

AGENDA NOTE

Subject: Comments on the draft Mines and Minerals (Development and Regulation) Bill, 2010

From News items, it was understood that Ministry of Mines is preparing a new Mines and Minerals (Development and Regulation) Bill, 2010 (MMDRB) to replace its earlier version of 1957. Subsequent enquiry with the Ministry of Mines, revealed that Ministry of Mines had placed the draft Bill on their web-site to get feed back and reactions in general (Copy forwarded by e-mail). Some of the important provisions of the draft Bill and comments thereupon are enclosed as **Annexure**.

2. Indian land laws, in general, do not confer ownership rights on the tenure holders, though tenures are held in perpetuity (subject to conditions) besides being heritable and transferable. Ownership is generally vested in the State, which also retains the right to mineral resources, water, etc. Exploitation of mineral resources by the Govt. is generally through grant of mining leases (on payment of dead rent / royalty) with the consent of the land holders (on mutually agreed terms). These (lease) arrangements have been the source of considerable resentment amongst land rights holders because there is no provision for grant of substitute land by the State or provision for profit-sharing / alternative vocations, even though mining renders land unsuitable for subsequent agricultural use. The R & R effort also has been unable to avert subsequent impoverishment of land rights holders, especially in tribal areas.

3. Since independence, as the need for accelerating the pace of planned development in various sectors of the economy started gaining momentum, the pressure to divert forest / private land at various places for mining of critical natural resources also started building up. The tribal people had to vacate large tracts of land, for the simple reason that, through a natural co-incidence, the tribal habitats contained large reservoirs of mineral resources. Land is the primary means of production in the tribal society. Landlessness, therefore, is both socially and economically depriving. A landless tribal is not able to fulfill many of the social functions expected of him. The struggle of the tribals has historically centred on their land base, as land represents the greater asset of the tribal society. They cannot think of undertaking any other vocation as they are largely incapable of it. Special attention has, therefore, to be paid to their needs so that they are not sacrificed at the altar of development.

4. As per the Judgement of the Supreme Court in SLP(C) No. 17080-81/95 also, minerals are to be exploited by tribals themselves, either individually or through cooperative societies with financial assistance of the State, or the State itself in the case of Scheduled Area. While such restrictions may not be feasible for techno-economic reasons, the Govt. should be willing to shoulder vicarious

responsibility for providing habitat and livelihood security in such areas if mineral extraction is authorized by private entities.

5. In order to identify the gamut of repercussions on tribal habitat, population and livelihood, before awarding the lease for mining of any mineral in Scheduled Areas, a comprehensive SIA should be conducted by a competent agency, in consultation with Gram Sabha and District Councils in case of Scheduled Areas and tribal-dominated areas. This would identify rehabilitation needs as well as livelihood support arrangements required for the land rights holders and other affected persons. Forest right holders/ peripheral Gram Panchayats should also be consulted before grant of mining leases in forest areas, because they have to bear the deprivation of livelihood / adverse after-effects of mining activity.

6. The State is one of the principal beneficiaries of the mineral extraction projects, as the royalty levied by the State on minerals extracted far exceeds the land rents paid to the tribal owners. Also, since mineral extraction is generally destructive of soil surface, it can't usually be restored to original land use subsequently. To ensure livelihood security to tribals, the State must ensure alternative land in case they will be substantially deprived of the use of their holdings. It may be more helpful to the land rights holders if damage compensation, or a part thereof, is paid at the outset because it may supplement livelihood security / change efforts. Besides, free skill training, etc, the mining enterprise must ensure that at least one person of each tribal household is given a suitable regular job in the mining project within a reasonable period of time. The compensation and source of livelihood should be adequate to assure living standards comparable with the surrounding community, or even better.

7. Annual compensation suggested in the MMDRB, 2010 should be viewed as a form of countervailing payment to land rights holders (counterpart of dead rent paid to Govt.). The Commission may also suggest that if agricultural land is to be used for mining, then besides compensation for entrustment and damage of land surface rights, future earnings from mining activity should also be shared with land owners in reasonable measure on par with royalty paid to the Govt. The draft Bill proposes to provide 26 % (sweat) equity to the land owners in mining projects. Industry is not supportive of the idea, since after giving away 26% shares apprehend that shareholders could take decisions that are not necessarily in the company's interest. Stock options would also not guarantee annual returns to land losers since commodity prices fluctuate according to global conditions and shareholder returns may be circumscribed by perceived outlook, prevailing tax regime, etc. Besides, illiterate tribals might also be cheated under board-room rules. Therefore, while redesigning the quantum and nature of equity participation to allay the apprehensions of promoters in respect of enterprise management, a sum equal to royalty be paid to the land rights holders for the duration of mineral extraction; and sweat equity holdings may be redeemed by the lessee to purchase lifelong annuity payments after mining operation have ceased in a particular location. Land Record of Rights should however, continue

to make mention of land owners to compensate them for alternative usage of land in future and subsequent land use plans may also take into account alternative vocations envisaged by land rights holders.

8. In respect of mining projects, the proposed National Sustainable Development Framework should address the full range of anticipated social, economic and environmental risks to mitigate the adverse effects of mining on the people and the surroundings. Comprehensive impact assessment, appropriate compensation, suitable R&R practices and efficacious restoration of habitat should form an important aspect of the Framework, along with explicit guidelines for rehabilitation and resettlement of displaced / project-affected persons.

9. Obligations / responsibilities of the lessee towards the project-affected / displaced persons should be specified as a necessary pre-condition of the lease. Rehabilitation schemes / plans should be validated with reference to the potential risks and related risk-reversal programmes to ensure that project affected / displaced tribals don't suffer from impoverishment in any manner and the problems of marginalization are mitigated to the maximum possible extent; and the R & R plan should form a separate part of the Mining Plan. Mine closure plans should be linked to the R&R Plan also, so that R&R activities are satisfactorily complete before the lessee ceases operations in a specified area. In the case of displacement arising from projects implemented by non-government / corporate bodies, the entire onus of implementing rehabilitation and resettlement plans should be that of the lessee (individual/ corporate entity) to avoid fragmentation / dereliction of responsibility. In default, the appropriate Govt. may undertake rehabilitation / resettlement (as for Govt. investments) at their cost, which may also form part of the lease conditions.

10. A standard rehabilitation procedure should be drawn and incorporated in the MMDRB, 2010 for tribals displaced from land used for mining and the same should be made applicable to diversion of forest land for this purpose involving the extinguishment of existing rights of the tribals in the forest area under the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; and all forest land diversion process in tribal areas must be held in abeyance till settlement of rights under The Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006. Land holdings regularized under The Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006 must not be resumed/diverted except in the case of emergency or strategic necessity, wherein equivalent land must be provided in the forest with similar rights besides other compensation admissible.

11. MMDR legislation should also create a meaningful CSR model incorporating a significant part of retained profits, comparable with the returns provided to shareholders and a participative mechanism to monitor its implementation. Initiatives should be taken by the mining enterprise as per the requirements of the local displaced/ affected people to create additional employment through schemes like helping the PAPs to form a co-operative society and direct allocation of 20% of the work to the society at the lowest price against a tender even without society's participation in the tendering process, standing as a surety for the loans to the PAPs for purchase of LMV, and hiring their vehicles for official purposes etc.

12. After approval of the Commission, these suggestions would be forwarded to the Ministry of Mines as well as MTA for suitable incorporation in the proposed legislation.