



INDIA'S MINING REGULATION A CHANCE TO CORRECT COURSE

India's natural wealth risks turning into a curse if the proposed Mines and Minerals (Development and Regulation) Bill fails to address extreme poverty, environmental degradation, and weak rule of law in mining regions.

Summary

The mining sector's current situation, with socially and environmentally disruptive practices making news regularly, is a powerful reminder that change is required. The proposed Mines and Minerals (Development and Regulation) Bill offers a unique chance to lay a sound basis for responsible extraction of the country's natural resources.

A series of amendments in India's legal framework over the past two decades have opened the mining sector to private investments. It was hoped that this would support economic development in some of India's poorest states. However, the reality is different. Human development indicators in mining-intensive states are stagnating when compared to the country average. Without strong regulations, mines too often damage the environment and hamper the livelihood of local populations, or displace them without adequate compensation. Large-scale illegal mining fills individual pockets instead of supporting a strong state apparatus. The violent conflict that spreads in many mining regions adds to the urgency of correcting the course.

The sector's predicted expansion is an additional argument in favour of reforms: its current value of about INR 200,000 crore will nearly double over the next 15 years, according to estimates by the Ministry of Mines.¹ Without better regulation, the benefits from its expansion will be overridden by environmental and human costs.

A number of clauses in the proposed Bill suggest that the regulation will better protect the basic rights of local populations. It paves the way for sharing benefits with affected communities, provides environmental and social oversight, makes it mandatory to consult local elected bodies before awarding a mining lease, and includes specific provisions for Tribal Areas.

However, the latest version of the Bill also falls short of expectations on some crucial aspects:

- ▶ The envisioned 26 percent equity sharing for affected people is watered down to a mere trickle—26 per cent

share of net profit for coal and lignite industries, and an amount equivalent to the annual royalty for all other major minerals.

- ▶ The Bill dramatically expands the size (to 100 sq.km.) and duration (to 30 years) of single leases, which reduces oversight and risks, increasing their human cost.
- ▶ Important notions, such as "affected people" or "reasonable compensation", are loosely defined.

Oxfam India, along with the network of civil society organisations "mines, minerals & PEOPLE" (mm&P), urges policymakers and Parliamentarians to prioritise the long-term stability of mining regions and the wellbeing of the people over short-term profits, by amending the Bill as follows:²

Recommendations

- ▶ Seeking free prior and informed consent of local communities should be made mandatory before granting a concession.
- ▶ Affected communities should be given free shares of equity worth 26 per cent, with clear mechanisms for redistribution and ownership.
- ▶ The size of concessions should be reduced from 100 sq. km. to 10 sq. km., and their durations reduced from 30 to 10 years.
- ▶ Notions of "affected person" and "reasonable compensation" should be defined, based on clear and measurable indicators.
- ▶ Institutional frameworks should be strengthened; guidelines on environment and social responsibility should be made more specific; responsibilities for implementation defined; and penalties for offences made more stringent.

The Mining Sector

Eighty-seven mineral types worth more than INR 200,000 crore were extracted in India during the year 2010-2011.³ Half of India's districts host mining activities.⁴ The political will to unlock "the potential of the mineral sector"⁵ is strong at a time when high demand in India and abroad is met by rising prices. The Ministry of Mines aims to double the sector's growth, which averaged 6.8 per cent over the last decade. It estimates that, with appropriate support, growth rates could be maintained at around 10-12 per cent per year. According to the same estimates, the contribution of extractive industries to the Indian GDP, currently at a mere 2.26 per cent,⁶ would grow to 7 per cent by 2025, with peaks of 20 per cent in states like Chhattisgarh.⁷

A number of previous amendments to India's mining legal framework pursued a similar aim: the National Mineral Policy 1993 and 2008 opened the sector to private and foreign investments. This triggered a slow increase in productivity, coupled with a massive expansion of illegal mining activities: in 2010, state governments across India reported 82,000 cases of illegal mining;⁸ in contrast, the number of mines registered with the Ministry of Mines amounts to a mere 9398.⁹

India's system of regulation for the mining sector is notoriously weak: the applicant company itself is entrusted with choosing and paying the consultant who makes the Environmental Impact Assessment (which provides data on the possible negative social and environmental impact of a proposed operation). This same assessment then guides the government's decisions to allow an operation, favouring a glaring conflict of interest.¹⁰

Social and Economic Context

The states richest in natural resources are also among India's poorest. Chhattisgarh, for example, has the second highest incidence of poverty among all Indian states (48.7) after Bihar. Levels of poverty in the state have stagnated, with a decrease of only 1.3 percent over the last five years, against a national average of 7.4. Jharkhand and Orissa (with respectively 39 per cent and 37 per cent of poor), also fare worse than the national average (30).¹¹

These human development indicators are a clear sign that mining benefits do not trickle down without strong mechanisms for redistribution. Mining activities provide very few employment opportunities for local populations. In 2008, an estimated 600,000 people were employed in the mining sector¹² – less than 0.05 per cent of India's population for a sector that accounts for 2.26 per cent of its GDP. Moreover, formal employees rarely come from local communities who instead fill the ranks of informal workers in and around the mines.

