

mm&P
mines minerals & PEOPLE

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New Delhi

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To
The Director (GW&CS)
Lok Sabha Secretariat
Room No. 160, First Floor,
Parliament House Annexe
New Delhi – 110 001

Dear Sir,

mines, minerals & People, a national alliance of communities affected by mining, support organizations and experts has been consistently engaged with the Ministry of Mines, Lok Sabha Channel and various other stakeholder consultations on the proposed Mines and Minerals (Development & Regulation) Bill since its draft stages. We had several rounds of consultation in the mineral rich states of Odisha, Jharkhand and Chhattisgarh in other parts of the country on the provisions of the Bill.

We are submitting our brief written memoranda within the stipulated time limit prescribed by the respected committee.

We also wish to appear before the Committee on any given date and time as the committee may prescribe in the due course of time.

Warm Regards,

R.Sreedhar

Chairperson, mm&P

Restoring Justice in the MMDR 2011

Brief Submission made by mm&P on behalf of its Alliance members and Partners to the Parliamentary Standing Committee



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11th February 2012



1.0 Context and Submission

- 1) The Mines Minerals (Development and Regulation) Bill 2011 was introduced in the Parliament silently in the tumultuous winter session on December. The Bill will significantly impact the industry and the communities in the mining regions and calls for larger participation. This note is submitted to Parliamentary Sub-Committee headed by Shri Kalyan Banerjee currently studying the Bill.
- 2) While the time period for submission of comments and suggestions of 15 days is very short for a complex law and especially for local and tribal communities on whom the implications will be severe, mm&P and its partners have been following the evolution of the bill and hence are in a position to articulate the views, we sincerely wish further inputs from communities beyond the deadline of 12th February 2012.
- 3) We also wish to seek as an Alliance and its partners a oral hearing on our concerns and suggestions and to engage with Parliamentarians and other legislators through various forums in enabling the passage of an Act that will be more in consonance with our Constitution than what the current economic and political conditions may demand of them.
- 4) Exponential increase in Mining in India has taken place since the State initiated liberalisation in early nineties followed by disinvestments and changes in policy.
- 5) Taking large leaps with investments from different sources - national and international companies, private players, banks, equity funds and even “round-tripping” of illegal funds etc. it is now poised for almost doubling its current size in 15 years.
- 6) The liberalisation process was initially propounded and enabled in the National Mineral Policy (NMP) 1993 and reiterated in the NMP 2008. Within two decades of liberalised economy, much in variance with the Constitutional objectives, mining itself 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.
- 7) The impacts are wide spread and diverse and have created socio-economic and cultural impacts over different geographies and ecosystems - From 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) have not been spared of this blight where ironically, the mineral wealth of the country rests. The growing violence, violation of human and ecological rights and huge illegality associated with mining calls for serious consideration of the options.
- 8) The mineral resources of our country need long-term strategies keeping in view the current levels of mineral exploitation and its consequences and the future needs and breakthroughs in technologies and processes. The mining legislations should have served as the bedrock of stability of a very long-term economy while other renewable resource options are brought into effective application. Thus far the legislations instead of acknowledging and restoring the rights as well as working towards the welfare have caused more hardship to the communities.
- 9) 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 and oblivious of the local communities. It has to seek consent of communities, direct governments to be enabler of better development of the mining regions, make local communities partners in development of mines and allied activities and not to lease it away to companies. But unfortunately never has any State or the Central Government sincerely enabled the implementation in the past fifteen years and on the

contrary found ways to encourage corporates by undermining the judgment through a slew of administrative and legal fiats.

