, our slogan is **STOP DIGGING! LET'S CHANGE**

About Environics Trust

Environics is the study of the influence of the environment on human behaviour. In our mission *to evolve innovative solutions to the problems of sustainable community development*, we interpret it more comprehensively as the mutual influences of environment and social behaviour.

We aim to contribute to long-term transitions and therefore have a process-oriented model. We define Sustainable Development as the '*set of processes that enables the local and global systems to be in ecological harmony*'. The four non-orthogonal attributes of sustainable development, which we address are Equity and Justice; Environmental Soundness; Endogeneity or Self Reliance and Economic Efficiency.

The delivery of our innovations are through the following processes: Participative Research, which enables documentation of existing conditions and the changes aspired; Community Based Action to demonstrate the possibility of transforming innovations into a physical and social reality; Enterprise Development and Servicing to respond to the current reality of the economic world and identify sustainable entrepreneurial and occupational niches and Communications to interface with a larger universe, to mutually learn and contribute.

Environics anchors several networks and partnerships and is currently the Secretariat for the mines minerals and PEOPLE alliance (mm&P), The Access Initiative Coalition (TAI) and the Occupational and Environmental Health Network of India (OEHNI). Environics is a co-founder of the Indian Network on Ethics and Climate Change (INECC) and the EIA Resource and Response Centre (eRc).

About Oxfam India

Oxfam is marking its 61st year in India this year. Oxfam India, a fully independent Indian organization (with Indian staff and an Indian Board) is a member of a global confederation of 17 Oxfams.

The Oxfams are rights-based organizations that fight poverty and injustice by linking grassroots programming (through partner NGOs) to local, national and global advocacy and policy-making. All of Oxfam's work is framed by our commitment to five broad rights-based aims: the right to a sustainable livelihood, the right to basic social services, the right to life and security, the right to be heard and the right to equality: gender and diversity.

Oxfam India's vision is to create a more equal, just, and sustainable world. The overarching vision of Oxfam India is "right to life with dignity for all". Oxfam India will fulfill its vision by empowering the poor and marginalized to demand their rights, engaging the non-poor to become active and supportive citizens, advocating for an effective and accountable state and making markets work for poor and marginalized people.

Oxfam India works in partnership with 200 grassroots NGOs to address root causes of absolute poverty and inequality in the four areas of 1) Economic Justice, 2) Essential Services, 3) Gender Justice and 4), Humanitarian Response and Disaster Risk Reduction (DRR). Oxfam India's program is focused on seven States – Assam, Bihar, Chhattisgarh, Jharkhand, Orissa, Uttar Pradesh and Uttarakhand – and four social groups – Dalits, tribals, Muslims, and women.



**Mining
Matters**

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www.environicsindia.in