Work conditions of informal miners are among the most

hazardous in the country: their life expectancy is as low as 45-55 years;¹³ work-related accidents are frequent; cases of tuberculosis, silicosis and other lung diseases are widespread. Living conditions around the site are dismal: sanitation is lacking and pollution of drinking water is recurrent. Given these conditions, upward mobility for people living around mining sites is very weak.¹⁴

India's poorly-regulated extractive industry also imposes a heavy human and environmental cost much beyond the immediate vicinity of mines. Thousands, possibly millions of people have been displaced.¹⁵ Mines are extremely water-intensive industries, and hence represent a real threat to the water resources of neighbouring communities. A growing body of studies document cases of water, soil and air pollution.¹⁶ Moreover, fertile land is often lost for generations because companies do not comply with proper closure procedures.

Poor regulation and the opportunity to reap high profits is an additional threat to local populations: weak local institutions risk being further undermined, as criminal networks compete for a share of the country's natural wealth. The violent conflict that has spread in many mining regions adds to this bleak picture. As argued in the literature on the subject, natural resources easily turn into a curse.¹⁷ Examples across the world show how these resources support corrupt elites, which are disconnected from the needs of their citizens and neglect basic services such as education and health. They also fuel conflict by providing insurgents with the money they need to wage war.

For women, mining poses specific threats. Their economic dependence often increases: they lose their traditional livelihood dependent on forest resources and agriculture, whereas mines rarely offer alternative avenues for income generation. They are most acutely impacted by water pollution, given that they are responsible for washing clothes and fetching water for the family.¹⁸ Finally, frequent cases of sexual harassment are reported around the mines.

Scheduled Tribes and other forest dependent communities, who live in some of the country's richest mineral-bearing regions, are particularly vulnerable to displacement and dispossession. There is hope that a number of positive new laws will help redress the historic exclusion of these communities. If properly implemented, the recognition of their rights to land by the 2006 Forest Rights Act (FRA) will reduce their vulnerability to displacement. Similarly, the 1996 Panchayat Extension to Scheduled Areas Act (PESA) will give communities a greater say on the governance of natural resources in their regions. It is crucial that the proposed Mining Bill does not contradict the FRA and PESA in these important respects.

History of the Bill

The proposed Bill was prepared by the Ministry of Mines to replace the 1957 Mines and Minerals (Development and Regulation) Act, after a high level committee called for amending India's mining code in 2006. The conception of the Bill started with a healthy debate between the government and civil society organisations. Networks such as mm&P were consulted during the drafting of the proposed Bill. However, this constructive engagement was somewhat undercut when, in July 2010, the Group of Ministers decided to water-down some of the Bill's most progressive clauses. The first draft was introduced in Parliament in December 2011, but was then referred to a Standing Committee.

Oxfam India believes that the Group of Ministers' move, in apparent response to pressure by private interests, is a miscalculation. Only by following the recommendations below will the Bill create an environment that encourages sustainable mining activities.

Recommendations

- ▶ **Seeking the free, prior and informed consent of local communities should be mandatory before granting a concession.**

Gram Sabhas should issue a public notification prior to granting a concession, and should accept objections for at least 30 days thereafter. Special provisions should be included for Scheduled Areas to avoid undermining the PESA structure of governance. Authorities should be required to seek the consent of the Tribes Advisory Council.

- ▶ **Affected Communities should be given a 26 per cent share of equity, with clear mechanisms of redistribution and ownership.**

Publicly-owned companies should award a 26 per cent ownership of equity to affected communities. Embedding ownership of communities in the law provides the legal basis required for them to intervene in cases of illegal activities, and ensures that they receive a fair share of the benefits. It also grants local communities a stronger bargaining position against mining companies, which may help undermine the notorious lack of transparency of the sector. Where the lease-holder is an individual, the 26 per cent share of profit should be awarded as an annuity.

The right of local communities to exploit natural resources should be respected: mining cooperatives should be prioritized where possible, and be made mandatory in PESA areas.

- ▶ **The size and duration of concessions should be limited.**

The proposed Bill allows mining leases of up to 100 sq. km. Such expanses of land would often encompass several villages. The size should be brought down to 10 sq. km. to allow better oversight.

The Bill also increases the allowed duration of a lease from 20 to 30 years. This duration is an obstacle to efficient oversight of the mine. It should be reduced to 10 years.

- ▶ **Notions of "affected persons" and "reasonable compensation" should be defined more specifically.**

The definition of an "affected person" should rely on unambiguous indicators that can capture the social, cultural and environmental impacts of the project. It should not only include people displaced by a mine, but also those whose livelihood is otherwise affected.