- 10) Despite a glimmer of hope in an earlier draft, the current bill negates the very core objective of reducing conflicts in mining regions and ensuring sustainable development of the communities. The draft as circulated in June 2010 was comfortable with the 26% equity holding by the affected communities and subsequently diluted by the Empowered Group of Ministers and has been a severe let down for the community.
- 11) The huge areas that individual leases could have will rapidly enable acquisition of huge tracts of land under lease in mineral belts and itself could be the root cause for future mining scams.
- 12) The original Mines and Minerals (Regulation & Development) Act 1957 enabled some form of a regulatory regime. Until the seventies there were very little corollary laws that enabled regulation of impacts of mining. The current situation is significantly different especially with a number of environmental and forest legislation, the Constitutional Amendment empowering the local self-governments and its extension in Scheduled Areas (PESA), the expansion of the concerns on Human and Ecological rights through various national legislations and ecological conventions. Indeed the call is for enabling the resolution of legacy problems in mining areas from resettlement and rehabilitation to restoration and recovery.
- 13) Several of the loopholes which existed in the current Act i.e. MMDR Act 1957, have been raised in the current bill. A wider discussion with all stakeholders could have enabled a more just and acceptable draft. Only by making the rule making process extremely participative will produce fair and workable solutions. A careful incorporation of the fundamental demands made by the communities into the Act could ensure the scope for participation. Ultimately mechanisms to ensure justice to the affected communities and restore the ecosystems need to be addressed by this new law. We would seek opportunities to provide detailed inputs.
- 14) The mm&P Alliance and its Partners present these specific and much needed changes before the bill is passed. We are confident that this memorandum submitted to the Parliamentary Sub-Committee will be carefully considered by the Hon Members and recommend appropriate changes in the bill as introduced by the Hon Minister in the House on 12.12.2011.



R.Sreedhar
Chairperson, mm&P



Ravi Rebba Pragada
Secretary General, mm&P

For mm&P Alliance
And on behalf of Oxfam India, SPWD, PiC

2.0 Reasons and Recommendations for Changes

1. OWNERSHIP SHOULD BE AN IMPERATIVE NOT DOLE FROM REVENUES

- 1) The mining regions across the world exemplify the phenomenon of “resource curse” and plight of the communities in the mining region is almost universal. Here trickle-down models have failed and it is necessary to develop partnership models for economic transition of the poor. This could only be achieved by a substantial benefit sharing arrangement.
- 2) Ownership in mining projects of the affected communities is the most viable model in enabling affected communities regain faith on the State and the economic system.
- 3) There is no real enumeration of actual number of mines. The Government’s figures are

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 Lok Sabha Answers

Given such a high proportion of illegality and the vast numbers, embedding ownership in the law would provide legal basis for the community to intervene in the case of illegal mines and to receive their share of benefits since they directly loose in the process.

- 4) There is international precedence in terms of guaranteeing ownership rights such the Black Empowerment Policy in South Africa and also in terms of multi-institutional operations in terms of equity.

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 considering the provision in the June 2010 draft (sec. 42) the following 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;*

The only other acceptable proposition will be of production sharing and appropriate text can be introduced such as

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

This would provide a fair opportunity for communities to be a part of the development, regulatory, monitoring and enabling framework being proposed in the new bill by becoming stakeholders in the mining life cycle. This would give meaning to the much-used term 'responsible mining'.

2. ENABLING TRIBAL COOPERATIVES WITHOUT RESTRICTION TO MINOR MINERALS

1. Provision 1 to sec. 5 (1) states that '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'.
2. Following the Samata Judgment Mining activities in Scheduled Areas should be in accordance with the scheme of Schedule V & VI of the Constitution and Judgement of the

Supreme Court in *Samata Vs State of Andhra Pradesh* [1997 (8) SCC 191]. *Mining leases can only be granted to cooperative societies comprising of 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”.*

Removal of reference to small deposits in bill will be in compliance to the Constitution and Judicial pronouncement.

3. RESTRAIN NEEDED IN THE SIZE OF A MINING CONCESSION

1. As per the new bill, a single mining lease can be the size of 10,000 hectares or 100 sq. kms, which is too large an area and can cut across commons of several communities.
2. The implications of allowing a single lease to be as large as 100 square kilometers are going to be impossible to manage, as it will affect large regions and diverse communities.
3. The following figure on the number of reporting mines in different size of leases gives a clear indication

Frequency Group	No. of Leases (2008)	Area (Sq. Km) in 2008	No. of Leases (2010)	Area (Sq. Km) in 2010
less than 0.5 Sq. Km	7092	740	8689	841.33
0.5 - 1 Sq. Km	799	590	891	663.26
1 - 2 Sq. Km	426	590	430	602.33
2 - 5 Sq. Km	263	820	280	861.85
Above 5 Sq. Km	188	2060	198	2105.27
TOTAL	8768	4800	10488	5074.04

4. The maximum size of lease is 500 hectares or 5 sq. kms, there are 198 (1.88% of total number of leases) such leases spread over an area of 2105 sq. kms. (Almost 42% of the total lease area).
5. One can image by simply comparing the total increase in lease area (from 2008 – 2010) which has increased by 274 Sq. Kms during the last two years but putting this in perspective, if single leases of 100 km² are given in future, then just three leases will be more than this increase in area.

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).

6. We demand that this be reduced by an order of magnitude with the maximum size of a single lease pegged at 10 square kilometers. This would provide for a far greater oversight and for corrective actions.

4. CLEAR DEFINITION OF AFFECTED PERSONS TO AVOID DISCRIMINATION

1. Clause 10 of sec. 43 calls for identification and the nature and extent to which the person or family is affected to determine the amount of monetary benefit. Unless a clear process of enumerating the Social, Cultural and Environmental impacts are in place this could lead to more confusion and conflict.
2. This also calls for concurrence under provisions of related laws on Panchayats, Forest Rights and Environment.
3. 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 mechanism for identification of the affected.

(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 (through a participatory process of SIA and EIA).

5. OFFENCES AND PENALTY TOO LOW TO DISCOURAGE UNLAWFUL MINING

1. 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.
2. 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.

6. SUSTAINABLE DEVELOPMENT FRAMEWORK

1. Sec. 46(4) states that the National Sustainable Development Framework 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.
2. The framework needs measurable indices and baseline criteria and cannot remain a conceptual document enumerating principles or policies.
3. Certain extreme violations should be punished with withdrawal of lease.

7. NATIONAL AND STATE MINING REGULATORY AUTHORITIES

1. 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. This pertains to major & minor minerals.
2. 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 u/s 72. This seems to be more inclined towards advisory role for the government and the industry as mentioned in provision under section 68(1).
3. Therefore the Regulatory Agency must be provided with the requisite authority to intervene *suo moto* and on the complaint of affected communities.

8. NATIONAL AND STATE MINING TRIBUNALS

1. 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.
2. 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.*
3. 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. 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.

9. UNTENABLE INSTITUTIONAL FRAMEWORK PROPOSED

1. 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.
2. 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.
3. If the functions are not clearly demarcated they would function at cross-purpose or make one institution redundant.
4. 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.

mines minerals & PEOPLE

An Emerging Alliance

mm&P (mines, minerals & PEOPLE) is a growing alliance of individuals, institutions and communities who are concerned and affected by mining. The isolated struggles of different groups have led us to form into broad a national alliance for combating the destructive nature of mining.

mm&P members at present are

- more than 120 grass-roots groups,
- About 20 diverse support organisations,
- Across 17 States

With the purpose of ...

- Supporting local struggles,
- Legal and Media advocacy,
- Information, documentation, research and fact finding,
- Developing campaign strategies,
- Skill share, Jatras, Exchanges,
- National and International networking,
- Technical and Scientific Expertise.

Challenges ahead....

- To bring a uniform and balanced mineral policy
- Protection of rights of indigenous communities,
- Fight for people's control over mineral resources,
- Stress for minimum mining,
- Explore better sustainable alternatives to mining,
- Resist environment destruction,
- Monitor global and Indian mining industries.

Of Choices....

- Mining should be the last resort for the use of land. Before resorting to mining, comparable usability of resources from existing sources, i.e. recycling and storage dumps should be made,
- There is much greater wealth for human kind above these minerals,
- One species of medicinal plant which turns out a medicine can be worth ten times the total produce of minerals.
- Community knowledge of various aspects of human life from medicinal plants to community organisation is worth ten times the value of a plant species.

.... and Alternatives

- We should gear towards a national policy of what has to be mined and what should not be mined, from the interest of the people rather than the Markets and the Industry.
- We therefore feel the progressive nations should go beyond economics of the market place and understand global stewardship,
- they should contribute to minimising mining,
- and seek ways where we can replace non renewable with more renewables.

Of values and Decisions.....

- The minerals will be for ever - if we do not mine them,
- The wealth above will never be ours - if we mine them..
-

... and therefore, in togetherness we appeal..... Emphasise Minimum Mining