The current version of the Bill guarantees a "reasonable compensation" to affected persons, but gives state governments the liberty to define its exact amount. This needs to be clarified. The Bill should define a minimal amount for compensation, linked to a dynamic index such as the Consumer Price Index.

- ▶ **Strengthen institutional framework and oversight.**

The Sustainable Development Framework (SDF), the government's guidelines for environmental and social sustainability, should rely on clear indicators that can capture the social and environmental impact of an industry. The Bill should clarify which parties are responsible for implementing the SDF, monitoring it, and enforcing that no mining takes place outside of its purviews. Similarly, Environmental Impact Assessments should be made more transparent, and include provisions ensuring the cancellation of environmental clearances where impacts on communities and the environment are intolerable. The Bill should also mandate disclosure and impose dissuasive penalties for violations.

The coordination between different agencies regulating the sector should be strengthened. The role of National and State Mining Regulatory Authorities should be better defined, and policymakers should ensure that these bodies do not overlap with the National Committees.

Notes

¹ Government of India (2011) 'Annual Report 2010-2011', Delhi: Ministry of Mines (mines.gov.in/annual201011/chap1.pdf, last accessed July 2012).

² mines, minerals & People (2012), 'Mining Matters', Delhi: mm&P.

³ Government of India (2011) 'Annual Report 2010-2011', op. cit.

⁴ B. Kalluri et al (2010) 'India's Childhood in the "Pits"', Delhi: Dhaatri Resource Centre for Women and Children, HAQ, Centre for Child Rights. p. 5 (www.haqrc.org/publications/india%E2%80%99s-childhood-pits-report-impacts-mining-children-india, last accessed July 2012).

⁵ Government of India (2011a) 'Unlocking the Potential of the Indian Minerals Sector', Delhi: Ministry of Mines (mines.nic.in/writereaddata/filelinks/7a47c611_Unlocking_the_potential_of_the_Indian_minerals_sector_-_FINAL.pdf, last accessed July 2012).

⁶ Government of India (2011) 'Annual Report 2010-2011', op. cit. p.11.

⁷ Ibid, pp. 5 and 15.

⁸ It should be kept in mind that this figure may include incidents related to the same site. Press Trust of India (2011) 'Over 82k illegal mining cases detected in 2010: Govt', August 14 (businessstandard.com/india/news/over-82k-illegal-mining-cases-detected-in-2010-mines-ministry/144328/on, last accessed July 2012).

⁹ The data excludes Fuel, Atomic & Minor Minerals. Government of India (2011) 'Annual Report 2010-2011', op. cit., p. 11.

¹⁰ Human Rights Watch (2012) 'India: Mining Industry out of Control', Washington DC: HRW (www.hrw.org/news/2012/06/14/india-mining-industry-out-control, last accessed July 2012).

¹¹ Estimates based on the Tendulkar Committee methodology. Government of India (2012) 'Press Note on Poverty Estimates', Delhi: Planning Commission (planningcommission.nic.in/news/press_pov1903.pdf, last accessed July 2012).

¹² Government of India (2011a), 'Annual Report, 2010-2011', op.cit. p. 1.

¹³ B. Kalluri et al (2010) 'India's Childhood in the "Pits"', op. cit. p. 28.

¹⁴ B. Kalluri et al. (2010) 'India's Childhood in the "Pits"', op. cit. Bavisar A. (2008) Contract Killings: Silicosis among Adivasi Migrant Workers', *Economic and Political Weekly* XLIII(25); mm&P (2003), 'Impacts of Mining on Women's Health in India', Delhi: mm&P (www.minesandcommunities.org/article.php?a=1817, accessed July 2012).

¹⁵ B. Kalluri et al (2010) 'India's Childhood in the "Pits"', op. cit. p.10.

¹⁶ The World Refugee Survey puts the number of IDPs in India as 507,000; the Indian Social Institute and the Global IDP project places it at 21.3 million, with 2.55 million displaced by mines alone. Lama M. P. (2000) 'Internal Displacement in India: Causes, Protection and Dilemmas', *Forced Migration Review*, 1(8).

¹⁷ Among others: Government of India, Indian Institute of Technology (2010), 'Comprehensive Environmental Assessment of Industrial Clusters', Delhi: Ministry of Environment (www.cpcb.nic.in/upload/NewItems/NewItem_152_Final-Book_2.pdf, last accessed July 2012); see also S. Sohail (2010) 'Coal Capital Turns Pollution Capital', Delhi: Centre for Science and Environment (www.cseindia.org/node/2825, last accessed July 2012).

¹⁸ mm&P (2003), 'Impacts of Mining on Women's Health in India', op.cit.

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With these recommendations, Oxfam India backs the claim of the network of civil society organisations "mines, mineral & PEOPLE" (mm&P).

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